THE BENGAL MUNICIPAL MANUAL.

172 C 53.(2)

THE

BENGAL MUNICIPAL MANUAL

CONTAINING

THE MUNICIPAL ACT, B. C. ACT III OF 1884, AS AMENDED BY BENGAL ACTS III OF 1886, IV OF 1894 AND II OF 1896, AND OTHER LAWS RELATING TO MUNICIPALITIES IN BENGAL,

WITH

RULES, CIRCULAR ORDERS BY THE LOCAL GOVERNMENT AND NOTES.

BY

F. R. STANLEY COLLIER, I.C.S.

FOURTH EDITION.

With all Amendments and Rules brought up to date.

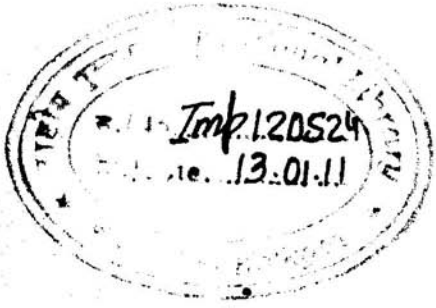
Calcutta:

THACKER, SPINK & CO.,

LAW PUBLISHERS.

1899.

CALCUTTA:
PRINTED BY THACKER, SPINK & CO.



PREFACE.

A Fourth Edition of this work having been called for, advantage has been taken to include some new Rules and Model Bye-laws, and the Appendix includes all the Acts and Rules to which reference is likely to be necessary. The changes made by the Amending Act are explained in a Government Circular, which is here reprinted. All the Notes have been carefully revised, and a large number of additional Rulings have been quoted.

F. R. S. C.

ALIPORE, *February* 1896.

NOTE.

The PUBLISHERS thankfully acknowledge the permission accorded to them to reissue the Fourth Edition with all amendments embodied in the Municipal Act and with all the latest Rules and Orders on the subject.

CALCUTTA, *December* 1898.

CONTENTS.

APPENDIX.

EXPLANATION OF ABBREVIATIONS USED IN THIS WORK.

P. C.	...	... Proceedings of Councils.
L. R.	...	... Opinion of Legal Remembrancer.
Bl. Coms.		... Blackstone's Commentaries.
Steph. Coms.		... Stephen's Commentaries.

TABLE OF CASES CITED.

—:o:—

MUNICIPAL DEPARTMENT.

Explanatory Circular.

CIR. No. 34M.

CALCUTTA, THE 27TH AUGUST 1894.

FROM C. W. BOLTON, ESQ.,

Offg. Secretary to the Government of Bengal,

TO THE COMMISSIONER OF

SIR,

AT page 15 of Part III of the *Calcutta Gazette* of the 15th August 1894, it is announced that His Excellency the Governor-General in Council has signified his assent to the Bill to consolidate and amend the law relating to Municipalities in Bengal, which was passed by the Bengal Legislative Council on the 28th April 1894. The Bill is printed in full in the Gazette of the same date ; but, in order to draw attention to the alterations and additions which have been effected, a special set of copies has been printed, which I am now directed to forward to you for information and for communication to the officers subordinate to you, showing in italics the new matter added by Act IV of 1894 and indicating by the method of black underlines the passages in the old Act which have been omitted or altered. I am also to invite your attention to the following observations on the chief points in the new Act.

2. The sections of the Bill naturally divide themselves into two groups, *viz.* (*a*) those which make administrative changes of a more or less important character ; and (*b*) those which are merely corrective, which repair omissions, give effect to the decisions of the Law Courts, recast the wording of old sections, and repeal those which are no longer necessary. The latter form, of course, far the larger group, but

they need little notice, as for the most part they explain themselves.

3. The matters on which Government, on behalf of the rate-payers or for the better administration of the country, has felt itself obliged to assume larger powers than it possessed before are few in number, and in each case careful safeguards are provided. First comes the power taken in sections 9 and 9A to disestablish a Municipality, or to alter its boundaries when it no longer fulfils the conditions which originally justified its creation; then follow the power to appoint Commissioners *ex-officio* (section 14), the power given to Commissioners of Divisions to remove Commissioners (section 20), the delegation to Commissioners of Divisions of certain of the smaller powers of Government (section 29A); the appointment of a special Auditor when the accounts are in confusion (section 82); and lastly, the power to appoint an assessor when it has been proved that the affairs of the Municipality require it, and when the Commissioners will not move of themselves (section 111A).

4. On the other hand, the powers and responsibilities of the Commissioners have been advanced in many ways. They will now be able to order a survey (section 223A), and to organise a fire-brigade (section 349A and B). Their financial powers are increased by the provision that the Commissioner of the Division shall not finally pass orders on their budgets till they have had an opportunity of replying to his criticisms (section 76), and their income may be considerably developed in several ways; the maximum of the water-rate is increased to 7½ instead of 6 per cent. (sections 86 and 279); they may levy in the same Municipality both the tax on persons and the rate on holdings (section 84); arable lands are no longer exempt from assessment where the personal tax is in force (section 87); property in their temporary possession may be turned to pecuniary advantage (section 200); licenses may be issued at burning-ghâts and burial-grounds (section 260A), and the latrine rate may be levied from vacant holdings (section 322). Not less important than their increased financial powers are the larger powers of administrative control now confided to Municipal Commissioners. They may control the water-supply where its purity is suspected, even when private right are affected (sections 199-199A); they will exercise

larger powers over ruined and dangerous houses, walls and trees (sections 208, 210, 210A); their powers in regard to building regulations may be greatly increased at their option (sections 237 to 242), and they have been enabled to frame wider bye-laws and to enact rules of business for their own guidance (sections 350, 350A and 351A).

5. Turning next to the most important sections of the Bill in detail, I am to direct your attention in the first place to sections 9, 9A and 9B of the Act. Under the old law a place which had once been made a Municipality, however little it might be entitled to claim Municipal Government, could be removed from that category, or could have its limits varied, only upon the recommendation of the Commissioners at a meeting, a course which for obvious reasons was very seldom adopted: the new law does not take from the Commissioners this power of recommendation, but provides that, where the conditions laid down in section 10 as to amount or density or character of population no longer exist, the Lieutenant-Governor, after affording full opportunity for objections to be made, may exercise in this respect, without recommendation from the Municipal Commissioners, the powers which ordinarily he would only use upon the recommendations of that body.

6. Section 14 of the Act as amended provides that the appointed Commissioners may be appointed either by name or by official designation. The object of this provision is to avoid the inconvenience which sometimes occurs when an official is transferred who has been appointed by name only. As vacancies take place among the appointed Commissioners of Municipalities in your division, it is for you to consider in each case whether the new nominee should be appointed by name or by his official designation. This change of principle involves petty changes in sections 17 and 23 of the Act.

7. By the amendment of section 15 of the Act, an important provision is added which enables Government to lay down by rule the authority who shall decide all election disputes under the Act. The question of amending the election rules is still under discussion, and orders on this point will issue hereafter. A proviso at the end of the section safeguards such jurisdiction as the Civil Courts may now be deemed to have in respect of these disputes.

The franchise is extended by the same section to a class of persons whose exclusion hitherto has been felt to be anomalous, *viz.*, those who, being in receipt of a monthly salary of Rs. 50 or more, which implies intelligence and education, have yet had no vote because they were not independent rate-payers. The number of voters added to the list by this section will not be large, but they should all be citizens of weight and importance. A new clause added to this section also declares what shall be included in the term rates—a point which has not hitherto been decided.

8. Section 20 of the Act has been recast so as to enact clearly on what grounds a Municipal Commissioner may be removed, and who shall pass the order for his removal.

9. Section 23 of the amended Act gives to the Local Government power to appoint the Chairman of a Municipality entered in Schedule II by name or by official designation. In clause 2 of this section it is made quite clear that when the Commissioners of a Municipality in Schedule I have once asked Government to appoint a Chairman, they do not thereby permanently surrender their right of election, but are entitled to exercise it on the occurrence of any future vacancy in the post of Chairman.

10. The alterations in section 26 of the Act enable a Chairman whose term of office under the Act would ordinarily have expired to carry on his duties till a proper and effective meeting is convened to elect his successor or ask Government to appoint him. By the same section the old body of the Commissioners will continue in office until the first meeting of their successors. Section 26A provides for certain subsidiary but necessary formalities in the same connection. By section 26B leave may be given to a Chairman or Vice-Chairman, and an omission in the present Act, which has not infrequently caused inconvenience, is thus repaired. As a corollary, section 28 authorises the grant of leave allowances to these officers when they are in the receipt of salary. Section 27A defines clearly the procedure to be followed when a Chairman, Vice-Chairman or Commissioner desires to resign.

11. By section 29A certain minor powers, which have hitherto been exercised by Government, may now be delegated to the Commissioner of the Division.

12. Two important alterations have been made in section 30. One has reference to the ruling of the Calcutta High Court in the *The Chairman of the Naihaty Municipality* v. *Kishori Lal Gossami*, I. L. R., 13 Calc., 38, and *Modhu Sudan Kundu* v. *Promoda Nath Roy*, I. L. R., 20 Calc., 732, where it was pointed out that the absolute property in the soil of a road was not vested in the Commissioners. This will no longer be the case. The object of the other alteration is to provide that a road, bridge, or drain need not be entirely excluded from the provisions of this Act, but only from the operation of certain specified sections.

13. The important provisions of the new sections 37A to 37M were very carefully framed by the Select Committee before they were accepted by Council, and the Lieutenant-Governor trusts that they will receive at the hands of local authorities the same careful consideration. It is hoped that recourse will be fully and frequently had to these sections in the larger Municipalities which have not yet been provided with a wholesome water-supply, and that they will facilitate the execution of a much-needed reform with the least possible risk of discord or extravagance. It will be noticed first that compulsion will not be employed by Government except in the last resort (section 37K), and not until the local authorities have had ample opportunity afforded them of taking action spontaneously ; and, secondly, that even then the representations of a substantial and undisputed majority will suffice to procure the abandonment of the scheme.

14. Section 59 requires the consent of Government to the *ad interim* election of a Chairman, and section 66A provides for the settlement of disputes between a municipality and its external neighbours, such as another Municipality or the District Board.

15. Some additions have been made to sections 68 and 69 of the Act, which allow the Municipal Fund to be expended on the maintenance of Municipal Benches and on the payment of an officer who may be specially deputed to revise their accounts.

16. Section 76 of the Act is more remarkable for what it omits than for what it enacts. An effort was made when the Bill was passing through Council to confine the supervision of the Commissioner of the Division to the major heads only of the annual budget estimate, and the refusal of

the Council to accept this proposal has been commented upon with some acerbity. It has been alleged that Government insisted on a retrograde step which deprived Municipal Commissioners of a privilege they already possessed. The exact contrary is the case: the Commissioner of the Division has been invested with no new powers, but, on the contrary, an important, though reasonable, concession has been made in the provision that the Commissioner can no longer alter a Municipal Budget without affording the Commissioners an opportunity of considering and replying to any modifications which he may think desirable in their estimates.

17. Section 82 of the Act has been recast so as to provide for the appointment of a special officer to examine and report upon the accounts of a Municipality whenever the yearly audit has shown that the accounts are in great confusion and the Municipal Commissioners, after due notice, have failed to set them straight.

18. Two important changes in the law on Municipal taxation have been introduced in sections 85 and 86 of the Act. Both the tax on holdings and the personal tax may now be levied in the same municipality, provided that both are not levied in the same ward. But where a Municipality is not divided into wards, it must be considered as consisting of one ward only, and both these taxes cannot, therefore, be in force there at the same time. By the second section quoted the maximum percentage for water-rate has been raised from 6½ and 5 to 7½ and 6 respectively. In section 87 of the Act it is now provided that in assessing the personal tax arable lands held by the assessee may be taken into account, but not any public burial-ground or burning-ghat. It was understood by the Council that, as a matter of fact, Municipal Commissioners when assessing a man's means and income are unable to leave out of consideration the income he derives from arable land, and it was deemed advisable to sanction this practice by legal enactment. Moreover, it was pointed out that, in the absence of such a provision, arable land within the boundaries of a Municipality escaped taxation altogether.

19. As regards the rate on the value of holdings, some changes have been made in sections 97, 98 and 99 of the Act which explain themselves.

20. A new section 111A deals with the appointment of an assessor of Municipal taxes—a question which has pro-

bably given rise to more discussion than any other embodied in the Bill. The provisions of the sections as they now stand have been very carefully considered, and a power, the want of which has sometimes been very acutely felt, has been placed in the hands of Government with the minimum of inconvenience and the greatest possible regard to the dignity of Municipal Commissioners. The authority now conferred will, in fact, be exercised only when the necessity for action admits of no question, and it may be hoped that the very existence of this power in the statute book will make its exercise unnecessary.

21. The importance of the alteration in section 116 should not be overlooked. In accordance with the spirit of the decision of the High Court in the case specified in the margin, section 116 now provides that the decision of the Commissioners or of a Committee appointed by them under section 114 shall be final only as regards the amount of assessment or rating: the larger question of liability to be assessed or rated will now be left to the decision of the Civil Courts.

Appeal under sec. 13 *of the Letters Patent No.* 23 *of* 1893. Chairman, Barisal Municipality, *Defendant-Appellant v.* Srimutty Addya Soondury Mittra and others, *Plaintiffs-Respondents.*

22. In section 121 an important proviso has been added on the subject of distrained property, and the addition to section 125 provides a punishment for the breach of the orders in the earlier part of the section. Similarly, the addition of sections 141A and 147A is intended to correct what is an omission in the old law, and the same may be said of the addition of the word "sewage" in section 187 of the Act.

23. Important additons have been made to the sections which deal with the control of bathing and washing-places, wells and tanks. In the first place, in section 199, wells have been brought under the control of Commissioners to the same extent as other sources for the supply of water for drinking and culinary purposes, and secondly, the last clause of that section has been re-written so as to define with greater precision the powers of Municipal Commissioners in respect of the private portion of any water-course which forms part of the public water-supply. Section 199A gives to the Commissioners the power of prohibiting the use of unwholesome water, the absence of which power has often been extremely inconvenient, and the Lieutenant-Governor hopes

that it will be freely exercised. It will now be possible for Municipalities to close a source of water-supply which may be suspected, and to maintain this prohibition until the purity and wholesomeness of the water is established by chemical analysis in accordance with the rules laid down in the Sanitary Commissioner's Circular No. 342 of the 25th June 1894. The reference may be made by the Commissioners, but would ordinarily be made by the person aggrieved by the closing of the well or tank.

24. By section 200 as now enacted, when an unwholesome tank or other source of water-supply has to be put in order, the Commissioners may call upon the owner or occupier to do one of three things, *i.e.*, either to re-excavate, fill up, or cleanse the place to their satisfaction. If the owner or occupier does none of these things, the Commissioners may do any one of them for him, and by the clause now added, if they re-excavate or fill up, they may retain possession of the property and turn it to profitable account until the expenses thereby incurred have been realised. The Commissioners are not entitled by the law to dictate to the owner which of the three courses open to him he is to pursue.

25. Section 208 has been re-written so as to give the Commissioners power in respect of trees, hedges, &c., which are likely to cause damage or obstruction, or to foul the water of any well or tank.

26. The powers of the Commissioners in regard to buildings in a dangerous state have been a good deal extended in sections 210 and 210A, and these sections should be carefully noted. The Commissioners can now interfere to protect the inmates of a building against the consequences of their own apathy or neglect. The Lieutenant-Governor has no doubt that the good sense of the local authorities throughout the province will prevent the powers now given from being misused to the annoyance of individuals.

27. The penal provisions of section 217 have been extended to section 199A ; those of section 218 to sections 206 and 207 ; and those of section 219 to section 210A ; and persons infringing the provisions of those sections can now be punished for so doing.

28. The addition to section 220 should be noted. It is now formally declared by law that wherever the whole of the provisions of any one of the Parts VII, VIII, or IX of

the Act of 1876 were in force when Act III of 1884 became law, the whole of each of the corresponding Parts VI, XI or X of this Act shall be considered to have been in force. This provision was necessary in order to remove doubt as to the continued application of these Parts. Where only a portion of the provisions of any one of Parts VII, VIII and IX of the Act of 1876 was in force when Act III (B.C.) of 1884 became law, its continuance was secured by the provision of section 1 of Act III of 1884, as further explained by the additions made to section 2 by the present amending Act IV of 1894. The result is that all notifications or orders passed, and all rules made under Act V of 1876, are still in force, unless expressly rescinded, even although the number of the Parts or sections quoted in them may have been altered.

29. By section 223A of the Act power has been given to make a survey, the cost of which is chargeable to the Municipal Fund under section 69 (9).

30. The sections which refer to building regulations (sections 236—244 of the Act) have been considerably expanded and should be carefully perused. The provisions of section 241 are suitable only to large Municipalities, which include many masonry buildings; and while all the remaining sections of this group came into force on the passing of this Act in every Municipality in which the corresponding sections of Act III of 1884 were in force at the time, it will be observed that the provisions of section 241 are expressly exempted from the operation of this general rule, and that this section will not take effect in a Municipality until it has been specially extended thereto at the request of the Commissioners at a meeting.

31. Some small alterations have been made in the sections relating to burial and burning-grounds, and it is believed that some income might be derived from the licenses which may now be granted under section 260A. These receipts might well be devoted to the improvement of these places which are often allowed to remain in very bad order.

32. Three important additions have been made to the provisions of section 261 and 262, which deal with certain offensive or dangerous trades or occupations. Places for the storage of rags or bones or both have been added to the list of those for the use of which a license is necessary,

and the last clause of the section has been so re-written as to safeguard, as far as possible, persons following any one of the specified trades or occupations from having to pay unreasonable and unsuitable fees for the privilege. It is important to note that in future no fees can be levied under this section until the scale has been approved by the Commissioner of the Division. No time should, therefore, be lost in submitting the scale for sanction. Lastly, section 262A empowers the Commissioners to prohibit the burning of bricks, &c., for private purposes within defined limits. Under section 263, as now amended, any person who keeps even one horse or pony or one head of cattle for the purpose of trade or business may be required to take out a license. The object of this change is not to raise an income from the poor, but to bring under control all the places where such animals are kept.

33. The additions in the penal sections—270, 271, and 273—merely give effect to provisions in other parts of the Act.

34. The alterations in Part VII of the Act, which deals with water-supply, are the outcome of prolonged and elaborate discussion. The maximum amount of the water-rate has been raised from 5 and 6½ per cent. to 6 and 7½ per cent. respectively. The principle on which it is to be calculated is carefully defined; and a fair share of the cost of collection and of general supervision has been made a legitimate charge against the fund: lands used exclusively for agricultural purposes are exempted from assessment, and power is left to the Commissioners to make special arrangements for the supply of water to persons beyond the limit up to which a water-rate can be levied.

35. A new section has been added (section 318A) making the lighting rates into a separate fund and defining how they may be expended.

36. Important changes have also been made in Part IX which deals with the cleansing of private privies and cess-pools. It is now clearly laid down that this Part does not deal with public latrines, which should be provided under section 186 as part of the general scheme of conservancy in the town, but with the cleansing of private privies and cess-pools only. It was at one time proposed to substitute for the existing rate a scale of fees for service rendered,

but after the fullest consideration the proposal was abandoned and the existing arrangements maintained. Cess-pools have been brought within the scope of this Part, as it appears that in some cases it was difficult to distinguish between a cess-pool and a privy. No privy rate will be assessed on a holding which does not contain a dwelling-house (section 321), nor on certain public buildings (section 334A), nor will it be levied from a shop-keeper twice over (section 322). Lastly, remissions or refunds will be allowed for vacant holdings. The effect of these changes ought to be to lighten the fees charged under this Part to the poorer residents of the Municipality.

37. The effect of the additions made to section 339 in Part X (regulation of markets) is to protect the proprietors of old markets from arbitrary treatment. The section compels Commissioners to renew year by year licenses for markets lawfully established at the time of the extension of this Part to the Municipality, so long as the Chairman continues to give year by year the certificate required by section 340 that the land is fit for use as a market for the sale of provisions. When a market is established after the extension of this Part to the Municipality, no such compulsion exists, and the Commissioners may give or withhold the license as they please.

38. Part XIA is entirely new and empowers Municipal Commissioners to make arrangements for the extinction and prevention of fire. The cost of these arrangements is declared to be a legitimate charge upon the Municipal Fund by section 69 (8).

39. It has been found that the wording of section 350 of Act III of 1884 was not sufficiently specific, and that, as a matter of fact, many bye-laws have been made from time to time, and have been accepted by Government, which do not, strictly speaking, fall within the scope of the section as it formerly stood. The wording has, therefore, been recast, and the matters in regard to which bye-laws may properly be made have been more clearly defined. At the same time an opportunity has been taken in section 350A to give to hill Municipalities more stringent powers over private owners of land as regards cutting down timber and excavation of building sites. A new section (351A) has been added, empowering the Commissioners of all Muni-

cipalities to make rules for the conduct of business in the same way as District and Local Boards have been empowered under Act III (B. C.) of 1885. The Lieutenant-Governor proposes to circulate for adoption by Municipal Commissioners a set of model bye-laws and one of model rules of business. Meanwhile the bye-laws which have already been passed by each Municipality and confirmed by Government will continue in force until repealed or altered in the proper manner. Power has been taken by the Lieutenant-Governor to cancel any bye-law which he has sanctioned: an omission in the former law, which can only have been due to oversight.

40. The last section to which it is necessary to refer is 365, which now extends to offences against bye-law as well as those against the Act itself, and allows certain selected servants of a Municipality to exercise the powers of a police-officer under the section.

I have the honour to be, etc.,

C. W. BOLTON,

Offg. Secy. to the Govt. of Bengal.

MUNICIPAL CIRCULAR No. 56M.

CALCUTTA, THE 7TH DECEMBER 1896.

FROM H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal,

TO ALL COMMISSIONERS OF DIVISIONS.

SIR,

IN continuation of Government Circular No. 20T.M., dated the 30th September 1896, I am directed to invite your attention to the following changes introduced into the Bengal Municipal Act, 1884, by Bengal Act II of 1896, which came into force on the 28th October last.

2. The first proviso to section 15 has been recast so as to omit clause (3), which was unintelligible, and to extend the franchise to certain classes of persons who did not enjoy it under the old law. Subject to the conditions specified in the

proviso, all persons who have paid or been assessed to income-tax, or who, besides possessing the occupancy qualification defined in the proviso, have passed the First Arts examination of the Calcutta University, or the corresponding standard of any other University, or hold a license granted by a Government Medical School to practise medicine, or a certificate authorizing them to practise as Revenue Agents, are now for the first time entitled to vote at municipal elections. The clause of section 15 relating to the fifty-rupee income qualification of members of joint families has been omitted, as it is covered by clause (ii) of the section as amended.

3. By the amendment of section 69, Municipal Commissioners are now enabled to devote a portion of the funds at their disposal to the establishment of open spaces for the promotion of physical exercise and education; the training and employment of female medical practitioners and of veterinary practitioners; the establishment and maintenance of veterinary dispensaries; the employment of qualified persons to prevent and treat diseases of horses, cattle, &c.; the improvement of the breed of cattle; and the establishment and maintenance of free libraries. At the same time, by the amendment of the proviso to the section, the restriction imposed by Act III of 1884 on expenditure on education, dispensaries and vaccination, is removed, and these purposes are classed among those ordinary purposes of municipal expenditure which are controlled by the Commissioner of the Division under section 76 of the Act. All of these ordinary purposes are given priority over the special purposes referred to in clauses viii to xiii.

4. The payment of travelling expenses incurred by a Municipal Commissioner in attending a meeting convened for the purpose of recommending a person for nomination as a member of the Bengal Legislative Council has been legalised by the insertion of clause (2) in section 69 of the Act.

5. The words "habitually used" in sections 131, 142 and 147A, which have been found to be ambiguous, have been replaced by the words "used in the ordinary course of business," a definition of which, as applied to carriages, animals, and carts, has been given in the two new sections 141B and 147B. Clauses have also been added to section 147A, providing for the levy and apportionment of cart registration fees.

6. Two important additions have been made to section 279. The object of the first is to legalise the levy of differential water-rates, which may vary with the distance of houses and lands from the nearest stand-pipe or other source of water-supply; and may be higher in premises with water connections than in the case of other premises. By the second addition holdings consisting only of tanks are exempted from water-rate.

7. The words inserted in section 321 render holdings which contain privies but no dwelling-house liable to pay the fees mentioned in the section. By section 322, as amended, a proportionate share of the proceeds of these fees is to be devoted to the cost of the staff employed in collecting them, in supervising the collections, and in keeping and auditing the accounts.

8. Lastly, a clause has been added to section 350, empowering the Commissioners to frame bye-laws prohibiting the letting off of fire-arms and fire-works, except with the permission of the Commissioners and after payment of fees.

I have the honour to be, etc.,

H. H. RISLEY,

Secretary to the Govt. of Bengal.

MEDICAL CIRCULAR No. 20T.—M.

DARJEELING, THE 30TH SEPTEMBER 1896.

FROM H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal,

TO ALL COMMISSIONERS OF DIVISIONS.

SIR,

I AM directed to invite your attention to the important changes introduced into the provisions of the Bengal Municipal Act of 1884, so far as they relate to the establishment and maintenance of hospitals and dispensaries, by the amending Bill recently passed in the Bengal Legislative Council.

2. Under the proviso to section 69 as it stands in the Act, the establishment and maintenance of hospitals and

dispensaries is one of the purposes on which Municipal Funds may not be expended except with the consent of a majority of the Commissioners present at a meeting specially convened for considering the subject. Section 69 as remodelled by the amending Bill introduces a proviso based upon a different principle, and includes hospitals and dispensaries among the purposes that must be sufficiently provided for before any portion of the Municipal Fund can be applied to any of the purposes specified in clauses VIII to XII. The practical effect of this is to bring the expenditure of a municipality on the establishment and maintenance of hospitals and dispensaries within the control exercised by the Commissioner of the Division under section 76 of the Act, and thus to enable him to require the Commissioners to make adequate provision for these important purposes.

3. Section 69A (1) of the Act as amended provides for the keeping of a separate account of receipts and expenditure on account of municipal hospitals and dispensaries, and the Accountant-General has accordingly been instructed to include in the Municipal Account Rules, now under revision, new rules for giving effect to the above provisions of the law.

I have the honour to be, etc.,

H. H. RISLEY,

Secretary to the Government of Bengal.

No. 29M.

DATED CALCUTTA, THE 19TH JUNE 1896.

FROM H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal.

TO ALL COMMISSIONERS OF DIVISIONS.

IT has recently been brought to the notice of Government by the Sanitary Board that municipalities have been purchasing from firms in Calcutta small pumps and other sanitary appliances, which, on being fixed in position, have been found to be quite unsuitable for the work for which they were obtained. You are aware that the Sanitary Board have at

their disposal the services of a Sanitary Engineer, who is well qualified to assist municipalities in obtaining really good and useful articles, and who, being stationed in Calcutta, would be easily able to go and inspect any pumps or sanitary appliances before their despatch from Calcutta. I am directed to suggest, therefore, when any municipality or other local body require any such appliances, the desirability of their placing themselves in communication with the Sanitary Engineer, Bengal, and informing him of their requirements. Beyond the actual expenses incurred by the Sanitary Engineer in visiting the different places of business, no other fees would be charged.

2. In the cases of pumps, &c., which are eventually to form part of a system of unfiltered or filtered water-supply, I am to say that, under the orders laid down in Government Resolution No. 636T.—M., dated the 3rd October 1895, a reference must invariably be made to the Municipal Department of Government.

No. 47M.

DATED CALCUTTA, THE 16TH NOVEMBER 1896.

FROM H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal.

TO ALL COMMISSIONERS OF DIVISIONS.

ON a reference made by the Chief Commissioner of the Central Provinces, the attention of the Lieutenant-Governor was drawn to the question of the interpretation put upon Article 1 (*a*) of Schedule II of the Court-fees Act by Municipalities in Bengal. It appears from the replies to a Circular* issued on the subject that the practice varies greatly in different Municipalities, and that it is hardly anywhere in strict accordance with the law. I am directed to request therefore that all the Municipalities in your Division may be informed that, in the opinion of the Legal Remembrancer, only those applications presented to the Commissioners of a Municipality are chargeable with a 1-anna stamp, which relate solely to matters of "conservancy" or "improvement," such as those covered by Parts V, VI, IX and X of the Bengal Municipal Act, III of 1884, as amended by Bengal Acts IV

* No. 1T.—M., dated 22nd April 1896.

of 1894 and II of 1896. Municipal Commissioners should act on this view of the law until further orders.

CIR. No. 38M.

DATED CALCUTTA, THE 5TH AUGUST 1896.

FROM H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal.

TO ALL COMMISSIONERS OF DIVISIONS (EXCEPT RAJSHAI).

IT has been brought to the notice of the Lieutenant-Governor that inconvenience arises, from the existing orders of Government, requiring the submission of two alternative names for every appointment to be made on Municipal Committees, or on District or Local Boards. I am to request, therefore, that, in future, only one name may be sent up for each vacancy, and that it may be stated that, in every case, whether the person nominated is willing to serve.

B. FOLEY,

Under-Secy. to the Govt. of Bengal.

DATED CALCUTTA, THE 24TH MARCH 1898.

ENDORSED—*By the Government of India, Finance and Commerce Department.*

COPY of the following forwarded to all Local Governments and Administrations, for information.

NO. 1409S. R., DATED CALCUTTA, THE 24TH MARCH 1898.

FROM J. F. FINLAY, ESQ.,

Secretary to the Government of India, Finance and Commerce Department,

TO THE SECRETARY TO THE GOVERNMENT OF THE NORTH-WESTERN PROVINCES AND OUDH, MUNICIPAL DEPARTMENT.

I AM directed to acknowledge the receipt of your letter No. 2216—XI-414A., dated the 21st September 1897, on the subject of stamping copies of municipal records.

2. His Honour the Lieutenant-Governor has no objection to take to the principle that certified copies of municipal records should, before being given in evidence in the courts, be liable to stamp duty; but he sees no reason why the public, when obtaining certified copies of municipal records for their private use, should be liable to charges for stamps from which they are exempt in the case of copies obtained from the Courts for the same purpose.

3. I am to say that, in the opinion of the Government of India, when a copy of a document is taken for private use only and no stamp duty is charged, it is not necessary that it should be certified as a true copy. For some years past it has been the practice in Bengal, Bombay and Assam to issue uncertified copies of documents filed in Court when they are required for private use and information only. The practice is desirable in order to prevent copies being given surreptitiously, and the Government of India are not disposed to think that it tends to encourage fraud; a document might be forged if it were required for some other purpose than private use, but when it is required for such use it is unlikely that any man would forge a copy.

4. After careful consideration of the suggestion made by His Honour the Lieutenant-Governor, the Government of India are of opinion that when certified copies of municipal records are required, they should be stamped, but that there is nothing which need prevent the issue by the Secretary of a Municipality of uncertified and unstamped copies of such records when required for private use.

CIRCULAR No. 47M.

COPY forwarded to all Commissioners of Divisions, for information and communication to District Boards and Municipalities in their respective Divisions, in continuation of Government Circular No. 16L. S.-G., dated the 1st May 1893.

By order of the Lieutenant-Governor of Bengal,

B. FOLEY,

Under Secy. to the Govt. of Bengal.

MUNICIPAL DEPT.—

CALCUTTA;

The 20th April 1898.

THE

BENGAL MUNICIPAL ACT,

BEING

B. C. ACT III OF 1884.

AS AMENDED BY BENGAL ACTS III OF 1886, IV OF 1894 & II OF 1896.

[NOTE.—The numbers in brackets denote the corresponding sections of Act V of 1876. The sections marked with an asterisk have been reproduced *verbatim*. Sections and words included within inverted commas have been added by the Amending Acts.]

An Act to amend and consolidate the law relating to Municipalities.

WHEREAS it is expedient to consolidate and amend the law relating to Municipalities within the territories subject to the Government of the Lieutenant-Governor of Bengal; It is enacted as follows:—

Preamble.

PRELIMINARY.

1. This Act may be called "The Bengal Municipal Act, 1884."

Short title and commencement.

And it shall come into force on such date as the Lieutenant-Governor may direct, not being more than three months after the date on which it may be published in the *Calcutta Gazette*, with the assent of the Governor-General.

But any notification, order or rule, and any appointmen to an office, may be made, or election held, under this Ac

at any time after it shall have received the assent of the Governor-General, but shall not take effect until the Act comes into force.

Previous Legislation in Bengal.—The following extract gives a sketch of the previous legislation in regard to Municipalities in Bengal:—

"Mr. Bernard moved for leave to bring in a Bill to amend and consolidate the law relating to Municipalities. He said that at present municipal government in Bengal towns, exclusive of Calcutta, was conducted under four different laws, each with its own system and procedure. The earliest of these Acts was Act XXVI of 1850, which empowered Government to constitute a Corporation in any town where the inhabitants may express a wish for self-government. Under this law there were only two Municipalities in Bengal, namely, Monghyr and Jumalpore. The next Municipal Act is XX of 1856, under which the whole municipal government vests in the Magistrate. The main object of this Act is to provide for the payment of chowkeydars or town watchmen. The Magistrate appoints these chowkeydars, assigns their salaries, manages the town fund, devotes its surplus to cleaning or lighting the town, and nominates a punchayet, who are to help him in assessing the town tax. Forty towns in Bengal had a *quasi* municipal organization under Act XX of 1856. The next municipal law was enacted by this Council as Act III of 1864, and was called the 'District Municipal Improvement Act.' Under this Act something approaching to self-government was allowed to townships in Bengal. It provides for the appointment of a governing body, on which certain *ex-officio* members sit. This body imposes taxation of four different kinds—it must keep up a town police-force, and it may spend municipal money on roads, streets, and conservancy. The Act of 1864 also provides penalties for the breach of certain ordinary and reasonable conservancy rules. A limit is prescribed for each of the different kinds of taxes which the Act permits. Twenty-six towns in Bengal have been incorporated as Municipalities under this Act; most of these towns are municipal head-quarters of districts, and all of them are places of some size and importance.

"The next Act is Act VI of 1868, the District Towns Act. This Act was introduced in 1868 by the hon'ble member who had to-day rejoined the Council (Mr. Dampier), and he explained that the Bill of 1868 was drawn on the model of Act XX of 1856; the Town Committee were to be rather a consultative than an executive body. Their functions were to advise the Magistrate on general matters, to examine and remark upon the town estimates, and either to assess the municipal taxes themselves, or to direct their assessment by the Ward Committees appointed for different sections of the town. Only one form of taxation is allowed under this Act, namely, a tax according to the circumstances and property of the persons to be protected; and the town fund thereby raised is applicable first to the payment of police, and then to the repair of roads or streets, to the conservancy or general improvement of the town, and to the maintenance of dispensaries and vaccination. The Act also contains sundry conservancy clauses, any or all of which can be extended to a town, and it empowers the members of the Town Committee to try persons accused of transgressing these conservancy provisions. This Act is now in force in ninety-four towns in Bengal."—(*P. C., 9th December*, 1871.)

Acts XXVI of 1850, XX of 1856, III of 1864 and VI of 1868 are repealed by Act V of 1876, which was repealed by the present Act.

Enactments repealed.

2. (2) On the commencement of this Act, the enactments specified in the sixth Schedule shall be repealed to the extent mentioned in the third column thereof.

But this repeal shall not revive any office, authority, or thing abolished by any such enactment, or affect the validity of anything done or suffered, or any right, title, obligation or liability accrued, before the commencement of this Act.

And all rules and bye-laws prescribed; assessments, valuations, measurements, divisions, and appointments made; powers conferred, and notifications published under any such enactment; and all other rules (if any) now in force and relating to the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, conferred, and published hereunder.

Saving clause.

"In every enactment passed before this Act comes into force in which reference is made to Bengal Act III of 1864, the District Municipal Improvement Act, or to any enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Act or to its corresponding part or section."

And all proceedings now pending, which may have been commenced under any such enactment, shall be deemed to be commenced under this Act.

"Notifications" defined.

"The expression 'notifications' as used in this section shall be deemed to include all directions, declarations and orders given, or made, and published under any enactment referred to in this section:

Provided that nothing in this definition shall be deemed to affect any decision or order of a competent Court made before the date on which this Act shall come into force."

In respect of all the matters aforesaid, the Commissioners under this Act shall be substituted for the Commissioners elected or appointed under the Bengal Municipal Act, 1876.

Hon'ble Mr. Reynolds.—"With regard to what fell from the Hon'ble Mr. Dampier, he might say that the point had been considered in Committee, and he understood it was the opinion of the Legal Members of the Council that section 2 was sufficient to cover the levy of tolls now raised on roads and bridges."—(*P. C., February 23rd*, 1884.)

It is important to note that all rules and bye-laws made under the former Act will still remain in force, unless inconsistent with the present Act.

The object of the addition made to this section by the Amending Act is thus explained in the Final Report of the Select Committee :—

"The ruling of the High Court in what is known as the *Kushtia case* (Mohim Chandra Pal and another *versus* the Municipality of Kushtia) made it necessary to define the meaning of the word 'notification' so as to include declarations and orders made by the Government. That decision has been set aside by a ruling of a Full Bench of the High Court, but it has been thought advisable to retain the definition for the sake of additional clearness."

The Full Bench Ruling is reported in I. L. R., 20 Calc., 699.—*Baikantha Nath Das* v. *Lolit Mohun Sircar.*

"'*Proceedings now pending.*'—Section 2, paragraph 5 of Bengal Act II of 1888, the Calcutta Consolidation Act, is to the same effect. Where the Corporation had commenced proceedings to enforce the improvement of a *busti* under the old Act, and notwithstanding that the new Act provided totally different preliminaries and procedure, had continued the proceedings practically under the old Act :—*Held* that, proceedings commenced before the passing of the new Act, must to be effectual be continued under its provisions and could only be used to enforce rights and powers in existence at the time it was sought to enforce them. Even if the proceedings could be considered under section 2, to have been commenced under the new Act, the action of the Municipality amounted to trespass for which they were liable in damages to the owner of the land."—*Corporation of Calcutta* v. *Jadu Lall Mullick*, I. L. R., 21 Calc., 528.

Existing Municipalities.

3. (3) Every place which has been constituted a Municipality under the provisions of the Bengal Municipal Act, 1876, and has not been withdrawn from the operation of the said Act before this Act comes into force, shall, from the time when this Act shall come into force, be deemed to be constituted a Municipality under the provisions of this Act.

It will be observed that this section does away with Unions and Stations, by omitting all mention of them. It also omits the distinction drawn between first class and second class Municipalities by the corresponding section of the former Act. The subject is referred to as follows in the "Statement of Objects and Reasons :"

"The present Act V of 1876 relates to institutions of four different kinds : Municipalities of the first class, Municipalities of the second class, Unions and Stations. It seems unnecessary to retain these distinctions. There is practically very little difference between the two classes of Municipalities ; and there are only two Stations under the Act, both of which can, without difficulty, be raised to the rank of Municipalities. Unions are more numerous, and it will perhaps be found that some of these are not sufficiently advanced to be entrusted with Municipal responsibilities.

"Such Unions will be placed under the Local Boards, which it is intended to establish by a separate Act of the Legislature, while the more fully developed Unions will be treated as Municipalities."

All property of late Commissioners vested in Commissioners under this Act.

4. (4) All property, moveable and immoveable, and all interest of any kind whatsoever, derived under any of the enactments specified in the sixth Schedule, or otherwise, and vested in, or held in

trust for, the late Commissioners under the said Bengal Municipal Act, 1876, shall become vested in the Commissioners and their successors; and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act.

Act not to be extended to cantonments without consent of Governor-General.

5. (5) Notwithstanding anything contained in section three this Act shall not take effect in any cantonment without the consent of the Governor-General in Council previously obtained, nor shall the Local Government extend this Act, or any part thereof, to any cantonment without such consent.

This section reproduces section 5 of the previous Act (Beng. Act V of 1876), with the exception that the term "Local Government" is substituted for "Lieutenant-Governor." This change has been made throughout the Act.

Under section 21 of Act III of 1880, the Local Government may, with the sanction of the Governor-General in Council, by notification in the official Gazette, impose in any cantonment any tax which can be imposed in any Municipality under the said Government. By section 22 of the same Act, the Local Government may, by notification in the official Gazette, apply to such cantonment the provisions in force for the assessment and recovery of any tax in any Municipality under such Government.

Interpretation.

6. (6) In this Act, unless there be something repugnant in the subject or context,—

"Carriage."

(1) "Carriage" means any wheeled vehicle with springs, used for the conveyance of human beings, and ordinarily drawn by animals.

"Cart."

(2) "Cart" means any cart, hackery or wheeled vehicle with or without springs, ordinarily drawn by animals, and not included in the definition of "carriage."

These definitions are taken *verbatim* from the former Act. With reference to (1) the point has been raised as to whether a bamboo cart can be regarded as a wheeled vehicle with springs, on account of the bamboos acting as springs. It is obvious that it cannot be so regarded. The word "springs" in the definition must be taken in its ordinary and definite sense.

"Holding."

(3) "Holding" means land held under one title of agreement, and surrounded by one set of boundaries:

Provided that where two or more adjoining holdings

form part and parcel of the site or premises of a dwelling-house, manufactory, warehouse, or place of trade or business, such holding shall be deemed to be one holding for the purposes of this Act other than those mentioned in clause (*a*) of section eighty-five.

Explanation.—"Holdings" separated by a road or other means of communication shall be deemed adjoining within the meaning of this proviso.

This definition is important. The Select Committee remark in their Preliminary Report: "We desire to call special attention to the modification we have introduced in the definition of a holding. The present definition (if indeed it deserve to be called a definition at all) has practically the effect of giving the Commissioners power to divide what is really a single holding into as many separate holdings as they think fit, and thus to evade the provision of the law which limits the amount of personal tax which can be imposed in respect of holdings. Cases have been brought to our notice in which this power has been improperly exercised."

"House."

(4) "House" includes any hut, shop, warehouse or building.

"Immoveable property" and "land."

(5) "Immoveable property" and "land" include (besides land) benefits arising out of land, houses, things attached to the earth, or permanently fastened to anything attached to the earth.

"Moveable property."

(6) "Moveable property" means property other than immoveable property.

"Magistrate of the District."

(7) "Magistrate of the District" means the Chief Magistrate in a District.

"The Magistrate."

(8) "The Magistrate" includes the Magistrate of the District, the Magistrate in charge of a division of the District in which division a Municipality is constituted, and every Magistrate subordinate to the Magistrate of the District to whom the Magistrate of the District may have made over any duties under this Act.

"Municipality."

(9) "Municipality" means any place in which this Act, or any part thereof, is in force.

The term is unknown to English law. The corresponding term in English law is the word "borough," which is defined in section 7 of the Municipal Corporations Act, 1882, to mean a city or town to which that Act applies.

A "Municipal Corporation" is defined in the same section as "the body corporate constituted by the incorporation of the *inhabitants* of a borough." Under the present Act the body corporate is constituted by the incorporation of the Commissioners, and does not include the inhabitants of the Municipality. See section 29.

(10) "Offensive matter" means dirt, dung, putrid or putrefying substances, and filth of any kind not included in the term "sewage."

"Offensive matter."

"Owner."

(11) "Owner" includes—

(*a*) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise ;

(*b*) a manager on behalf of any such person ;

(*c*) an agent for any such person ;

(*d*) a trustee for any such person :

Provided that no such manager, agent or trustee shall be liable to do anything required by this Act to be done by the owner, nor shall he be subject to any fine for omitting to do such thing, unless he have sufficient funds in his hands as such manager, agent or trustee to do such thing.

"Part."

(12) "Part" means a part of this Act.

"Road."

(13) "Road" means any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of way.

Public have a right of way.—The definition of road here given is similar to that of a highway, which has been defined as a passage which is open to all the king's subjects. "It may be a *footway*, appropriated to the sole use of pedestrians ; *a pack and prime way*, which is both a horse and footway ; or a *cart way*, which comprehends the other two, and also a cart and carriage way, Co. Lit., 56. But to whichever of these classes it belong, it is still a highway, for 'highway is the genus of all public ways, as well cart, horse or footways.'"—2, *Smith's Leading Cases*, p. 137.

A highway ordinarily "derives its existence from a dedication to the public by the owner of the land over which the highway extends of a right of passage over it ; and this dedication, though it may not be made in express terms, as it indeed seldom is, may and will be presumed from an uninterrupted use by the public of the right of way claimed.—*R.* v. *Lloyd*, 1 Camp., 260. . . . . An open user as of right by the public raises a presumptive inference of dedication requiring to be rebutted ; and when such user is proved, the onus lies on the person who seeks to deny the inference resulting from it to shew negatively that the state of the title was such that no one could make a valid dedication."—*R.* v. *Petrie*, 4 E. & B., 437 (*ibid*, p. 40). "No particular time is necessary

for evidence of a dedication. If the act of dedication be unequivocal, it may take place immediately. For instance, if a man build a double row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is *instantly* a highway".—*Per Chambre, J., in Woodyer* v. *Hadden*, 5, Taunt. 125.

"It is an established maxim—once a highway, always a highway—for the public cannot release their rights, and there is no extinctive presumption or prescription." . . . . . See the judgment of Byles, J., in *Dawes* v. *Hawkins*, 8 C. B. N. S., 858. 2, *Smith's Leading Cases*, p. 144. Compare *Empress on the prosecution of Jodunath Ghose* v. *Brojonath Dey*, I. L. R., 2 Calc., 425, quoted in the note to section 201.

A right of way limited to the occupants of houses in a Court, and access to such Court by persons having business with the occupants, is not a public right of way.—*Kalidas* v. *Municipality of Dhanduka*, I. L. R., 6 Bom., 686.

"Rubbish." (14) "Rubbish" means broken brick, mortar, broken glass, kitchen or stable refuse, or refuse of any kind whatsoever not included in the term "offensive matter."

"Sanitary Board." (14A) "Sanitary Board" means the persons for the time being appointed, either by name or by official designation, by the Local Government by notification in the *Calcutta Gazette* to constitute a "Sanitary Board for Bengal."

See sections 37C, 37D, 37E, 37G and 37J.

"Schedule." (15) "Schedule" means a Schedule annexed to this Act.

"Section." (16) "Section" means a section of this Act.

"Sewage." (17) "Sewage" means nightsoil and other contents of privies, drains, and cesspools.

"The Commissioners." (18) "The Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any Municipality under this Act.

"Year." (19) "Year" means a year beginning on the first day of April, or on such other date as may hereafter be fixed for any Municipality by the Local Government by notification in the *Calcutta Gazette*.

No other date having as yet been fixed by the Local Government, the Municipal year commences, as before, on the 1st April.

PART I.

OF THE CREATION OF MUNICIPALITIES.

Existing Commissioners and existing rates and taxes temporarily continued.

7. (7) In every place which, in accordance with the provisions of section three, becomes a Municipality under this Act, every person who has been appointed or elected to be a Commissioner for such place under the Bengal Municipal Act, 1876, and who is holding office as such Commissioner at the commencement of this Act, shall be deemed to be a Commissioner duly appointed for such Municipality, until such time as the election or appointment of Commissioners in respect of such Municipality shall take effect under the provisions of this Act. And in every such place in which a rate on the annual value of holdings, or a tax upon persons, or a tax upon carriages and animals, or a fee upon the registration of carts, or tolls on roads or on ferries, or a fee under Bengal Act VI of 1878, may have been levied by the Municipal Commissioners before the commencement of this Act, it shall be deemed that the said rate, tax, fee or tolls have been duly imposed under this Act, and such rate, tax, fee or tolls shall continue to be levied accordingly until the Commissioners at a meeting, with the sanction of the Local Government, shall otherwise direct.

Bengal Act VI of 1878 is the Latrines Act, and has been repealed by the present Act.

Local Government may extend Act.

8. (8) Except as is hereinafter otherwise expressly provided, this Act may be extended by the Local Government by notification published in the *Calcutta Gazette*, and in the manner prescribed by section three hundred and fifty-four to any town or village not being within the limits of the ordinary original jurisdiction of the High Court at Fort William in Bengal, from such date as may be specified in such notification ; and save as is hereinafter otherwise provided, this Act shall take effect in such town or village on the date

so specified, and the said town or village, within the limits mentioned in such notification, shall be deemed to be created a Municipality for the purposes of this Act :

Provided that at least six weeks before publishing any notification as aforesaid, the Local Government shall cause to be published in the town or village concerned a notice of its intention to declare the said town or village to be a Municipality, unless good reason to the contrary be shown within one month.

Any objections which may be made to the proposed measure shall be duly considered by the Local Government before it causes to be issued, the notification declaring the town or village to be a Municipality under this Act.

Every notification declaring a town or village to be a Municipality shall specify whether the name of such Municipality shall, or shall not, be inserted in the first or second Schedule of this Act, and shall further specify, subject to the provisions of section thirteen, the number of the Commissioners of such Municipality.

"9. (10) The Local Government may, on the recommendation of the Commissioners at a meeting, by notification published in the *Calcutta Gazette*, and in such other manner as it may determine, declare its intention—

Notification of intention to alter limits of Municipality.

(*a*) to withdraw any Municipality from the operation of this Act ; or

(*b*) to exclude from a Municipality any local area comprised therein and defined in the notification ; or

(*c*) to include within a Municipality any local area contiguous to the same and defined in the notification ; or

(*d*) to subdivide any Municipality into two or more Municipalities ; or

(*e*) to alter the number of the Commissioners of a Municipality :

And the Local Government may, on the recommendation of the Commissioners at a meeting of both or all the Municipalities concerned, by notification similarly published, declare its intention to unite two or more Municipalities so as to form one Municipality :

Provided that no local area shall be included within a Municipality unless the Local Government shall have been

satisfied that three-fourths of the adult male population of such local area are chiefly employed in pursuits other than agriculture :

Provided also that whenever it shall appear, either from a general census or from special enquiries undertaken in this behalf, that any Municipality does not comply with the conditions laid down in section ten, the Local Government may, of its own motion, declare its intention to withdraw such Municipality from the provisions of this Act or to deal with it in the manner stated in this section :

Provided also that where the local area to be excluded or included is a cantonment, or part of a cantonment, no notification affecting it shall be published under this section without the previous consent of the Governor-General in Council."

Objection to proposed alteration may be submitted to Local Government.

"9A. (1) Any rate-payer of a Municipality, inhabitant of a local area, or, when the union of two or more Municipalities has been recommended, the Commissioners of any one or more of such Municipalities in respect of which a notification has been published under the last preceding section may, should he or they object to the alteration proposed, submit his or their objection in writing, through the District Magistrate to the Local Government within six weeks from the publication of the notification in the *Calcutta Gazette*, and the Local Government shall take such objection into consideration.

"(2) When six weeks from the publication of the notification have expired and the Local Government has considered the objections (if any) which have been submitted under sub-section (1) of this section, the Local Government may, by notification, give effect to the proposed alteration or not, as the case may be.

Local Government may apportion and dispose of Municipal property upon a subdivision or union of Municipalities.

"9B. Whenever two or more Municipalities are united or a Municipality is subdivided, under the two last preceding sections, the Municipal Funds or Fund, and all property vested in the Commissioners of the Municipalities or Municipality concerned, shall be consolidated, or apportioned, in such manner as the Local Government may direct."

Conditions on which Municipality may be created.

10. (11) This Act shall not be extended to any town or village, unless the Local Government shall have been satisfied that three-fourths of the adult male population of such town or village are chiefly employed in pursuits other than agricultural; and that such town or village contains a number of inhabitants not being less than three thousand, and an average number of not less than one thousand inhabitants to the square mile of the area of such town or village.

11. *Repealed by Bengal Act IV of* 1894.

12. *Repealed by Bengal Act IV of* 1894.

PART II.

OF THE MUNICIPAL AUTHORITIES.

Of the Constitution of the Municipality.

Number of Commissioners.

13. (15) The number of Commissioners of a Municipality constituted before the passing of this Act shall be such number as may be specified in a notification of the Local Government to be issued immediately after this Act comes into force, and to be published in the *Calcutta Gazette*, or in any subsequent notification under section nine.

The number of Commissioners of each Municipality created under the provisions of section eight of this Act shall be such number as is specified in the notification of the creation of such Municipality, or in any subsequent notification under section nine:

Provided that the number of Commissioners of a Municipality shall in no case be more than thirty or less than nine:

Provided further, that no act of the Commissioners, or of their officers, shall be deemed to be invalid by reason only that the number of the Commissioners did not, at the time of the performance of such act, amount to the number specified in the notifications aforesaid.

Under this section the number of Commissioners must be determined by a notification of the Local Government, published immediately after the Act comes in force, and after such publication the number can only be altered on the recommendation of the Commissioners at a meeting, as provided in section 9. Under section 15 of the former Act, the Lieutenant-Governor

could, within the limits laid down, vary the number at any time. The notification referred to in the first clause was published in the *Calcutta Gazette* of the 6th August 1884, and will be found *post*.

The last clause follows clause (4) of section 22 of the Municipal Corporations Act of 1882, by which it is provided that "no act or proceeding of the Council or of a Committee shall be questioned on account of any vacancy in their body." In Rawlinson's M. C. Act it is remarked that while this clause will prevent any ill-effects from death, resignation, or absence, it will probably be held never to obviate the necessity of the number present at any meeting of the Council being not less than one-third of the whole Council—that being the quorum fixed by the Act. Compare note to section 42.

Constitution of body of Commissioners.

14. Two-thirds of the number of the Commissioners of each Municipality, fixed by such notification, shall be elected as hereinafter provided by male persons, resident within the limits of such Municipality, who shall have attained the age of twenty-one years.

The remaining one-third of such Commissioners shall be appointed "either by name or by official designation" by the Local Government immediately after the result of the election hereinbefore mentioned shall have been notified to the Local Government, and such appointment shall be deemed to have been made on the date of which such election takes place:

Provided that the number of persons holding salaried offices under the Government, and appointed as Municipal Commissioners, shall not bear a larger proportion than one-fourth to the total number of Commissioners elected and appointed under the provisions of this Part:

Provided also that, in cases where the whole number of Commissioners is not evenly divisible by three or by four, the one-third or one-fourth shall be ascertained by taking the number, next below the whole number, which is evenly divisible by three or by four, as the number to be divided.

Resident within the limits of such Municipality.—The term "resident" must here be understood in its legal and not in its ordinary acceptation. The legal meaning of the terms "residence," "dwelling," "domicile," and "home," all of which appear to be synonymous in law, is discussed at some length in *Gopal Chunder Sirkar* v. *Kurnodhar Moochee and others*, 7 W. R., C. R., 349, from the judgment in which the following extracts may be quoted:—

"Now the word 'dwelling' is synonymous with the term 'place of abode' or 'residence.' It is the place where a man lives and which he considers his home. A dwelling is constituted by an actual occupancy coupled with an intention to give the character of permanency to such occupancy. 'Residence,' said Park, B., 'means a domicile or home.'—*Lamb* v. *Smith*, 15 L. J., 207, Exch.

"A man's dwelling is *primâ facie* the place where his wife and family reside, and if he has a family dwelling in some place, and he occupy a house

and occasionally sleep in another, he will not be a resident in the latter place, for his residence is his domicile, and his domicile is his home, and his home where his family reside (Story's Conflict of Laws, 63; *R.* v. *The Duke of Richmond*, 6 T. R., 561); and where a man had a shop and private parlour in which he carried on his business and entertained his friends, but neither himself nor his servants slept there, the Judges held that such occupation did not constitute a dwelling (*R.* v. *Martin*, R. & R., 108). A man may have two dwelling-places at the same time. Thus it was held by the Judges that, when a man has two houses and servants in both, and lives sometimes in one and sometimes in the other, both will be his dwelling-house (C. Rep., 389), and during his temporary absence each house, although empty, if there be the *animus revertendi*, will yet be his dwelling-house (*Rex* v. *Murray*, 2 East P. C., 496).

"So also in the case of *Whithorne, Appellant* v. *Thomas, Respondent* (7 Man. & Gr. 5), where the question was as to the meaning of the word 'residence' in the Reform Act, Earle, J., said: 'The fact of sleeping in a place by no means constitutes a residence, though, on the other hand, it may not be necessary for the purpose of constituting a residence in a place to sleep there at all. If a man's family are living in a borough, and he is absent for six months, but with the intention of returning there, he will still be considered as residing there.'"

See also *Kasi Nath Kooer* v. *Deb Kristo Ramanooj Dass and others*, 16 W. R., 240 C. R.; *Fatima Begum* v. *Sakina Begum and another*, I. L. R., 1 All., 51.

On the other hand, it has been held that where a person is regularly employed in service in one place, and his family reside in another place to which he has no immediate or definite intention of returning, he may correctly be said to reside or dwell at the former place.—*Pargash Paray* v. *Hachim Khansamah*, 417 C. R., W. R. In such a case, for the purposes of this section, it would probably be correct to consider such a person a resident of both places.

The term "residence" does not necessarily have the same meaning in different enactments or with respect to different subject-matters. Although a merchant's place of business was considered to be his "place of abode" for the purpose of the service of a notice (*Waterloo with Seaforth Local Board* v. *Bibby*, 10 Jur. (N. S.), 519), a person was held not to be qualified to be placed on the burgess list as an inhabitant house-holder, when he only had in the borough a house in which he carried on business and in which there was a bedroom, and sitting room, and in which he sometimes slept.—*Reg.* v. *Mayor of Exeter*, L. R. 4 Q. B., 110. Per Blackburn, J.: "There is no strict or definite rule for ascertaining what is inhabitance or residence. The words have nearly the same meaning. Sleeping once or twice in a place will not constitute inhabitance. There is no precise line to be drawn. It is always, if the inhabiting is *bonâ fide*, a question of more or less. The question is whether there has been such a degree of inhabitance as to be in substance and in common sense a residence. Where a person has a country and town house, it is a mere question of fact whether he has two or only one residence."—*Ib.*, p. 113.

And "a person may inhabit a place without sleeping there, or he may sleep there without inhabiting it. The fact that a person sleeps in a place is generally a very important ingredient in deciding whether he inhabits it, but it is not conclusive."—*Ib.*, p. 116.

A definition of the term "resident" has now been included in the Election Rules. That definition is, however, merely intended to explain the law on the subject and has no authority, save so far as it is in accordance with the decisions of the Courts. It cannot be held to be enacted under the authority conferred by section 15, as that section confers no power of defining the meaning of terms used in other sections of the Act.

It will be noted that by the addition made to this section Commissioners can be appointed by official designation. By section 25A, if a Commissioner is appointed by official designation, the person for the time being holding the office shall be a Commissioner.

Rules to be laid down for election.

15. (16) For the purposes of the aforesaid election of Commissioners, the Local Government, with respect to each Municipality, shall lay down such rules, not inconsistent with the provisions of this Act, as it shall think fit, in respect of the division where necessary, of each Municipality into wards, and the number of Commissioners to be elected for each of such wards, the qualifications required to entitle any person to vote for a candidate for election, and in respect of the mode of election "and the authority who shall decide disputes thereunder." And the Local Government may at any time cancel any rule made by it under this section :

Provided that every male person who is at the time of such election and has been for a period of not less than twelve months immediately preceding such election, resident within the limits of a Municipality, and who

(1) has, during the year immediately preceding such election, paid in respect of any rates an aggregate amount of not less than three rupees, or

(2) has, during the year aforesaid, paid or been assessed to the tax imposed by Act II of 1886 (*An Act for imposing a tax on income derived from sources other than agriculture*), or

(3) being a graduate or licentiate of any University, or having passed the First Arts Examination of the Calcutta University, or the corresponding standard of any other University, or holding a license granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorising him to practise as a pleader or as a mukhtar or as a revenue agent—occupies a holding, or part of a holding in respect of which there has been paid, during the year aforesaid, in respect of any rates, an aggregate amount of not less than three rupees, shall be entitled to vote at the election of Commissioners of such Municipality.

No person who is not entitled to vote at the election of Commissioners of a Municipality shall be deemed qualified for election to be a Commissioner of such Municipality :

"Provided that nothing contained in this section nor in any rules made under the authority of this Act, shall be deemed to affect the jurisdiction of the Civil Courts."

"Rates" defined.

"The term 'rates' in this section means—

(*a*) the tax upon persons and the rate upon the annual value of holdings levied under section eighty-five;

(*b*) the tax on carriages and horses levied under Part IV;

(*c*) the water-rate on the annual value of holdings levied under Part VII;

(*d*) the lighting-rate on the annual value of holdings levied under Part VIII;

(*e*) the fee for the cleansing of privies and cess-pools levied under Part IX."

Explanation.—Rules made under this section may reduce but not raise any of the sums mentioned in the first proviso thereto, and may declare that any persons who are not referred to in that proviso shall be entitled to vote.

The rules laid down by Government under this section will be found *post*.

The proviso of this section is as amended by Act II of 1896, B. C.

By comparing this with the preceding section, it becomes obvious that an elected Commissioner must be a resident of the Municipality. For the electors must be residents (section 14), and the elected Commissioners must be qualified to vote.

No such restriction exists in the case of nominated Commissioners. They need not therefore be necessarily residents, or otherwise qualified to vote.

Joint undivided family.—It may be noticed that the term "family" and not "Hindu family" is used. It would seem therefore that the application of clause (2) is not restricted to Hindu families; and that it has no reference to the technical meaning of "joint undivided family" in Hindu law. If the members of the family live together and have their expenses in common, the clause would seem to be applicable, whether they are Hindus or not.

In the corresponding section of the former Act, the Lieutenant-Governor was empowered to lay down rules as to the qualification of candidates. This provision has been omitted in the present section. The only restriction as regards candidates is contained in the last clause, and it follows therefore that any one entitled to vote is entitled to come forward as a candidate. The following extract bears upon the matter:—

"It is not, we think, desirable to have any separate qualification for candidates for election. In Burdwan and Krishnagar, any resident rate-payer may offer himself for election, if only he can read and write. Such an educational test as this seems to us superfluous. It is most improbable that a totally illiterate man would offer himself for election, or would be elected if he should offer himself. A more practical difficulty has been raised by some critics of the Bill, who have urged that the absence of a special qualification for candidates may lead to the election of persons of inferior social status, with whom respectable gentlemen would be unwilling to sit. While we admit a certain force in this objection, we do not see how the difficulty could be met by any form of qualification which could be devised. A mere property test would evidently be insufficient, and, on the whole, we are not inclined to fetter the choice of the electors by imposing any qualification." (*P. C., January 12th*, 1884.)

It has been held under the English Act that payment of rates to entitle a person to vote must be a payment by his own act or authority. Payment by another person acting as a volunteer, and without any authority from the person liable, is not sufficient.—*Reg.* v. *Mayor of Bridgnorth*, 10 A. & E., 66. "But a payment by the landlord in consequence of an arrangement between him and the tenant has been considered a sufficient payment under the Reform Act (1832.)" *Rawlinson's M. C. Act*, 82.

The following changes have been made in this section by the Amending Act. Power is conferred on Government to make rules prescribing by what authority disputed elections shall be decided, though such rules shall not be deemed to affect the jurisdiction of the Civil Courts. Persons in the employment of registered companies or of joint-undivided families, and in receipt of salaries not less than Rs. 50 per month are in certain cases qualified. Persons occupying holdings in respect of which an aggregate amount of rates not less than Rs. 3 has been paid, are also qualified. Finally, the term "rates" in the section is defined.

It is obvious that the qualification prescribed by this section is merely a maximum and that the Local Government can reduce it at discretion. By the rules in force, the amount of rates the payment of which confers a qualification to vote, has been reduced to Re. 1-8.

First election of Commissioners.

16. The first election of Commissioners under this Act may take place at such time, not being more than six months after this Act comes into force, as the Local Government shall direct.

On failure of election, Commissioners to be appointed by Government.

If the persons entitled to elect Commissioners for any Municipality fail, within the time appointed for the first election under this Act, or for every subsequent election within the time prescribed by the rules mentioned in the last preceding section, to elect the whole number of Commissioners allotted for election to such Municipality, the Local Government may appoint one or more Commissioners to complete the number so allotted as aforesaid.

Certain Municipalities excluded from elective system.

17. Every Municipality mentioned in the first Schedule of this Act shall be excluded from the operation of the three last preceding sections: and, in any Municipality so excluded, the whole number of the Commissioners shall be appointed by the Local Government "either by name or by official designation," subject, however, to the proviso contained in the third clause of section fourteen.

It shall be lawful for the Local Government at any time to remove the name of any Municipality from the said Schedule.

The proviso in the third clause of section 14 restricts the number of Commissioners holding salaried offices under Government to one-fourth.

The only cases in which the Local Government can make additions to the Schedule in question are, in the case of new Municipalities created under section 8, and of Municipalities in which the Commissioners have been superseded under section 65. Compare sections 8 and 66.

18. *Repealed by Bengal Act IV of* 1894.

19. (21) The Local Government may, if it thinks fit, on the recommendation of the Commissioners at a meeting, remove any Commissioner appointed or elected under this Act, if such Commissioner shall have been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct.

Removal of Commissioner.

The words "if it thinks fit" and "at a meeting" are new, the remainder of the section being unchanged. The term "disgraceful conduct" has been often objected to as being too vague. It is difficult to see, however, how any more precise term could be used. The following extract from the Proceedings of the Council, when Act V was under consideration, bears upon the point:—

"The Hon'ble the Advocate-General thought that the term 'disgraceful conduct' was not in any way vague or indefinite. . . . . It was conduct unbecoming the position of a Commissioner."—(February 19th, 1876.)

It is obvious that the Local Government has no power of removing the Commissioner unless it is proved that he has been guilty of misconduct or disgraceful conduct. Section 9 of the Towns' Improvement Act (Madras Act III of 1871) provides that the Governor in Council may remove an elected Municipal Commissioner for misconduct. In a suit for damages brought against the Secretary of State by a Municipal Commissioner for wrongful removal from office:—*Held*, that the defendant not having proved misconduct, the plaintiff was entitled to damages.—*Vijaya Ragava* v. *The Secretary of State for India*, I. L. R., 7 Mad., 466.

By section 22 a Commissioner removed under this section cannot be elected or re-elected without the sanction of the Local Government.

The section is probably not intended to have retrospective effect. Compare notes to next section.

"20. (22) (1) The Commissioner of the Division may remove any Commissioner—

Power to remove Commissioners.

(*a*) if he refuses to act or becomes incapable of acting, or is declared insolvent, or is convicted of any non-bailable offence; or

(*b*) if he has been declared by notification to be disqualified for employment in the public service; or

(*c*) if he absents himself from six consecutive meetings of the Commissioners without having obtained permission from the Commissioners at a meeting; or

(*d*) if, in the judgment of the Commissioner of the Division to be recorded in writing, he has

become disqualified to continue in office under section fifty-seven: Provided that any Commissioner so removed may appeal to the Local Government.

(2) All acts and proceedings of any Commissioner so removed shall, if done previously to such removal, be valid and effectual to all intents and purposes."

The section is not meant to have retrospective effect, and the conviction or insolvency must, therefore, have occurred subsequently to the election, or appointment, of the Commissioner. (L. R.)

Under the Municipal Corporations Act of 1835, an uncertificated bankrupt was held not disqualified from being elected a councillor or alderman, although by that Act should any person, while holding the office of mayor, alderman, or councillor, be declared a bankrupt, he would immediately be disqualified.—*Rex* v. *Chitty*, 5 A. and E., 609.

The six consecutive meetings must have all been held under the present Act. (L. R.)

By section 22 no Commissioner who has been removed under clauses (*a*) and (*b*) of the above can be elected or re-elected without the consent of the Local Government.

"By *section* 10 *of the Bill* we have remodelled section 20 of the Act on the lines of section 18 of Bengal Act III of 1885, so as to indicate more clearly the grounds upon which a Commissioner may be removed. We have also provided, in accordance with Schedule II, section 70 of the English Public Health Act, 1875, that proceedings in which a disqualified Commissioner has taken part before his removal shall not thereby be invalidated."—*Final Report of Select Committee on Amending Bill.*

Tenure of office of Commissioner.

21. (23) Every Commissioner shall vacate his office at the end of three years from the date of his appointment or election as such Commissioner.

This section is subject to the provisions of sections 26, 27 and 27A.

Under the former Act the Commissioner, unless he had previously retired by rotation, vacated his office at the end of three years from the first day of the year next following the date of his appointment or election as Commissioner. The rule of rotation is abolished by the present Act.

Commissioner not to be elected or re-elected without consent of Local Government.

"22. (28) No Commissioner who has been removed from his office by the Local Government under section nineteen or by the Commissioner of the Division under clauses (*a*) and (*b*) of sub-section (1) of section twenty may be elected or re-elected a Commissioner without the consent of the Local Government."

It is, no doubt, intended that a Commissioner, who has vacated his office under section 21, may be again appointed or elected.

From some of the opinions submitted on the Draft Bill, this does not seem to have been generally understood. It would have been more satisfactory if the Act had contained a distinct provision on the subject. The N.-W. P. and Oudh Municipalities Act and the English Municipal Act both contain distinct provisions on the point. The corresponding section of the former (Act

V of 1876) also provided for the re-election or re-appointment of retired Commissioners. The last Bill of 1872 contained a similar provision.

"23. (1) The Local Government shall appoint, either by name or by official designation, the Chairman of every Municipality mentioned in the second Schedule of this Act.

Appointment of Chairman.

(2) The Commissioners of every Municipality, the name of which is not included in the said Schedule, shall, at a meeting, elect one of their number to be Chairman, or may, whenever a vacancy occurs, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman, and such Chairman shall be appointed by name.

(3) The Local Government may at any time remove a Chairman appointed by it.

(4) The Local Government may at any time remove the name of any Municipality from the said Schedule.

(5) Whenever the name of any Municipality is removed from the said Schedule, the office of Chairman shall thereupon become vacant."

It is clear that the constitution of the Municipal Corporation is not legally complete, and that the Commissioners can, therefore, have no legal power, and can transact no other business of any kind, until a Chairman has been appointed or elected. The saving clause at the end of section 12 has reference only to the number of Commissioners, and not to the corporate officers. Compare section 29, from which it appears that the Commissioners without a Chairman do not constitute a body corporate. The election of a Chairman is, therefore, a statutory duty which must be performed without any avoidable delay.

It has been held under the English Municipal Corporations Act that no other business can be discussed before the Mayor and Aldermen have been elected.—*Rex* v. *Parkyns*, 3 B. & A., 658.

An appointed Chairman need not be a resident of the Municipality. An elected Chairman must, however, be a resident, unless he is a nominated Commissioner, as an elected Commissioner is necessarily a resident. (See note to section 15.)

The question has more than once arisen as to who ought to preside at a meeting of the Commissioners called to elect a Chairman. If it is the first meeting of the Commissioners, or in other cases if the former Chairman is not present, it is clear that they should elect one of their number to preside. But supposing the former Chairman is present, should he preside, and can he insist on presiding as a matter of right?

If the Chairman is a candidate for re-election, it is clear that it is not desirable that he should preside, for, by so doing, he may have to decide questions in which he has a direct and personal interest. It further seems clear that he cannot claim the right to preside. For section 26A now provides that the Chairman shall resign at the first meeting of the newly appointed and elected Commissioners at which a quorum is present, and before the meeting proceeds to the election of a new Chairman. The meeting must therefore clearly elect one of their number to preside, the former Chairman not being necessarily excluded.

राष्ट्रीय पुस्तकालय, कलिकाता IMPERIAL

Another question which arises is as to whether the Chairman at such a meeting has a second or casting vote. As section 41 applies to all questions which may come before the Commissioners at a meeting, it seems clear that he has. The importance of choosing a President, who is not a candidate, is therefore all the more obvious. By the 10 Vict., c. 16, s. 38, it is provided that if a tie happens at the election of a Chairman, the question shall be settled by lot, and the provision seems a salutary one.

By section 59, the election of a Chairman is subject to the sanction of the Local Government.

It is not necessary that a candidate for the office of Chairman should have a majority in his favour of the votes of the whole number of members present and voting. It is sufficient that he should have more votes than any other candidate. In an English case—*Oldknow* v. *Wainright*, 1. W. Bl., 229 ; 2 Burr., 1017, decided in 1760, and still cited as an authority on the subject, it was held by Lord Mansfield that in an election to a corporate office, where out of twenty-one electors present nine voted for the election of a particular candidate, eleven protested against his election, but did not vote for anyone else, and one declined to express an opinion at all, the candidate in question was duly elected.

The only cases in which the Local Government can make additions to the Schedule are in the case of new Municipalities formed under section 8, and of Municipalities in which the Commissioners have been superseded under section 65.

"Section 23 of the Act has been amended by *section* 12 *of the Bill*, so as to make it clear that when the Commissioners of a Municipality not mentioned in the second Schedule of the Act have requested the Lieutenant-Governor to appoint a Chairman, they do not thereby surrender their power to appoint a Chairman on the occurrence of a subsequent vacancy. Some obvious omissions are also supplied."—*Final Report of Select Committee on Amending Bill.*

Circular No. 4. L. S. G., dated the 27th January 1893, directs that Assistant Surgeons and Civil Hospital Assistants are not to be appointed as Chairmen or Vice-Chairmen of Municipalities. As Commissioners, however, they can render valuable assistance by advising and superintending in matters relating to the conservancy and sanitary arrangements of the Municipality in which they reside.

His status and tenure of office.

24. Notwithstanding anything in section thirteen contained, every Chairman appointed under the last preceding section, if not already a Commissioner of the Municipality of which he shall have been appointed Chairman, shall, from the date of his appointment, during the term of his office, enjoy all the rights and privileges of a Commissioner of the Municipality to which such appointment relates, but shall not be reckoned in calculating the proportions of one-third and one-fourth under the provisions of section fourteen.

"Except as is otherwise provided in this Act," every Chairman, whether appointed or elected, shall hold office for three years from the date of his appointment or election, and shall be eligible for re-appointment or re-election.

A Chairman elected under the last preceding section may at any time be removed from his office by a resolution of

the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose.

An appointed Chairman, if not already a Commissioner, does not become one by his appointment. He, however, enjoys all the rights and privileges of a Commissioner during his term of office. Under section 17 of the former Act, the Magistrate of the District and the Magistrate of the Division were *ex-officio* Commissioners, and one or other was ordinarily Chairman of the Municipality.

The removal under this section of a Chairman from office is by section 59, subject to the approval of the Local Government.

Semble, that the "whole number of the Commissioners" means the number as fixed by the notification issued under section 13, and not the number of those who may happen to be holding office at the time. This is the construction which has been placed upon a corresponding provision in the English Act.

"Except as is otherwise provided in this Act." Compare sections 27, 27A, and section 23, clause (5).

Election of Vice-Chairman.

25. (30) The Commissioners at a meeting shall elect one of their own number to be Vice-Chairman. He shall hold office for three years from the date of his election, and shall be eligible for re-election on the expiration of his term of office.

The Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners shall have given their votes at a meeting specially convened for the purpose.

Under the former Act the Vice-Chairman was not necessarily a Commissioner before his election. He must now be a Commissioner before he can be elected.

The election of a Vice-Chairman is no longer subject to the approval of the Lieutenant-Governor.

Term of office of Commissioners.

"25A. If a Chairman or a Commissioner is appointed by official designation, the person for the time being holding the office shall be a Chairman or a Commissioner, as the case may be."

Tenure of office under sections 21, 24 and 25.

26. The term of three years mentioned in sections twenty-one, twenty-four and twenty-five shall be held to include any period which may elapse between the expiration of the said three years and the date of the "first meeting of the body of Commissioners newly-appointed and elected, at which a quorum shall be present, and any Chairman elected under section twenty-three, twenty-five

or twenty-seven shall be competent to discharge the duties of his office after his election and pending the orders of the Local Government approving his election."

Under this section it is clear that the whole body of the Commissioners whether appointed or elected, as well as the Chairman and Vice-Chairman, will continue in office until the date on which the newly-appointed body of Commissioners hold their first meeting. There is consequently nothing to prevent the old body of Commissioners from holding meetings and transacting business, if necessary, after the date of election of the new body of elected Commissioners. For their term of office does not expire until the newly-appointed and elected body of Commissioners hold a meeting at which a quorum is present.

It would clearly be the duty of the Chairman of the old body of Commissioners to call a meeting of the new body, as soon as the names of the newly-elected and appointed members have been gazetted. Under the provisions of the next section the old Chairman and Vice-Chairman should attend and resign at such meeting.

Resignation of Chairman and Vice-Chairman.

"26A. Notwithstanding anything contained in sections twenty-four, twenty-five and twenty-sevenA, the Chairman and Vice-Chairman of every Municipality shall resign office at the first meeting of the Commissioners newly-appointed and elected at which a quorum shall be present. The meeting shall thereupon proceed—

(*a*) to elect, or to request the Local Government to appoint, a Chairman, and

(*b*) to elect a Vice-Chairman :

Provided that, if the Municipality is in the second Schedule of this Act, or if the meeting decides to request the Local Government to appoint a Chairman, the resignation of the Chairman shall not take effect until a new Chairman is appointed."

By the preceding section a Chairman elected under this section shall be competent to perform the duties of his office pending the orders of the Local Government approving of his election. For a Chairman elected under this section is also elected under section 23.

The Chairman having resigned as soon as the meeting is formed, obviously cannot preside at it as of right. The meeting should therefore proceed to elect a member thereof to preside, the former Chairman not being necessarily excluded. The question has been raised as to what should be done if a tie happens at the election of a Chairman of a meeting held under this section. Obviously the Rules framed by the Commissioners under section 351A should provide for such a case. Compare note to section 23.

Leave may be granted to Chairman or Vice-Chairman.

"26B. The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year."

Section 28 authorises the grant of leave allowances in the case of a salaried Chairman or Vice-Chairman.

Appointment or election of Commissioner, Chairman or Vice-Chairman for unexpired term of office.

27. If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office, "or shall avail himself of leave granted under section twenty-sixB," the vacancy caused by his resignation or removal or death, "or absence on leave," shall be filled by the appointment or election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office, "or during his absence on leave as the case may be."

Resignation of Chairman, Vice-Chairman, &c.

"27A. (1) A Chairman of a Municipality may resign by notifying in writing his intention to do so to the Local Government, and on such resignation being accepted, shall be deemed to have vacated his office.

(2) A Vice-Chairman or a Commissioner of a Municipality may resign by notifying in writing his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting, and on such resignation being accepted by such Commissioners, shall be deemed to have vacated his office."

Allowances of Chairman and Vice-Chairman.

28. The Chairman and Vice-Chairman of any Municipality may, if the Commissioners think fit, receive such allowances out of the Municipal Fund as shall from time to time be fixed at a meeting by the Commissioners.

"And in the case of a salaried Chairman or Vice-Chairman, the Commissioners may grant such leave allowances as they may from time to time determine at a meeting:

Provided that the allowance so granted together with the acting allowance, if any, of the officiating incumbent shall not exceed the salary fixed for the office."

By section 59 any resolution passed under this section is subject to the approval of the Local Government.

Under section 30 of Act V, a salaried Vice-Chairman might be elected; but no provision was made for granting allowances to the Chairman.

By section 26B, the Commissioners at a meeting may grant leave of absence to the Chairman or Vice-Chairman for any period not exceeding three months in any one year.

Under section 57 the holding by a Commissioner of any office of profit under the Commissioners amounts to a disqualification, and subjects the holder to a fine of Rs. 500. But as the Act itself permits the Chairman and Vice-Chairman to receive allowances, it is evidently not its intention that the receipt of such allowances should entail disqualification and a penalty. In the English Act, however, (section 12), the Mayor and Sheriff are distinctly excepted from the disqualification arising out of holding any office or place of profit, in the gift or disposal of the Council.

Commissioners incorporated.

*29. (31) The Commissioners shall, in the name of their Chairman, by the description of "The Chairman of the Municipal Commissioners of.....," be a body corporate, and have perpetual succession, and a common seal, and in such name shall sue and be sued.

Such common seal shall have the name of the Municipality engraved thereon in legible characters in the English language, and also in the vernacular of the district.

"We have already remarked that there is a species of lay corporation which is erected for the good government of a town. An institution of this kind has, in modern times, been termed a *Municipal Corporation;* and may be defined generally as a body politic or corporate, established in some town to protect the interests of its inhabitants as such, and the maintenance of order therein; and consisting of the burgesses or freemen, that is, such persons as are duly and legally admitted as members of the corporate body."—(*3 Steph. Com.*, 31.)

It will be noticed that, under this section, the body corporate is formed by the incorporation of the Commissioners only.

By section 7 of the English Municipal Corporations Act, 1882, a Municipal Corporation is defined as "the body corporate constituted by the incorporation of the inhabitants of a borough."

"*In the name of their Chairman,*" *etc.*—"When a corporation is erected, a name is always given to it, or, supposing none to be given, will attach to it by implication, and by that name alone it must sue and be sued and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation in other respects. But some name is the very being of its constitution, and though it is the will of the Sovereign that erects the corporation, yet the name is the knot of its combination, without which it cannot perform its corporate functions."—(*1 Steph. Com.*, 11.)

Perpetual succession.—"Corporation or body politic, artificial persons established, for preserving in perpetual succession, certain rights which being conferred on natural persons only, would fail in process of time. . . . . It has power to make bye-laws for its own government, and transacts its business under the authority of a common seal—its hand and mouthpiece; it has neither soul, nor tangible form, so that it can neither be outlawed nor arrested; it only enjoys a legal entity, sues and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law."—(*Wharton's Law Lexicon.*)

Common seal.—"It is a general rule that a corporation must contract by its common seal, but wherever the observance of this rule would occasion great inconvenience, or tend to defeat the very purpose of the business, it is not observed."—(*Ibid.*)

A corporation, "as the general rule, can be guilty of no crime in its corporate capacity. Yet it is liable in certain cases to an indictment, as where it allows a bridge, the repair of which belongs to it by law, to fall into decay. And it

is capable of suing or being sued for breach of contract, and for many other kinds of civil injury, as for example a libel."—(3 *Steph. Com.*, 13.) "It must always appear in Court by attorney, for it cannot appear in person, being, as Sir E. Coke remarks, invisible, and existing only in intendment and consideration of law."—(*Ibid.*)

"A corporation may (*i.e.*, in certain cases) be proceeded against criminally as well for a misfeasance as a nonfeasance.—*Reg.* v. *The Birmingham and Gloucester Railway Company*, 3 Q. B. Rep., 223; *Reg.* v. *Scott*, 3 Q. B. Rep., 547; *Reg.* v. *The Great North of England Railway Company*, 9 Q. B. Rep., 315."—I. L. R., 3 Calc., 762.

Per Lord Bramwell, a corporation aggregate is not capable of being actuated by a malicious motive such as would render it liable to an action for malicious prosecution.—*Abrath* v. *North-Eastern Railway Company*, L. R., 11 App. Cas., 247.

A Municipal Corporation is not a public servant within the meaning of section 39, Act IV of 1877 (repealed), and may therefore (in certain cases) be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section.—*Empress* v. *The Municipal Corporation of Calcutta*, I. L. R., 3 Calc., 758.

Act IV of 1877 was repealed by Act X of 1882 (the Code of Criminal Procedure). Section 197 of the latter Act is, however, practically to the same effect as regards this particular matter as section 39 of the former. It follows, therefore, that the above ruling now applies to all Municipalities, and that the sanction of Government is not requisite for the criminal prosecution of any Municipality.

Section 39 of Act IV of 1877 referred, and section 197 of the Criminal Procedure Code refers, to a public servant not removable from office without the sanction of Government; and in the case above quoted it was held that a Municipal Corporation does not come under this description. Whether a Municipal Corporation can be considered to be a public servant at all within the meaning of section 21, Indian Penal Code, was held to be very doubtful. In the case above referred to, White, J., remarked: "I think it is open to much doubt whether the Corporation, as distinct from its individual members, is a public servant at all, as these words are defined by the 21st section of the Indian Penal Code."

This view of the matter appears to overlook the definition of the term "person" given by section 11 of the Penal Code, and was apparently differed from in *Kharak Chand Pal* v. *Tarack Chunder Gupta*, I. L. R., 10 Calc., 1030.

A Municipal Commissioner is a public servant,—section 21, Indian Penal Code.

Delegation of certain powers and functions of Local Government.

"29A. (1) The powers and functions of the Local Government under sections thirty, two hundred and fifty-five, two hundred and fifty-nine and three hundred and thirty-one, may be delegated by the Local Government to Commissioners of Divisions.

(2) In regard to powers or functions delegated to them under this section, Commissioners of Divisions shall have the same authority as the Local Government, and the delegation shall continue until revoked by the Local Government.

(3) A delegation under this section may be of all or any of the powers and functions aforesaid, and may be made generally in regard to all the Municipalities within the division of the Commissioner, or it may be made particularly in regard to certain Municipalities only.

(4) The delegation may be by name or by official designation, and shall in each case be notified in the *Calcutta Gazette.*"

Section 30 empowers the Local Government to exclude by notification any road, drain, or bridge from the operation of this Act, or of any specified section thereof. Section 255 refers to the re-opening of disused burial and burning grounds. Section 259 requires the sanction of the Local Government to the provision of burial and burning grounds by the Commissioners. Section 331 requires the sanction of the Local Government to rules defining the duties of persons employed in the removal of sewage.

Of the Property of the Commissioners.

Public roads, &c., vested in the Commissioners.

30. All "roads including the soil and all" bridges, tanks ghâts, wells, channels, and drains in any Municipality (not being private property, and not being maintained by Government or at the public expense), now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all erections, materials, implements, and other things provided therefor shall vest in, and belong to, the Commissioners.

But the Local Government may, from time to time, by notification, exclude any road, bridge or drain from the operation of this "Act or of any specified section of this Act," and may cancel such notification wholly or in part:

Provided that, if the cost of the construction of the work shall have been paid from the Municipal Fund, such work shall not be excluded from the operation of this Act "or of any specified section of this Act" without the consent of the Commissioners at a meeting.

Three more or less important changes have been made in this section by the Amending Act. The most important is the insertion of the words "including the soil." Their effect is to confer the full proprietary right in the land covered by public roads on the Commissioners. According to English law "the freehold of a public highway is in the owners of the soil, for the dedication of the land for the passage of the public is not a transfer of the absolute property in the soil, and the owner is entitled to all profits, trees, and minerals upon and under it, and may bring trespass or ejectment."—*Glen's Law of Public Health*, 10th Edn., p. 240. The decisions of the Indian Courts are to the same effect. See *Nihal Chand* v. *Azmat Ali Khan*, I. L. R., 7 All., 362; *The Chairman of the Naihati Municipality* v. *Kishori Lall Goswami*, I. L. R., 13 Calc., 38; *Modhu Sudan Kundu* v. *Promoda Nath Roy*, I. L R., 20 Calc., 732. The second change made is by the insertion of the words "and all," thus separating the term roads from the parenthesis "not being private property," &c. As pointed out in the preceding editions of this work the reservation "not being private property" was unnecessary as regards roads, on account of the definition in clause 13 of section 6. A road over which the public has a right of way is public and not private property *qua* road. The mistake has now been rectified.

The third alteration is a very useful one. Under the section as it previously stood, the Advocate-General held that a road, bridge or drain, must be excluded from the provisions of the Act altogether, or not at all. In the case of a road so excluded none of the provisions of the Act, nor of any bye-laws made thereunder, would be in force. By the alteration now made, the exclusion may be in respect of one or more specified sections of the Act.

A section of an Act which vests streets in a Municipality, though it gives perhaps only a limited estate, yet gives not merely the bare surface of the ground, but so much above and below it as is requisite or appropriate for the preservation of the street for the usual and intended purposes. Consequently, the Municipality was justified in refusing permission to the plaintiff to occupy the column of space over the street with a balcony, and no suit would lie in respect of such refusal.—*Nagar Valab & Narsi* v. *Municipality of Dhandhuka*, I. L. R., 12 Bom., 490.

Commissioners may, with consent of owners, take over and repair roads, &c.

31. (33) The Commissioners at a meeting may agree with the person in whom the property in any road, bridge, tank, ghât, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare by notice in writing put up thereon or near thereto, that such road, bridge, tank, ghât, well, channel or drain has been transferred to the Commissioners.

Thereupon the property therein, or the control thereof (as the case may be), shall vest in the Commissioners, and such road, bridge, tank, ghât, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

The word "road" here apparently means a private road, and the section seems to overlook the definition of the term given in clause (13) of section 6.

This section is no longer necessary in consequence of the changes made in section 69 of this Act by Act II of 1896 B.C.

Existing hospitals, schools, rest-houses, &c., may be vested in the Commissioners.

32. (34) Every hospital, dispensary, school, rest-house, ghât, and market, not being private property, or the property of a religious institution or society, and all medicines, furniture, and other articles appurtenant thereto, not being such property, which at and after the commencement of this Act shall be found within any Municipality, may, by order of the Local Government duly published on the spot, be vested in the Commissioners of such Municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer:

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the *Calcutta Gazette*, and within the Municipality in the vernacular language of the district.

Transfer to be conditional in certain cases.

*33. (35) If the Commissioners at a meeting shall, after publication of the notice mentioned in the last preceding section, object to the transfer to themselves of any hospital, dispensary, school, rest-house, ghât or market, on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

Power to purchase, lease and sell lands.

34. (36) The Commissioners at a meeting may purchase or take on lease any land for the purposes of this Act, and may sell, let, exchange, or otherwise dispose of any land not required for such purposes.

By section 6, clause (5), "land" includes houses and things attached to the earth.

This provision for the sale of land must be held to be subject to any public or private rights which may exist with regard to the land in question. For instance, the Commissioners would have no power to sell a public road and thereby deprive the public of their right of way over it.

"While certain land formed part of a certain public thoroughfare, F had immediate access to such thoroughfare and the use of a certain drain. The Municipal Committee sold such land to M, and constructed a new thoroughfare. M used and occupied such land so as to obstruct F's access to the new thoroughfare and his use of the drain. F, therefore, sued him to establish a right of access to the new thoroughfare over such land and a right to the use of such drain:—*Held*, that having suffered special damage from M's acts, F had a right of action against him, and that such right was not affected by the circumstance that M had acquired his title to the land from the Municipal Committee, inasmuch as the Municipal Committee could not have dealt with the old thoroughfare to the special injury of F, and, had it closed the same, would have been bound to provide adequately for his access to the new thoroughfare and for his drainage."—*Fazal Hak* v. *Maha Chand and another*, I. L. R., 1 All., 557.

Land may be taken up under Land Acquisition Act, 1870.

35. (37) The Local Government, on the application of the Commissioners at a meeting that any land be acquired for the purposes of this Act, may, on being satisfied that the Commissioners are in a position to pay for such land either at once or in such instalments as the Local Government may think proper, notify under the provisions of the Land Acquisition Act, 1870, or any similar Act for the time being

in force for the acquisition of land for public purposes, that such land is required for a public purpose, and may cause such land to be acquired under the provisions of such Act; and on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

Commissioners to pay cost of such land.

*36. (38) The Commissioners shall be bound to pay to the Government the cost of any land which may be acquired for them on their application under the provisions of the last preceding section.

Act X of 1870 (the Land Acquisition Act) was repealed by Act I of 1894.

Mode of executing contracts.

37. (39) The Commissioners may enter into and perform any contract necessary for the purposes of this Act.

Every contract made on behalf of the Commissioners of a Municipality in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

Unless so executed, such contract shall not be binding on the Commissioners.

Under section 39 of the former Act it was held that the section did not authorize the Commissioners to enter into a contract with a company for the construction and working of tramways, such construction and working not being one of the purposes of the Act. This objection has now been obviated by the inclusion of tramways among the objects to which the Municipal Fund may be applied by section 69.

Section 39 of Act V provided a limit of Rs. 200 in respect of second class Municipalities. The distinction between first and second class Municipalities having been abolished by the present Act, the higher limit has been adopted.

The contract can only be varied by the Commissioners at a meeting. Government has been advised that the Chairman has no power to grant an extension of time to a contractor in respect of a contract above the limit laid down in this section. (L. R.)

The section authorizes the Commissioners to enter into contracts necessary for the purposes of this Act, and therefore implies that they are prohibited from entering into any contracts not necessary for such purposes. Such other contracts, though duly executed, would not be binding on the Corporation.

"'Corporations,' said Baron Parke in an oft-quoted passage, 'which are creatures of law, are, when their seal is properly affixed, bound just as individuals are by their own contracts, and as much as all the members of a partnership would be by a contract in which all concurred. But where a