corporation is created by an Act of Parliament *for particular purposes*, with special powers, then indeed another question arises. Their deed, though under their corporate seal, and that regularly affixed, does not bind them, if it appears by the express provisions of the Statute creating the corporation, or by reasonable inference from its enactments, that the deed was *ultra vires*, that is, that the Legislature meant that such a deed should not be made.'"—*Smith's Leading Cases*, 1,351.

A contract entered into by a municipal subordinate, in respect of a sum below five hundred rupees, would be binding on the Commissioners, if such subordinate had authority to make it, or the Commissioners subsequently ratified it, but not otherwise. In such a case the agent could not be sued on the contract unless he had contracted personally or pledged his own credit. He might be liable, however, to an action in *tort*.—*Mohendro Nath Mukerjee, Defendant*, 9 W. R., 206 C. R.

"*Shall not be binding on the Commissioners.*"—If not binding on the Commissioners it follows that it is not binding on the other parties to the contract. When a Corporation is not bound by a contract by reason of their common seal not being affixed, the other party to the contract is equally free from obligation. Thus a Municipal Corporation and Local Board caused certain tolls to be put up for auction, and the highest bidder was declared to be the purchaser. He subsequently, however, declined to carry out the conditions of sale, and on an action being brought against him for breach of his agreement to take the tolls, it was held that the contract was one which required the common seal, and not having been sealed by the Corporation or signed by any person authorized under their seal to sign it, he was not bound by it.—*Kidderminister (Mayor, &c.)* v. *Hardwick*, L. R. 9 Ex., 13.

Formation of Joint-Committees.

"37A. The Commissioners of any Municipality may join with the Commissioners of any other one or more Municipalities, or with any District Board or with any Cantonment authority, or with more than one such Board or Cantonment authority, in constituting out of their respective bodies a Joint-Committee consisting of not more than two members from each of such bodies for any purpose in which they are jointly interested, and in delegating to any such Joint-Committee any power which might be exercised by either or any of the Municipal Bodies, or District Boards, or Cantonment authorities concerned, and such Joint-Committee may from time to time frame rules as to the proceedings of any such Joint-Committee, and as to the conduct of correspondence relating to the purpose for which such Joint-Committee is constituted."

"*Section 22 of the Bill* (37A of the Act) has been re-drafted on the model of section 30 of Bengal Act III of 1885 and section 27 of Act XX of 1891. The proposed new sections of the Act (37 B to 37 M), dealing with the introduction of the systems of water-supply and drainage, have been drafted for the purpose of giving effect to the recommendation of a Conference which met at Belvedere on the 18th July 1892, to discuss these subjects. The Select Committee in their preliminary report explained that they had been unable fully to consider these sections. We have very fully and carefully examined them, and have introduced considerable modifications into their form as originally drafted. It is now distinctly enacted that the local authorities shall ordinarily take the initiative in

introducing a scheme of this kind, and that Government will intervene only in case of necessity and in the event of the Commissioners omitting to take action. Ample provision has also been made for the full consideration of the scheme by all concerned."—*Final Report of Select Committee on Amending Bill.*

Voluntary introduction of a water-supply or system of drainage.

"37B. Whenever it appears expedient to the Commissioners of any Municipality, or to the Commissioners of a Municipality acting conjointly with the Commissioners of any other Municipality or Municipalities or with one or more of any of the local authorities specified in the last preceding section to provide a supply of water for domestic purposes, or to introduce a system of drainage, they may cause to be prepared a scheme and estimates of the cost of the works necessary for the purpose, together with such plans and specifications of the same as may be necessary, and may submit the same to the Local Government through the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain is situated."

Sanitary Board with a Committee to consider and report on scheme.

"37C. The Local Government may refer such scheme, plans, specifications and estimates to the Sanitary Board, who, in consultation with a Committee consisting of one member to be appointed by the Municipality or by each of the Municipalities or other local authorities concerned, and one member to be appointed by the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain is situated, shall consider the same and report thereon to the Local Government."

Sanitary Board is defined by section 6, clause (14A).

Local Government to sanction, modify or refer scheme.

"37D. The Local Government shall consider the report together with the plans, specifications and estimates, and may thereupon:—

(*a*) sanction the scheme, or

(*b*) add to, alter or modify the scheme and sanction the same so added to, altered or modified, or

(*c*) add to, alter or modify the scheme and refer the same so added to, altered or modified,

together with the plans, specifications and estimates, to

the Sanitary Board, who, in consultation with the said Committee, shall further consider the scheme so added to, altered or modified, and report thereon to the Local Government.

Distribution of costs of scheme.

"37E. (1) When the scheme recommended for sanction extends to two or more Municipalities or other local areas, the Sanitary Board, acting in consultation with the said Committee, as constituted under section thirty-seven C, shall include in their report proposals for distributing the cost of the scheme, including its maintenance and working expenses, between or among the local authorities benefited.

(2) In the case of Municipalities, such distribution shall be in proportion to the income derived by each from taxation, allowance being made for any difference in the degree of benefit conferred on each, such as, in the case of a water-supply scheme, the pressure at which the water is delivered, the facilities for procuring water, the distance from the head-works, and the like.

Approved scheme to be published.

"37F. (1) When the scheme has been approved by the Local Government, there shall be published in the *Calcutta Gazette*, and locally in accordance with the provisions of sections three hundred and fifty-four, the following particulars :—

(*a*) a general description of the scheme ;

(*b*) an estimate of the cost of carrying it out ;

(*c*) an estimate of the cost of maintaining it ;

(*d*) the source from which the cost will be met ;

(*e*) the amount of the loan, if any, the annual instalments by which it will be repayable, and the number of years required to repay it ;

and where several local authorities are concerned ;

(*f*) the distribution of the loan ;

and

(2) Where the scheme is for providing or improving the water-supply, the following additional particulars in respect of each Municipality concerned :—

(*a*) the total annual charge to be incurred by reason of the water-supply and to be met by a water-rate ;

(*b*) the percentage of such water-rate on the annual value of holdings ;

(*c*) the average incidence of such water-rate per head of the population.

"37G. After the expiry of two months from the date of such publication, and after considering any objections or suggestions that may be submitted, the Local Government may sanction or reject the scheme as published, or may refer it, with such suggestions as it may think fit, to the Sanitary Board, who, in consultation with the same Committee as aforesaid, shall consider the scheme with a view to its amendment, and when the scheme shall have been so considered, it shall be forwarded to the Local Government, and the provisions of this and the last preceding section shall be applied.

Sanction of scheme.

Sanitary Board is defined by section 6, clause (14A).

"37H. When a scheme has been sanctioned by the Local Government under the last preceding section, the Commissioners of the Municipality or Municipalities, or the local authorities concerned, shall, if the rate and other moneys to be collected, received or recovered for or in respect of the water-supply or drainage system be sufficient for the purpose, proceed to carry it out, and where two or more Municipalities or local authorities are concerned, a Joint-Committee may be formed for that purpose according to rules to be framed in this behalf by the Local Government.

Scheme to be carried out by Municipalities.

"37I. The Local Government may order the works specified in any scheme, plans, specifications and estimates, or any portion thereof, to be executed by an officer to be appointed by it, and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded) : and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

Local Government may appoint an officer to execute the works.

"37J. The cost of making plans, specifications and estimates, and the travelling expenses incurred by the members of the Committee in attending the meetings of the

Cost of the scheme to be advanced from the public funds.

Sanitary Board for the consideration of the scheme, and the cost of carrying out the scheme if the same be proceeded with, may be advanced from the public funds on the security of the fund or funds of the Municipality or Municipalities or other local authority or authorities concerned, and shall be recoverable under the Loans Act, 1879, and all the provisions of that Act and the rules made under it referring to the recovery of loans shall be applicable to such advances.

Compulsory introduction of water-supply or system of drainage.

"37K. (1) When it appears to the Local Government that the Commissioners of any Municipality or the Commissioners of a Municipality, acting conjointly with the Commissioners of any other Municipality or Municipalities or with one or more of any other local authorities specified in section thirty-seven A, should be required to provide a supply of water for domestic purposes or to introduce a system of drainage, it may call upon such Commissioners to show cause within a specified time why they should not be so required, and the Local Government shall consider any objections which may be submitted by the Commissioners, and if it considers such objections insufficient, it may, after publishing in the *Calcutta Gazette* a full statement of the reasons which have led to action being taken, by an order in writing, fix a time within which the Commissioners shall submit such a scheme, plans, specifications and estimates as are referred to in section thirty-seven B, in the manner therein provided:

Provided that when the Commissioners of one Municipality are required to show cause, as aforesaid, a resolution against the introduction of such scheme passed at a meeting specially convened for the purpose, in favour of which a majority of not less than two-thirds of the whole number of Commissioners shall have voted, or when the Commissioners of two or more Municipalities are required to act conjointly with each other for that purpose, a similar resolution passed by the Joint-Committee constituted under section thirty-seven B, in favour of which a majority of not less than two-thirds of the total number of votes allotted to such Municipalities and apportioned to each of them, according to their respective incomes shall have been recorded shall

be final, and in either case no further action shall be taken by the Local Government under the provisions of this section.

(2) When the said order has been complied with, the provisions of sections thirty-seven C to thirty-seven J inclusive shall apply.

(3) If default is made in complying with the said order, the provisions of section sixty-four shall apply: Provided that in the case of a Municipality mentioned in the first Schedule and not required to act conjointly with any other Municipality or local authority, if within two months from the date of the publication of the particulars of any such scheme in the *Calcutta Gazette* under section thirty-seven E, a petition is presented to the Local Gevernment by a majority of not less than two-thirds of the registered rate-payers of a Municipality objecting to the compulsory introduction of such scheme into such Municipality, the Commissioners thereof shall not be compelled to carry out such scheme.

Part VII to apply to Municipality.

"37L. The provisions of Part VII shall, notwithstanding anything in section eighty-six, two hundred and twenty, two hundred and twenty-one, two hundred and twenty-two, two hundred and twenty-three, two hundred and seventy-nine or two hundred and eighty-seven, apply to every Municipality in which a water-supply is provided under section thirty-seven K.

As amended by Act II of 1896, B. C.

Chairman not to exercise powers of Commissioners.

"37M. The powers conferred on the Commissioners by sections thirty-seven A to thirty-seven L inclusive shall not be exercised by the Chairman under section forty-four."

Of the Mode of Transacting the Business of the Municipality.

Commissioners to meet ordinarily once a month.

38. (40) The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.

If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall,

instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

Meeting not invalidated by non-service of notice.

"Accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of a meeting."

The addition made to this section is very necessary, as according to the English cases even accidental omission to serve notice on any Commissioner would invalidate the proceedings. Now only an intentional omission will have that effect.

Vestries Act, 1818, *section* 1.—A meeting of a public body is not a legal meeting unless a notice to attend is served on all the members.—*Dobson* v. *Fussy*, 9 L. J. (O. S.) C. P., 72 ; 7 Bing., 305.

A public body entrusted with the performance of a public duty cannot hold a valid extraordinary meeting except all the members be summoned who can be summoned, unless the unsummoned members are actually present at the meeting. The proceedings at a meeting at which any individual is not present, who might have been summoned, and was not, are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned.—*Rex* v. *Langhorne*, 6 N. & M., 203 ; 4 A. & E., 538.

Where certain acts of a Corporation are to be performed at a special meeting, all the persons entitled to be present must be summoned if within summoning distance. The omission to summon any one so entitled renders invalid the proceedings at such meeting in his absence. On the party who supports the validity of such proceedings in the absence of a person who ought to have been summoned rests the *onus* of shewing a sufficient cause why such person was not summoned. With one person absent, who ought to have been summoned, even a unanimous decision of those present would be void.—*Smyth* v. *Darley*, 2 H. L. C., 789.

Notice to all the Commissioners of the meeting being a material part of the machinery provided by the Act for imposing a legal tax, was a condition precedent to the validity of that tax. Consequently, where a resolution was come to without conforming to those provisions, it was held to be not legal, and whether sanctioned or not by the Government, it always retained its inherent defect.—*Joshi Kalidas Sevakram* v. *Dakor Town Municipality*, I. L. R., 7 Bom., 399.

In his absence.—The absence of the Chairman from the Municipality, and not from his ordinary place of residence, is here referred to. By section 30 of the Bill of 1872, it was provided that "the Chairman, or, in his absence, the Vice-Chairman, shall exercise all the powers vested by this Act in the Commissioners." The following extract clearly shews the meaning of the word "absence" in this proviso:—

"The Council would remember that the Municipalities where the Magistrate was resident were comparatively few. In many places all over the country there was no resident Magistrate. If the Council would look to the provisions of the Bill, they would find that not only on the delegation of the Magistrate, but also in his absence, the Vice-Chairman would exercise the full powers of the Chairman. The consequence would be that in many Municipalities, where there was no resident Chairman, the Vice-Chairman would be for most purposes the Chairman, and the most ample opportunities for self-government would be left to the people in those Municipalities."—P. C., 20*th July*, 1872.

*39. (41) The Chairman, or, in his absence, the Vice-Chairman, shall call a special meeting on a requisition signed by not less than three of the Commissioners.

And at other times on special requisition.

If the Chairman or Vice-Chairman fails to call a special meeting within thirty days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.

(Act II of 1896, B. C.)

This section does not mean that special meetings can only be called in this manner and in no other. The Chairman, or, in his absence, the Vice-Chairman, can call a special meeting at any time. The object of the section is to compel the Chairman or Vice-Chairman to call a special meeting when three or more Commissioners require him to do so, and not to limit his power of doing so at other times. The distinction between an ordinary and a special meeting is, that any business can, subject to such rules as may be in force as regards notice, be taken up at the one, while the other is called to consider certain specified subjects and no others. An extra meeting held for the transaction of ordinary business, and at which, subject to the provisions in force for giving notice, propositions of any kind can be brought forward, is not a *special* meeting.

"Meetings are of two kinds, ordinary or general, and extraordinary or special. The former are held periodically at appointed times, and for the consideration of matters in general. The latter are called upon emergencies, and for the transaction of particular business.

"Extraordinary meetings being thus summoned unexpectedly, the notice to them ought to specify very carefully and exactly the occasion of the summons, and all the business proposed to be transacted thereat, so as to call the attention of each member to the circumstances."—*Brice on Ultra Vires*, 840.

When a special meeting is requisite to do an act which is beyond the competence of an ordinary meeting, the Court will require proof that a full and clear intimation was given that the special meeting would be called to consider such matter. In the absence of adequate notice to the parties entitled to attend, the decision of those present will be deemed invalid.—*Vale of Neath Brewery Company, in re*, 21 L. J., Ch., 688; 1 De Gex. M. & G., 421.

Under the provisions of this and other Acts, the following subjects must be dealt with at special meetings only:—

(1) Removal of Chairman, section 24.

(2) Removal of Vice-Chairman, section 25.

(3) Framing rules for pensions or annuities, or for Provident or Annuity Fund, section 47.

(4) Imposing tax upon persons or holdings, section 85.

(5) Imposing additional taxes, section 86.

(6) Extension of special regulations, section 221.

(7) Framing of bye-laws, section 350.

(8) Arranging for registration of births and deaths, section 11, B. C. Act IV of 1873.

(9) Applying to Local Government for sanction to the construction of a tramway, section 3, B. C. Act III of 1883.

By section 69 grants for schools, hospitals, dispensaries, or the promotion of vaccination must be made either at a special meeting, or after special notice that such matters will be considered at an ordinary meeting.

Who to preside at meetings of the Commissioners.

40. (42) The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting, and, in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside.

"*Absence of appointed Chairman.*—The absence of the appointed Chairman cannot withhold a meeting from the transaction of the business for which it has been convened. The meeting, save in case of express provision

to the contrary, as a matter of course, proceeds to the election of one of its members as Chairman. Nor is any time limit usually placed on the exercise of this power when a meeting, composed of a definite number of members, is duly assembled. If the appointed Chairman be not present at the hour fixed for the meeting, the election of his substitute may be effected at once as is provided by the statutory rules for the conduct of local and school boards and boards of directors, and unless otherwise ordered, he retains the chair during that sitting, although the appointed Chairman may subsequently join the meeting. The moment to be taken for the election of an occasional Chairman may accordingly be left to the discretion of the meeting.

"It is undesirable, however, that a meeting where attendance is large, and the occasion of special importance, should be called upon forthwith to fill up the vacancy caused by the absence of an appointed Chairman, and the rule prescribed by the Companies Act, 1862, to meet such an emergency might generally be followed. This rule enacts that if there is no regular Chairman of a shareholders' meeting or 'if he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be Chairman.'"—*Palgrave's Chairman's Handbook*, p. 12.

The most important duty of the Chairman of a meeting is to maintain order, or, in other words, to see that the proceedings and discussions are regularly and properly conducted. He must take care that there is a distinct motion before the meeting and should allow no speeches to be made which are not strictly relevant to that motion. His decision on all points of order is virtually final. The duty of deciding all questions as to the admissibility of motions and amendments under the rules in force as to notice, or in regard to the terms of the notice convening the meeting in question, is especially imposed upon him. He should insist upon the use of decorous and temperate language, and call any person to order who indulges in unwarrantable personalities, or imputations. Where two members rise at the same time, it is for the Chairman to decide which is entitled to speak. When a motion or amendment is made, and the mover resumes his seat, the Chairman should allow no member to speak unless such member declares that he rises to second the motion or amendment. The Chairman is entitled to insist that all speeches should be addressed to him, and that members should not speak on the same motion more often than the rules permit. The general rule is, that, except in the case of a mover summing up by way of reply, no speaker is entitled to speak twice. "Perhaps it will be safe in a general way to allow a man to speak a second time, if he does so in good faith, for the purpose of commenting on some new point that has arisen since his first speech, or of making some new suggestion of his own, it being clearly understood both by him and by the meeting that he speaks by favour, and not of right."—*Chambers' Handbook for Public Meetings*, p. 5.

Where business involving many details has to be transacted, it is better that the meeting should resolve itself into committee, thereby suspending the ordinary rules of debate, and permitting a general discussion unfettered by them.

According to the procedure generally followed in England, only one amendment can be before the meeting at the same time, that is to say, that the Chairman must not accept a second amendment until the first has either been negatived, or accepted as the main question. In this country, however, a different practice prevails, and several amendments are commonly before a meeting at the same time, the last one made being put to the vote first. It must be remembered that an amendment, as its name implies, professes to improve by alteration the original motion. An amendment cannot merely negative the original motion. A person objecting to a motion *in toto* must be content to vote 'No' when the question is put from the Chair. When once a motion or amendment has been duly made and seconded, it becomes the property of the meeting, and cannot be withdrawn unless the meeting consents.

For full information as to the powers and duties of Chairmen in regard to meetings, reference may be made to *Palgrave's Chairman's Handbook* and *Chambers' Handbook for Public Meetings*.

41. (43) All questions which may come before the Commissioners at a meeting shall be decided by a majority of votes, unless otherwise provided in this Act.

Questions to be decided by majority.

In case of equality of votes, the President shall have a second or casting vote.

Casting vote.

The words "unless otherwise provided by this Act" are obviously necessary. In certain cases a majority of two-thirds of the whole number of the Commissioners is necessary.

For making rules under section 47, a majority of two-thirds of the Commissioners present at a meeting is required.

Second or casting vote.—"By common right the Chairman of a meeting has, if the number of votes is equal, no second or casting vote. The House of Lords, in this respect, follows 'ancient rule' and the 'non-content' lords 'have it' in case of an equality of votes. In the House of Commons, if the number should happen to be equal, the Speaker (and in Committee the Chairman of Ways and Means), who otherwise never votes, must give the casting vote. A third mode of solving this difficulty is established by the Legislature. A Chairman of municipal councils, local and school boards, vestries, and of board or general meetings of companies is empowered to give, in the first instance, his vote as a member, and then, as Chairman, a second or casting vote in case of an equality of votes. *But when a Chairman votes as a member, he should give that vote before declaring the number of voters for and against the motion.*"—*Palgrave's Chairman's Handbook*, p. 13.

The case of the election of the Chairman or Vice-Chairman is an exception to the principle laid down in this section. It is not necessary that there should be an absolute majority of the Commissioners present and voting, in favour of a particular candidate for the office of Chairman or Vice-Chairman, to render him duly elected. The term election implies that the votes for each candidate should be counted, and that the candidate who has most votes should be returned as duly elected.

42. (44) No business shall be transacted at any meeting of the Commissioners, unless such meeting has been called by the Chairman or Vice-Chairman, or under section 39 by persons signing a requisition, nor unless a quorum shall be present.

Quorum.

A quorum shall be, in any Municipality in which the Commissioners are more than fifteen, five;

in any other Municipality a number being not less than one-third of the entire number of Commissioners.

If, at the time appointed for a meeting, or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the President, and three days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

Adjourned meeting.

As amended by Act II of 1896, B. C.

The last clause is taken from the Calcutta Municipal Act, 1876, section 49.

For certain purposes a quorum is practically two-thirds of the whole number of Commissioners. Thus by section 23 a resolution requesting the Local Government to appoint a Chairman cannot be passed unless the meeting is attended by two-thirds of the whole number of Commissioners. Certain resolutions (sections 24 and 25) require a vote of at least two-thirds of the whole number of Commissioners *in their favour*. It is therefore obviously a waste of time to discuss them unless there is at least that proportion present.

By section 3 of B. C. Act III of 1883, the quorum for a meeting to pass a resolution in favour of applying to the Local Government for sanction to the construction of a tramway is two-thirds of the number of Commissioners.

"The maintenance of a quorum during the holding of a meeting in the first instance devolves upon the Chairman. He is bound to ascertain that a quorum is present before he permits the meeting to proceed to business; but custom after the sitting has commenced, lays that duty on the members of the meeting at large. This is the practice of the House of Commons itself; though for Select Committees the House adopts a stricter method. The Clerk of the Committee is specially charged, whenever a quorum is not present, to bring that fact to the attention of the Chairman, who is thereupon to suspend the proceedings of the Committee until a quorum be present, or to adjourn the Committee to some future day. This regulation might be generally adopted, coupled with the limitation provided for the School Board for London, which sanctions an interval of five minutes as a period of grace for the possible re-assembly of a quorum before its presence is officially declared."—*Palgrave's Chairman's Handbook*, p. 17.

For the purposes of this section the number of Commissioners must always be taken to be the entire number as fixed by the notification issued under section 13. This is the construction which has been placed on the corresponding provision of the English Act.

Except in the case provided for by this section, notice is not required of any adjourned meeting, as such a meeting is held to be a continuation of the original meeting, and is not competent to transact any business save that which the adjourned meeting left unfinished. The adjournment must be to some day certain.

* 43. (45) Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose, and shall be signed by the President of the meeting, and such book shall be open to the inspection of the tax-payers.

Minutes of Proceedings.

The proceedings of a Municipal Committee can be proved in any Court by a copy certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body.—*Evidence Act* (Act I of 1872), section 78, clause (5).

Minutes of proceedings.—"The precise form in which the minutes of a board should be kept, and whether letters and other documents should be placed thereon, or entered upon detached appendices, are matters which may be left to individual experience, so long as an adequate method of arrangement and of cross reference be provided. The entries essential to a due record of procedure are as follows:—Resolutions in the precise form in which they were put from the chair, every question proposed or put from the chair, whether withdrawn, negatived, or superseded; the names of those who voted, together with the number of the votes given upon each division; the names also of those present at each division, who, if usage so permit, took part in the debate, but abstained from voting; Chairmen's decisions upon matters of order and statements of their opinion regarding practice or procedure; the day and hour upon which a postponed or adjourned proceeding is to be considered. If a special form of notice of business involving the appointment or dismissal of officers, or other important matter is prescribed, the fact that such notice

has been given should be recorded. Indexes also to the minutes and appendices should be kept up systematically, so as to form a complete annual register to the proceedings."—*Palgrave's Chairman's Handbook*, p. 97

It is provided by section 60 that a copy of the minutes of the proceedings is to be "forthwith" forwarded to the Magistrate of the district. It appears probable, therefore, that it is not necessary that the minutes should have been confirmed before a copy is despatched. For, by the usual practice of boards, committees, and councils of all kinds, the minutes are confirmed at the next meeting. This would usually be about a month later, and to send a copy after a delay of more than a month would hardly be to do so "forthwith." It will be observed that the section does not enact that the minutes are to be signed *at* the meeting. This procedure was prescribed by the English Municipal Corporation Act, 1835, which provided that the minutes of each council should be "signed by the Chairman at such meeting." As this provision has, however, since been repealed, it would appear not to have worked satisfactorily in practice.

"When a statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly' it would probably be understood as allowing a reasonable time for doing it."—*Maxwell on the Interpretation of Statutes.* It has been held in several English cases that a statutory provision that minutes are to be signed by the Chairman of the meeting to which they relate, is complied with by the same Chairman signing them at the following meeting.—*West London Railway Company* v. *Bernard*, 13 L. J., Q.B., 68; 3 Q.B., 873; or at a subsequent time.—*Miles* v. *Bough*, 12 L. J., Q. B., 74.

There can be little question as to the truth of the following remarks in Mr. Palgrave's excellent work:—"The verification of minutes, it is needless to suggest, would be avoided if, according to the Parliamentary system, the record of each sitting was issued without delay under the authority of the presiding officer. If printed forms were prepared to be filled up as occasion required, a prompt and methodical issue of the minutes might be obtained, and verbal inaccuracies might be corrected under direction from the Chairman of the next meeting, if his attention be called thereto, either at the commencement or the close of the sitting." - *The Chairman's Handbook*, p. 19.

In the case of large and important Municipalities, the best plan to adopt is to print the minutes as soon after the meeting as possible, and to furnish each Commissioner with a copy, sending at the same time copies to the Magistrate of the district. At the ensuing meeting any inaccuracies can be pointed out, and if it is admitted that there are none, and that the minutes are accurate, they can be taken as read and confirmed at once.

Confirmation of minutes.—"The confirmation of minutes is, it must be remembered, a formal proceeding, designed solely for the ratification of the record. No discussion can accordingly be raised thereon regarding the policy enforced by the minutes; far less can general debate be allowed; nor can any amendment be moved to that motion."—*Palgrave's Chairman's Handbook*, p. 17.

"*Reg.* v. *York, Mayor.* In the case of meetings of public bodies, 'confirm' is commonly used in the sense of to 'verify.' *Per* Lord Campbell, C. J.:—To confirm the minutes of a meeting means not to give them force, but to declare them accurate." (1 E. & B., 588, at p. 594.)

It is sometimes supposed that the resolutions are inoperative or invalid unless and until this "confirmation" has taken place, but this supposition is incorrect. The object is that the minutes, which are the permanent record and the *primâ facie* evidence of the acts of the authority, shall be as accurate as possible; they are read in order that the members may have the opportunity of calling attention to inaccuracies in them, and when these have, if necessary, been corrected, may declare them to be accurate; and the Chairman then signs them by way of attestation.—(*Ibid.*)

Powers of Chairman.

*44. (4) The Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order autho-

rized thereby, exercise all the powers vested by this Act in the Commissioners :

Provided that the Chairman shall not act in opposition to, or in contravention of, any order of the Commissioners at a meeting, or exercise any power which is directed to be exercised by the Commissioners at a meeting.

The Commissioners cannot set aside any act of the Chairman which he had authority at the time to perform. They can, however, pass a resolution, that he should not perform similar acts in future. After such a resolution, such acts would be invalid. The resolution, however, could only have prospective and not retrospective effect.

The proviso to this section and the above note only apply to the case stated in the first paragraph of the section, *i.e.*, where the Chairman exercises powers vested by this Act in the Commissioners. When he exercises powers directly and definitely vested by this Act in the Chairman, the proviso does not apply. Compare note to section 46.

By section 37M the powers conferred on the Commissioners by sections 37A to 37L inclusive shall not be exercised by the Chairman under this section.

Chairman may delegate his duties to Vice-Chairman.

45. (47) The Chairman may, by a written order, delegate to the Vice-Chairman all or any of the duties or powers of a Chairman as defined in this Act, subject to such restrictions as may seem fit to him, and may at any time by a written order withdraw or modify the same :

Provided that nothing done by the Vice-Chairman, which might have been done under the authority of a written order from the Chairman, shall be invalid for want of or defect of such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained.

The Vice-Chairman has no independent or original powers under the Act, except in certain specified cases, in the absence of the Chairman. When the Chairman is absent, the Vice-Chairman can call meetings, and preside at meetings, whether ordinary or special. When the Chairman is present, the duties and powers of the Vice-Chairman are precisely what the Chairman may choose to delegate to him.

It is hardly necessary to note that the Vice-Chairman cannot delegate any of his duties or powers to another Commissioner. *Delegatus delegare non potest.*

In regard to the delegation by the Chairman of his powers to direct or sanction prosecutions, see note to section 353.

Appointment of subordinate officers.

46. (48) The Commissioners at a meeting shall, from time to time, decide whether a paid Secretary, Engineer, Health Officer "or Assessor" is required or not, and what number of subordinate officers, servants, and collectors of taxes or tolls may

be necessary for the Municipality, and shall, from time to time, fix the salaries to be paid to such persons respectively out of the Municipal Fund, and the allowances to be granted to such persons during absence on leave.

Subject to the scale of establishment decided upon by the Commissioners under this section, the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their places :

Provided that no person shall be appointed to an office, the salary of which is fifty rupees per mensem or upwards, without the sanction of the Commissioners at a meeting ; and that no officer, whose salary is more than twenty rupees per mensem, shall be dismissed without such sanction.

In the former Act the limits were Rs. 200 and Rs. 50, respectively.

This section is controlled by section 61, which must therefore be read with it.

This question has been more than once raised as to whether the Commissioners at a meeting have the power to pass a resolution directing the dismissal of a subordinate drawing more than twenty rupees per mensem, and whether the Chairman is bound to carry such a resolution into effect. Contradictory opinions on these points have been given by two different Advocates-General. The correct view appears to be that this section leaves the matter to the discretion of the Chairman. If a subordinate is drawing less than twenty rupees per mensem, the Chairman has an absolute power of dismissal. If he is drawing more than twenty rupees per mensem, the order of dismissal must be sanctioned by the Commissioners at a meeting, on a reference by the Chairman. But the initiative must be taken by the Chairman and not by the Commissioners at a meeting. It does not appear that the proviso to section 44 has any application to this section. That proviso only applies to the case stated in the first paragraph of the section, *i.e.*, when the Chairman is exercising powers vested by the Act in the Commissioners. It does not apply to powers which, as in the present section, are definitely conferred by the Act on the Chairman, independently of the Commissioners.

By section 111A, the Local Government can only appoint an assessor in cases where one has not been appointed under this section.

47. The Commissioners at a meeting, specially convened for the purpose, may, by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting shall have voted, from time to time make rules for—

Commissioners may frame rules for pensions and gratuities or for the creation of a Provident or Annuity Fund.

(*a*) the granting of pensions and gratuities out of the Municipal Fund ; or

(*b*) the creation and management of a Provident or Annuity Fund, for compelling contribution thereto on the part of their officers and servants, and

for supplementing such contribution out of the Municipal Fund.

And may repeal or alter such rules.

The Commissioners at a meeting may, from time to time, in accordance with such rules for the time being in force, grant such pensions or gratuities, or grant allowances or annuities out of such Provident or Annuity Fund to any of their officers or servants, as they may see fit.

No other business can be transacted at a meeting called under the first clause of this section. This is obviously implied by the words "specially convened for the purpose."

Two-thirds of the Commissioners present,—that is to say, two-thirds of the whole number of Commissioners present, whether voting or not.

Where a Statute requires a vote of a definite proportion of those present to render valid an act, those who, being present, refuse to vote cannot be deemed absent—*Eynsham Ratepayers, In re* (Lighting Act, 1833), 18 L. J., Q. B., 210.

By section 59 any resolutions passed by the Commissioners under this section for the making, repeal, or alteration of the rules referred to are subject to the approval of the Local Government.

Draft Model Provident Fund Rules will be found *post*.

Municipal Circular No. 34M. of the 16th December 1893, is as follows :—

"It has long been a well-established and well-known rule that service under a Municipality does not carry with it a claim to pension or gratuity ; and although Government in the notification, dated the 9th February 1877, published at page 211 of the *Calcutta Gazette* of the 14th idem, made an exception in favour of such employés as may have special claims, the integrity of the general principle has always been maintained.

2. When the present Municipal Act became law, section 47 provided that the Commissioners of a Municipality might, subject to certain restrictions, make rules for the granting of pensions and gratuities out of the Municipal Fund ; but lest that power should be exercised injudiciously, section 59 further provided that any Resolution passed under section 47 should be subject to the approval of the Local Government. Several municipal bodies have taken advantage of the powers given by section 47 ; but the Lieutenant-Governor, as has been stated in paragraph 4 of Government Order No. L $\frac{2\,R}{13}$ 59, of the 25th July 1890, has decided that such rules, when sanctioned, are to be prospective only, and are not to confer on persons in the service of the Municipality, when the rules were sanctioned, any claim for pension or gratuity on account of service rendered before that date.

3. Notwithstandinng these orders, however, special representations are not unfrequently made to Government by Municpalities, the rejection of which is considered a hardship ; and the Lieutenant-Governor therefore thinks it well to draw the attention of Municipal Commissioners to Article 867 of the Civil Service Regulations, in order that, when special representations for the grant of a pension are considered appropriate, they may be based upon the provisions of that Article and submitted for the orders of Government with reference thereto. Full particulars of the rules of the Postal Department relating to the purchase of pensions or annuities may be obtained from that Department : but, for the present information of Municipalities in your division, I am to append a table showing the sums payable for the purchase of a fixed monthly allowance, the amount of purchase-money varying with the age of the pensioner."

Pensions, &c., to Government officials.

48. In the case of a Government official employed by the Commissioners, the Commissioners may—

(1) if his services are wholly lent to them, contribute to his pension, gratuities and leave allowances in accordance with the rules of the Government Civil Pension and Leave Codes for the time being in force ; and

(2) if he devotes only a part of his time to the performance of duties in behalf of the Commissioners, contribute as above in such proportion as may be determined by the Local Government.

This section is taken almost *verbatim* from the N.-W. P. and Oudh Municipalities Act, India Act XV of 1883, section 37.

Security from officers or servants.

49. (49) The Commissioners may take such security as they may think proper from any officer or servant in their employ.

The former section only referred to collectors of taxes or tolls, and persons whose duty it was to receive or expend money. The present section applies to all municipal subordinates. It is obvious that the nature and amount of security to be taken rests entirely with the Commissioners, and that the rules in force as to the securities of Government Ministerial officers do not apply to municipal subordinates.

Though not provided by the section, it is obviously desirable that the Commissioners should determine at a meeting the nature and amount of security to be taken from each class of municipal subordinates, and not leave the matter to the sole discretion of the Chairman.

By Rule 7 of the Account Rules, the secretary, accountant, tax-darogah, cashier, and tax-collecting sircars must furnish security.

Of Ward Committees.

Power to appoint Ward Committees.

*50. (50) The Commissioners at a meeting may divide any Municipality into Wards and thereupon appoint, or cause to be elected, for each Ward not less than three proper persons, whether such persons be or be not Commissioners for the time being to be members of the Ward Committee ; and the Commissioners at a meeting may define the limits of the Ward for which any Ward Committee may be appointed or elected.

It has been held that the Commissioners have no power of making rules for the appointment and constitution of Ward Committees, their powers in the matter being clearly defined and limited by this section. (L. R.)

Section 15 authorises the Local Government to lay down rules "in respect of the division, where necessary, of each Municipality into Wards" for electoral purposes. No such rules have been laid down. Apparently the Wards for electoral purposes may be altogether independent of the Wards defined under this section.

Commissioners may lay down rules for election.

51. (51) The Commissioners at a meeting may lay down rules, not being inconsistent with the provisions of this Act, in respect of the qualifications required to entitle any

person who is not a Commissioner to stand as a candidate for such election, and to entitle any person to vote for any candidate, and in respect of the mode of election.

And the Commissioners may at any time cancel any rule made by them under this section for such election.

Election of Chairman and Vice-Chairman of Ward Committee.

* 52. (52) Each Ward Committee may, for each year if it sees fit, elect its own Chairman and Vice-Chairman (if necessary) from among its own number :

Provided that if one or more Commissioners are members of the Ward Committee, the Chairman of the Ward Committee shall be a Commissioner.

Commissioners may delegate powers to Ward Committee.

* 53. (53) The Commissioners at a meeting may delegate to a Ward Committee such of the powers of Commissioners under this Act as to them may seem fit ; and such Ward Committee, within the limits of its Ward, as defined by the Commissioners at a meeting, may exercise all or any of such powers, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such powers.

All acts done, orders issued, and assessments made by Ward Committees, shall be subject to the control and revision of the Commissioners at a meeting, who may at any time withdraw all or any of such powers.

It has been held that the Commissioners have no power of framing rules for the guidance of Ward Committees, as their powers are limited by this section to defining the powers which they may wish to delegate to such Ward Committees. (L. R.)

Certain sections applicable to transaction of business by Ward Committees.

54. (54) The provisions of sections thirty-eight to forty-five (both inclusive) shall, as far as possible, be applicable to the transaction of business by Ward Committees, and the Commissioners shall sanction the establishments of Ward Committees in accordance with the provisions of section forty-six.

Removal, resignation and appointment of members.

* 55. (55) All questions regarding the removal, resignation, and appointment of members of Ward Committees shall be settled by the Commissioners at a meeting.

It does not appear that much use has been made of these sections in Municipalities generally.

Liability of Commissioners and Ward Committees.

Personal liability of Commissioner or Member of Ward Committee.

* 56. (56) No Commissioner or Member of a Ward Committee shall be personally liable for any contract made, or expense incurred, by or on behalf of the Commissioners.

Every Commissioner or Member of a Ward Committee shall be personally liable for any wilful misapplication of money entrusted to the Commissioners to which he shall knowingly have been a party, and he shall be liable to be sued for the same.

"The distinction between Corporations and Trading Partnerships is this, that in the first, the law sees only the body corporate and knows not the individuals who are not liable for the contracts of the Corporation in their private capacity . . . . . but in the latter, the law looks not to the partnership, but to the individual members of it who are therefore answerable for the debts of the firm even to their last shilling and acre." (*Wharton's Law Lexicon, Art. Corporation.*)

The personal liability of Municipal Commissioners is discussed in *Soonder Lall* v. *Dr. N. B. Baillie and another*, 24 W. R., C. R., 287, in which case Macpherson, J., remarked as follows :—

"The Judge speaks of the protection offered by the Act, which he says must be taken to extend to cases where the defendant *bonâ-fide*, though erroneously, exceeds the powers given him by the Act. We are not aware of there being any special protection afforded by the Act (III B. C. of 1864), excepting that, under section 22, relating to contracts made on behalf of the Commissioners for which no Municipal Commissioner is to be personally liable. Municipal Commissioners under this Act and their servants incur no personal responsibility for what they do, so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable for an action. That is the law in England as to Trustees and Commissioners of Public Works and the like, and it is equally the law here. There is no special law extending to members of Municipalities which protects them so long as they act *bonâ-fide*.

The law of England as to Trustees and Commissioners of Public Works referred to has been thus stated: "And generally, as with all other corporations, their powers, duties, and liabilities will be determined directly or implied by the statutes and other instruments appointing them. The jurisdiction, the rights and the responsibilities imposed upon them will belong to them, but no others. For the due and careful carrying out of their authorities they must provide: and in default of this—if anything be done, directed or concurred in negligently by them, or through negligence omitted to be so done or directed—they will be answerable in damages for injury resulting, even if they have no funds to pay such damages ; and even though they are purely a public body, and deriving personally no profit or advantage whatever from their position." (*Brice on the Doctrine of Ultra Vires*, p. 234.)

"We shall briefly repeat here a most important principle of corporation law which has before been adverted to, namely, that a corporation is not responsible as a corporation for acts which, though colourably corporate acts, are not within the competency of the corporation to perform ; in such case the individuals who take part in the pretended corporate acts are personally responsible. Thus, when the majority concurred in placing on the corporation books a resolution libelling a Court of Justice, the individuals comprising the majority were held liable to a criminal information ; and so in cases of contract." (*Grant on the Law of Corporations*, p. 281.)

The contract referred to in the first clause of the section must obviously be one which the Commissioners were legally empowered to make.

The only contracts which the Commissioners are empowered to make are those which are necessary for the purposes of this Act. If they enter into any contracts not necessary for the purposes of this Act, such contracts will be void as against the corporation on the ground of *ultra vires*; and the Commissioners may incur personal liability. Compare section 37 and note.

Disqualification of Commissioners having share or interest in contracts.

57. (57) No Commissioner or Member of a Ward Committee shall have, directly or indirectly, any share or interest in any contract "of any kind whatsoever to which the Commissioners are a party, or shall hold any office of profit under them," and if any Commissioner shall have such share or interest "or shall hold such office," he shall thereby become disqualified to continue in office as Commissioner, and shall be liable to a fine not exceeding five hundred rupees:

"Provided that" a Commissioner shall not be so disqualified by reason only of his having a share or interest in—

(*a*) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or shareholder; or

(*b*) any lease, sale, or purchase of land, or any agreement for the same; or

(*c*) any agreement for the loan of money, or any security for the payment of money only; or

(*d*) any newspaper in which any advertisement relating to the affairs of the Municipality is inserted.

But no such Commissioner shall act as Commissioner or Member of a Ward Committee, or take part in any proceedings relating to any matter in which he is so interested.

The second paragraph is taken from the English Municipal Corporations Act of 1882.

By section 12, clause (1) (*c*) of the English Act, a person is disqualified for election as a Municipal Councillor if he "has directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Council." The following commentary on this clause may be quoted from Rawlinson's Municipal Corporations Act:

"The object of this clause, which is produced *verbatim* from section 28 of the Act of 1835, clearly was to prevent all dealings on the part of the Council with any of its own members in their private capacity; in other words, to prevent a member of the Council, standing in the situation of a trustee for the public, from taking any share or profit out of the trust fund, or in any contract or employment, in the making or regulating of which he, as one of the Council, ought to exercise a superintendence.

"The evil contemplated being evident and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be brought within the above words.

Upon this principle, a person who had entered into an existing contract for profit with the Council was held to be disqualified, even though, by reason of its not being under seal, he could not have sued the corporation on the contract."—*Reg.* v. *Francis*, 18 Q. B., 526; S. C., 21 L. J., Q. B., 304.

"The word contract, if the above view is correct, would extend to all cases of supplies of goods to the use of the borough, corporation, buildings, etc., when ordered by the Council; and this, though the order be a single one of small or large amount, or relate to the supply of a year, or for a longer or shorter period."

In the case of *Reg.* v. *York*, 2 Q. B., 847; S. C., 2 G. & D., 105, the point was raised as to whether a lease granted by the corporation was a "contract" within the meaning of the above words. The Court expressed a decided opinion that it was, but took time to consider whether the particular lease, having been granted by the old corporation, could be said to be a contract with the Council under the Act. Judgment was ultimately delivered, deciding that it was a contract with the Council.

In consequence of the inconvenience arising out of this decision, the Statute 5 & 6 Vict., c. 104, was passed, by which it was enacted that the word contract as used in section 28 of the Act of 1835 should not extend or be construed to extend to any lease, sale or purchase of any lands, tenements or hereditaments, or to any agreement for such lease, sale or purchase, or for the loan of money, or to any security for the payment of money only. The provisions of this Statute have been reproduced in the English Act of 1882, and in the above section.

Directly or indirectly.—The same words in section 28 of the Act of 1835 were held to include the case of a lease granted by the corporation to the trustee of a councillor.—*Simpson* v. *Ready*, 12 M. & W., 736.

Where a person contracted to sell land to a Board of which he afterwards became a member before the completion of the purchase:—*Held*, that he was not disqualified, the contract not being of a continuing character.—*Woolley* v. *Kay*, 25 L. J., Ex, 351.

Formerly the Act contained no provision as to the authority which should decide when a Commissioner had become disqualified under this section. Section 20 now empowers the Commissioner of the Division to do so by an order in writing.

Section 12 of the English Act excepts the Mayor and Sheriff from disqualification on account of holding any office or place of profit in the gift or disposal of the Council. Under section 28 the Chairman and Vice-Chairman may receive allowances, and in such a case would hold an office of profit under the Commissioners. But it seems evidently the intention of the Act, that they should not thereby become disqualified or liable to a penalty under this section.

A person who, in the ordinary course of his business, sold goods required for the execution of public works to the contractor who was executing the works for the Town Council, was held not to be disqualified under the Municipal Corporations Act, 1835, as having "directly or indirectly, by himself or his partner, any share or interest in any contract or employment, with or by or on behalf of such Council."—*Le Feuvre* v. *Lankester*, 3 E. & B., 530; 23 L. J., Q. B., 254. A sub-contractor, however, who performed part of the contract work for the contractor was, under the Act of 1882, held by Field, J., to be disqualified.—*Tomkins* v. *Jolliffe*, 51 J. P., 247.

Act as Commissioner.—Where, by a local paving and lighting Act, a penalty was imposed upon any Commissioner "acting as such" in any matter in which he might be personally interested, one of the Commissioners, being personally interested, in a foot-path, attended a meeting of the Commissioners, and spoke upon the mode of constructing such foot-path, *held*, that this was sufficient evidence to go to the jury of his acting as a Commissioner.—*Charlesworth* v. *Rudyard*, 1 C. M. & R., 498.

Commissioners disqualified from voting on certain questions.

"58. (58) No Commissioner or Member of a Ward Committee shall vote on any matter affecting his own conduct or pecuniary interest, or on any question which regards exclusively the assessment of himself, or the

valuation of any property in respect of which he is directly or indirectly in any way interested, or of any property of or for which he is manager or agent, or his liability to any tax.

Control.

The following extract from the Report of the Select Committee explains the object of these sections :—

"We imagine that the principle will generally be accepted, that it is desirable to leave the Municipalities the greatest possible freedom of action, so long as precautions are taken to ensure that liberty accorded to them will be rightly used. It is in the application of the principle that differences of opinion will be found. In our view the necessary precautions do not lie in the direction of restraining the power of the rate-payers to elect their own representatives or of the Commissioners to elect their own Chairman. We should prefer to attain our object by providing—*first*, that the Magistrate shall have full opportunities of knowing what the Municipality is doing or resolving to do; *secondly*, that power shall be reserved to restrain the Municipality from doing any specific act which may be dangerous to the public peace or injurious to the common interest; *thirdly*, that measures shall be possible by which a Municipality may be compelled to perform any specific duty which it may have neglected to fulfil; and *fourthly*, that a Municipality which may show persistent neglect or incapacity shall be liable to be suspended for such time as the Government may direct. To these safeguards we are disposed to attach much importance, and we have not only included them in the Bill, but have emphasized them by classing them together under a sub-head of '*Control*' in that part of the Bill which describes the constitution of the Municipality.

"For Corporations, being composed of individuals subject to human frailties, are liable as well as private persons to deviate from the end of their institution. And for that reason the law has provided proper persons to visit, inquire into, and correct all irregularities that arise in such Corporations either sole or aggregate, and whether ecclesiastical, civil, or eleemosynary.' (1 *Bl. Com.*, 480.)

Certain resolutions subject to approval of Government.

59. All resolutions passed by the Commissioners under the following sections, that is to say—

(*a*) under section twenty-three "or twenty-seven" for the election of a Chairman;

(*b*) under section twenty-four for the removal of a Chairman from office;

(*c*) under section twenty-eight for the grant of allowances to a Chairman or Vice-Chairman;

(*d*) under section forty-seven for the making, repeal, or alteration of rules for the grant of pensions or gratuities or for the creation and management of Provident or Annuity Funds,

shall be subject to the approval of the Local Government.

Copy of minutes to be sent to Magistrate.

60. A copy of the minutes of the proceedings of all meetings of the Commissioners referred to in section forty-three, shall be forthwith forwarded by the Commissioners to the Magistrate of the District.

The word "forthwith" appears to clearly imply that confirmation of the minutes at the following meeting should not be waited for. Possibly the Act contemplated that the minutes should be confirmed at the close of the meeting to which they relate. There is no objection to such a practice, except the difficulty of carrying it out, and it was expressly prescribed by the English Municipal Corporations Act, 1835, which provided that the minutes should be "signed by the Chairman at such meeting." The provision in question has, however, since been repealed, which appears to shew that it did not work satisfactorily. Compare section 43 and note.

"When a Statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly,' it would probably be understood as allowing a reasonable time for doing it."—*Maxwell on the Interpretation of Statutes.*

Circular No. 10, dated Calcutta, the 11th April 1891, has reference to this section and is as follows:—

"Under section 60 of the Bengal Municipal Act, III (B.C.) of 1884, a copy of the minutes of the proceedings of the Commissioners in meeting must be forwarded forthwith to the Magistrate of the district. The object of this provision of the law is to ensure that the Magistrate shall be in a position to watch over and control the proceedings of the Commissioners on behalf of Government; and while it is incumbent on Magistrates to be careful not to exercise unnecessary or hasty interference, especially in matters of detail, it is equally their duty to draw attention to any questionable action, especially as regards the expenditure of public money in any doubtful fashion, or any serious departure from accepted principles on the part of the Commissioners. The Lieutenant-Governor has some reason to believe, from cases which have come to his notice, that there is a tendency to overlook the responsibility which is imposed on Magistrates by this section, and he desires therefore to remind them that the proceedings of Municipal Commissioners in their districts should be carefully perused and considered in all cases. It is desirable that copies of important proceedings should be forwarded by the District Magistrate for the information of the Commissioner of the Division, but a discretion in such cases must rest with the Magistrate.

"2. I am to request that these orders may be communicated to all District Magistrates in your Division."

Sanction to appointment of subordinate officers.

61. The appointment by the Commissioner of subordinate officers, as provided by section forty-six, shall be subject to the following rules:—

(*a*) No appointment, of which the salary is two hundred rupees per mensem or upwards, shall be created or abolished without the sanction of the Local Government.

(*b*) No persons shall be appointed to, or dismissed from, an office the salary of which is one hundred rupees per mensem or upwards without the sanction of the Commissioner of the Division.

Magistrate's power of inspection.

62. The Magistrate of the District, or the Magistrate in charge of the Division of the district in which a Municipality is situate, may enter on and inspect, or cause to be entered on and inspected, any immoveable property occupied by the Commissioners, or any work in progress under their direction; and may

call for and inspect any document which may be, for the purposes of this Act, in the possession or under the control of the Commissioners.

This section is taken from the Central Provinces Local Self-Government Act (India Act I of 1883), section 28. By it the District and Subdivisional Magistrates are appointed Visitors of the Corporation.

Power to suspend action under Act.

63. The Commissioner of the Division or the Magistrate of the District may, by order in writing, suspend within the limits of the Division or District (as the case may be) the execution of any resolution or order of the Commissioners of any Municipality, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act, if, in his opinion, the resolution, order, or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

When a Commissioner or Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the Local Government, which may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

This section is taken almost *verbatim* from the N.-W. P. and Oudh Municipalities Act (India Act XV of 1883), section 60.

Bengal Govt. Municipal Circular No. 9 T. M. of the 6th July 1885, has reference to this section, and is as follows :

"An instance has lately occurred, in which a District Officer was compelled, in the interests of the public, to suspend, under section 63 of the Bengal Municipal Act, 1884, the execution of an order of the Commissioners of a Municipality. To avoid delay the Magistrate submitted a copy of the proceedings direct to Government for orders, instead of transmitting it through the usual official channel. As, however, a question of such a delicate nature could not be disposed of by Government without obtaining the views of the Commissioner of the Division on the subject, a reference had to be made to that officer. Thus the object for which the Magistrate's report had been submitted to Government direct was frustrated, and greater delay was eventually occasioned in the disposal of the question. As the law does not distinctly lay down the channels of communication in such cases, and as the submission of the reports direct to Government involves unnecessary labour and delay, the Lieutenant-Governor directs that the attention of District Officers may be invited to the matter, and that they may be instructed on all occasions when the necessity arises for them to take action under section 63 of the Act to invariably submit their proceedings for confirmation through the Commissioner of the Division, who should forward these papers promptly to Government, with such reports and remarks of his own as may be necessary for a complete comprehension of the facts. In the event, however, of the case being one of extreme urgency the Magistrate may submit

direct to Government a copy of his report to the Commissioner; but it seems to the Lieutenant-Governor unlikely that cases of this nature will be of frequent occurrence."

Powers of Local Government in case of default.

64. If at any time it appears to the Local Government, on the report of the Magistrate of the District, or of the Commissioner of the Division, that the Commissioners of any Municipality have made default in performing any duty imposed on them by or under this or any other Act, the Local Government may, by an order in writing, fix a time for the performance of that duty.

If that duty is not performed within the period so fixed, the Local Government may appoint the Magistrate of the District to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the Municipal Fund.

If the expense is not so paid, the Magistrate, with the previous sanction of the Local Government, may make an order directing the person having the custody of the balance of the Municipal Fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same.

N.-W. P. and Oudh Municipalities Act (India Act XV of 1883), section 62. The procedure prescribed in this section is only applicable to cases where there has been a distinct default in performing or an omission to perform a statutory duty. The procedure could not properly be applied to any case in which there was room for difference of opinion as to whether there had been any default or not.

Power to supersede Commissioners in case of incompetency, default or abuse of powers.

65. If, in the opinion of the Local Government, the Commissioners of any Municipality are not competent to perform, or persistently make default in the performance of the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the Local Government may, by an order published, with the reasons for making it, in the *Calcutta Gazette*, declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

This is taken from clause (1), section 63 of Act XV of 1883. The words "in the opinion of the Local Government" have been inserted in order to check

litigation, as, without them, legal proof might possibly have been required that the Commissioners were not competent, or persistently made default, &c.

Consequences of supersession.

66. When an order of supersession shall have been passed under the last preceding section, the following consequences shall ensue:—

(*a*) All the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners.

(*b*) All the powers and duties of the Commissioners shall, during the period of supersession, be exercised and performed by such person or persons as the Local Government may direct.

(*c*) All property vested in such Commissioners shall, during the period of supersession, vest in the Government.

On the expiration of the period of supersession specified in the order, it shall be lawful for the Local Government to direct that the Municipality shall be entered in the first Schedule, or the second Schedule, or in both the first and second Schedules; but otherwise the Commissioners shall be re-established by appointment and election, and the persons who vacated their offices under clause (*a*) shall not be deemed disqualified for appointment or election.

This is evidently taken from section 63 of the N.-W. P. and Oudh Municipalities Act (Act XV of 1883).

Disputes.

"66A. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more Municipalities constituted under this Act, or between the Commissioners of any such Municipality and a District Board, or Cantonment authority, the matter shall be referred—

(*a*) to the District Magistrate, if the local authorities concerned are in the same district; or

(*b*) to the Commissioner or Commissioners of the Division or Divisions, if the local authorities concerned are in different districts; or

(*c*) to the Local Government, if the local authorities concerned are in different Divisions and the Commissioners of those Divisions cannot agree.

(2) The decision of the authority to which any dispute is referred under this section shall be final.

(3) If, in the case mentioned in clause (*a*), the District Magistrate is a member of one of the local authorities concerned, his functions under this section shall be discharged by the Commissioner of the Division.

PART III.

OF THE MUNICIPAL FUND.

What shall constitute the Municipal Fund.

67. (59) All sums received by the Commissioners, and all fines paid or levied in any Municipality under this Act, and all other sums which, under the sanction of Government, may be transferred to the Commissioners, shall constitute a fund which shall be called the "Municipal Fund," and shall, together with all property of every nature or kind whatsoever which may become vested in the Commissioners, be under their control, and shall be held by them in trust for the purposes of this Act.

This section provides that all sums received by the Commissioners shall constitute a general "Municipal Fund." The following two sections specify upon what purposes the "Municipal Fund" may be expended, and the first of them enumerates certain purposes which have prior claims on the Fund.

It is clear, however, that the general provisions contained in these sections must be held to be overridden by the special provisions contained in other parts of the Act. Thus it is provided by section 307 that the water-rate levied under Part VII can only be expended on purposes connected with the supply of water. Again, section 318A provides that the lighting-rate shall be spent in lighting purposes. As regards the house-service fees their application is expressly limited by section 322 to the purposes of Part IX. It appears obvious therefore that each of these rates must be credited to what is for all practical purposes a separate fund, and that none of them are available for the other general purposes specified in sections 68 and 69.

Payment on account of interest on loans and establishment.

68. (60) "Except as is otherwise provided in this Act," the Commissioners shall set apart and apply annually out of the Municipal Fund,—

(*a*) *firstly*, such sum as may be required for the payment of the interest which may fall due on any loan contracted by the Commissioners;

(*b*) *secondly*, such sum as they are by this Act required to provide for payment of their own establishment, including such contributions as are referred to in section forty-eight;

(*c*) *thirdly*, such sum as the Local Government may direct towards the cost of audit, towards the cost of establishments in any office of account or in any treasury, "and towards the salary of any special officer who may be appointed under section eighty-two:"

Provided that the total amount which any Municipality may be required to pay under clause (*c*), "otherwise than as the salary of a special officer appointed under section eighty-two" shall not in any year exceed two per centum on the amount of the Municipal income for such year.

India Act XI of 1879 enacts in what manner loans may be raised by Municipal Committees and other local authorities.

By section 8 it is enacted that, except as provided by the Act and the rules made thereunder, no local authority shall, for any purpose, borrow money upon or otherwise charge its funds; and any contract made for that purpose after the passing of the Act shall be void.

This section, it will be noticed, no longer provides for the payment of Municipal establishments entertained in the offices of the Magistrate and Commissioner of the Division; on the other hand, the provision as to the cost of establishments in any office of account or in any treasury, is new. The cost of audit was debitable to the Commissioners under section 73 of the former Act.

The provision for the maintenance of the Municipal Police force in the corresponding section has been omitted.

Municipal Department No. M $\frac{21\text{-A}}{9}$ 2, dated 14th February 1889, contains the following:—

"In supersession of previous orders the Lieutenant-Governor is now pleased to direct that, with effect from the 1st April next, in all municipalities (except Calcutta) an audit fee shall be levied at the rate of one per cent. on income, subject, in the case of municipalities with an annual income of Rs. 20,000 and less, to a maximum fee of Rs. 150, and in the case of municipalities with an income exceeding Rs. 20,000 to an additional Rs. 100 for each additional Rs. 20,000 (or part thereof) of income. It is estimated in this office that under these orders the receipts from municipalities will increase to about Rs. 19,600.

Turning now to the question of fees for control, banking, and account, the Lieutenant-Governor considers that the one per cent. rate charged in municipalities (except in the case of those which do not bank with Government) should continue as at present, and, in accordance with your proposal, is pleased to sanction the levy of a similar rate of one per cent. on the income of District Boards and Municipalities, excluding the grants from Government. This order will also take effect from the 1st April next, and the consolidated recovery of 1·54 per cent. will cease from that date."

Purposes to which Municipal Fund is applicable.

"69. (1) After the said sums have been set apart under section 68, the Commissioners at a meeting shall, as far as the Municipal Fund permits, from time to time cause roads, bridges, tanks, ghats, wells, channels, drains and privies, being the property of the Commissioners, to be maintained and repaired and the Municipality to be cleansed;

and may, except as is otherwise provided in this Act, and subject to such rules and restrictions as the Local Government may from time to time prescribe, apply the Municipal Fund to any of the following purposes within the Municipality, that to is say,—

(i) the construction, maintenance and improvement of roads, tramways, bridges, squares, gardens, tanks, ghats, wells, channels, drains and privies ;

(ii) the supply of water, and the lighting and watering of roads ;

(iii) the erection and maintenance of offices and other buildings required for municipal purposes ;

(iv) the construction and repair of school-houses, either wholly or by means of grants-in-aid ;

(v) the establishment and maintenance of schools, either wholly or by means of grants-in-aid ;

(vi) the establishment and maintenance of hospitals and dispensaries ;

(vii) the promotion of vaccination ;

(viii) the acquiring and keeping of open spaces for the promotion of physical exercise and education ;

(ix) the training and employment of female medical practitioners and of veterinary practitioners ;

(x) the establishment and maintenance of veterinary dispensaries for the reception and treatment of horses, cattle and other animals ;

(xi) the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals ;

(xii) the improvement of the breed of horses, cattle and asses, and the breeding of mules ;

(xiii) the establishment and maintenance of free libraries ;

(xiv) the maintenance of a fire-brigade ;

(xv) other works of public utility calculated to promote the health, comfort or convenience of the inhabitants ;

(xvi) the establishment and maintenance of Benches for the trial of offences under this Act or any bye-laws made thereunder ; and

(xvii) generally, to carrying out the purposes of this Act :

Provided that no portion of the Municipal Fund shall be applied to any of the purposes specified in clauses (viii) to

(xiii), both inclusive, unless a majority of the Commissioners present at the meeting are satisfied that the other purposes specified or referred to in this sub-section, or such of them as the majority consider it necessary to carry out, have been sufficiently provided for.

"(2) The Municipal Fund shall also be applicable to the payment, at such rates as the Local Government may from time to time direct, of travelling expenses incurred by any of the Commissioners in attending meetings convened under the rules made by the Local Government in pursuance of sub-section (4) of section 1 of the Indian Councils Act, 1892, for the purpose of recommending a person to be nominated as a member of the Lieutenant-Governor's Council.

55 & 56 Vict., c. 14.

"(3) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

As amended by Act II of 1896, B. C.

For Rules under section 69, see *post*.

The note to section 67 explains the necessity of the addition "except as is otherwise provided in this Act." For example, the application of the water-rate and lighting-rate is otherwise provided for in the Act; and those rates cannot be applied to the other purposes specified in this section.

B. C. Act III of 1883 provides for the construction of tramways by Municipal Corporations and other local authorities. By section 3 a resolution in favour of an application to the Local Government for sanction to the construction of a tramway must be passed at a special meeting of which at least a month's notice must be given, and at which at least two-thirds of the Commissioners must attend and vote.

The following extract will explain the object of the amendments made in this section. On a proposal to include a clause for the construction and maintenance of *serais*, "The Hon'ble Mr. Reynolds thought the words unnecessary, as clause (4), which mentioned generally other works of public utility, was sufficient to cover *serais*. He might explain that some of the works specially mentioned in the existing Act had been advisedly omitted by the Committee. Embankments, for instance, were not considered proper objects for municipal expenditure, and 'jetties and urinals,' the mention of which was also omitted, were covered by clause (4); nor did it appear why they had been inserted in the Act of 1876. Urinals, moreover, were covered by 'latrines' The only subject of expenditure which was intentionally omitted was embankments; the other omissions were merely meant to be verbal improvements of the section." (*P. C., February 20th*, 1884).

It has been held that section 61 of Act V did not enable the Commissioners to spend any portion of their funds in carrying out a census, as it is not one of the purposes of the Act. (L. R.)

It is obvious that the Municipal Fund cannot legally be expended upon any purposes not specified in this and the preceding section. Expenditure upon ceremonies, entertainments, testimonials, etc., cannot therefore be met from it, and should be defrayed by private subscriptions. It was held *in re Corporation of Sunderland*, T. S., 1878, that the Corporation could in no case have a right to spend any part of the borough funds in the entertainment of General Grant. In *Attorney-General* v. *Mayor of Batley*, 26 L. T., N. S., 392, it was held that the Corporation clearly cannot buy the Mayor a gold chain, such an article being utterly unnecessary.

In *Attorney-General* v. *Mayor of Norwich*, 2 Myl. Cr., 406, & 425, 428, the Lord Chancellor remarked that the clause in the Act of 1835 authorizing the payment of expenses not otherwise provided for which shall be necessarily incurred in carrying into effect the provisions of the Act—"cannot merely mean expenses to carry into effect that which must be done to set the Act of Parliament in operation, but must mean also those expenses which would arise out of the duties imposed on the parties by the Act." On this principle, it has been held that the costs of litigation undertaken *bonâ fide*, and on reasonable grounds for the defence of the corporate rights, may be paid out of the public funds, though such litigation is eventually unsuccessful.—*Reg.* v. *Mayor of Tamworth*, 19 L. T., N. S., 433.

Circular No. 32 *M.*, 22*nd August* 1894.

"In connection with a recent case of embezzlement in a Municipality, the question whether the cost of prosecuting a Municipal servant for defalcations should be borne by the Municipality or the Government has been reconsidered. The Lieutenant-Governor considers that the enforcement of honesty and probity on the part of Municipal servants is an important step in carrying out the purposes of the Bengal Municipal Act as laid down in section 69, and that the Government cannot therefore be equitably called upon to meet the cost of such prosecutions. The point was referred to the Hon'ble the Advocate-General, and he holds that such expenditure may under the law be incurred out of Municipal Funds. This opinion is, therefore, circulated for communication to all District Officers and Chairmen of Municipalities in your Division. Expenditure on prosecutions of their servants must in future be met by Municipal Commissioners. The Government orders contained in Circular No. 10 T. M., dated the 30th June 1884, are cancelled."

OPINION OF ADVOCATE-GENERAL OF BENGAL.

I AM of opinion that the costs incurred in prosecuting a Municipal servant guilty of defalcations can legally be charged to the Municipal Fund. Under section 69 (9) of Act III (B.C.) of 1884, the Municipal Fund can be applied "generally to carry out the purposes of that Act." The question I have to consider is whether the costs incurred in prosecuting a Municipal servant guilty of defalcations are covered by the word "purposes" as mentioned in the Act. I am of opinion that they are. As pointed out by Sir George Jessel, the late Master of the Rolls, in the case of the Attorney-General *versus* The Mayor of Brecon—L. R., 10 Ch. Div., 204—Municipal Corporations are not in the position of owners of property but are trustees of property, and as such are not free to dispose of their property in any way they thought fit. They are empowered to devote their income towards expenses "which shall be necessarily incurred in carrying into effect the provisions of the Act, and in case the borough fund shall be more than sufficient for the purpose aforesaid, &c., &c." Sir George Jessel at page 215 states as follows:—"Now, it is manifest, the moment you read the Act, that if you read 'purposes' as meaning merely 'express purposes,' a Corporation would be left in this position—that they could not even defend their property or their very existence against attack. If, therefore, the word 'purposes' is to be read in the narrowest sense, that is, as meaning the purposes expressed by name in the Act, this would follow—that if an action of ejectment or what is now called an action for recovery of land, were brought against the Corporation to get from them the whole of their landed property, they would not be justified, under the Municipal Corporations Act, in incurring the costs of defending that action. That, of course, is too extravagant, and it must therefore be assumed that there is to be found somewhere, either under the word 'purposes' as mentioned in the 92nd section or under the general law, a provision for such a case as that." Again at page 216 he says:—"Here, again, if you read the word 'purposes' in the narrow and restricted view, it would be difficult to find any such purposes expressed in the Act: but you must either read it in the larger way, or else you must assume that the Legislature intended that the ordinary rights of Corporations in defending themselves against attack

whether by action at law or by Bill in Parliament, or otherwise, should be reserved to them." It appears to me that the Municipality has every right to protect its funds from the likelihood of any future defalcations, by prosecuting one of their servants guilty of defalcations, and that, according to the decision of Sir George Jessel, the expenses incurred in that behalf would be considered to be for the "purposes" of the Municipal Act. Furthermore, as I have said, the position of the Municipal Commissioners is that of trustees of Municipal Funds; and, under the general law, I should say they would be entitled to pay for these expenses.

Section 352 of Act III (B.C.) of 1884 has been relied upon as being exhaustive, and giving colour to the opposite view, but in point of fact it only sets out and defines a part of the purposes under section 69 (9), and does not exhaust them. If section 352 had been omitted, the expenses of the prosecutions and proceedings mentioned in it would have been met under the powers conferred by section 69 (9).

The 3rd August 1894. G. C. PAUL.

"69A. (1) The Commissioners shall cause to be kept, for each hospital and dispensary vested in them, accounts, in such form as may be prescribed by rules made by the Local Government, showing—

Receipts and expenditure on account of hospitals and dispensaries.

(*a*) all endowments, funds and contributions received by them,

(*b*) all sums directed by them to be applied to establishment or maintenance, and

(*c*) all expenditure incurred by them.

(2) No money which has been received by the Commissioners on account of any hospital or dispensary, or directed by them to be applied to the establishment or maintenance of any hospital or dispensary, shall be expended on any other object.

Power to make rules.

"69B. The Local Government may from time to time make rules—

(*i*) prescribing the qualifications of candidates for employment under clause (xi) of section 69; and

(*ii*) generally, for the guidance of the Commissioners in all matters connected with the carrying out of the purposes of sections 69 and 69A."

Sections 69A and 69B added by Act II of 1896, B. C.

70. (62) With the consent of two-thirds of the Commissioners obtained in writing, and with the sanction of the Local Government, the Commissioners may contribute a portion of the Municipal Fund towards the expenses incurred in any other Municipality, or elsewhere, for any of the purposes mentioned in section 69, sub-section (1); or towards

Contribution to other Municipalities.

the salary of any officer under another authority whose services are employed by them ; and also towards the expenses of making, maintaining, and repairing any work for the improvement of a river or harbour (by whomsoever such work may be done).

But no contribution shall be made under this section to any work, unless the same is calculated to benefit the inhabitants of the contributing Municipality.

Notwithstanding anything in this section, the Municipal Fund may be applied, by the vote of the majority referred to in the proviso to section 69, sub-section (1), and without the consent and sanction mentioned in this section to meeting expenses incurred beyond the limits of the Municipality in the training of female medical practitioners or of veterinary practitioners.

As amended by Act II of 1896, B. C.

"The Hon'ble the Advocate-General said that he considered this section to be a very salutary provision, as it provided for those cases in which one Municipality might not alone be able to undertake a particular work. The object of the section was to enable two or three Municipalities to club together to achieve a common object."—(*P. C., February 26th*, 1876.)

71. (63) The account books of the Municipality shall be open to the inspection of any tax-payer at the office of the Commissioners on a day or days to be fixed in each month.

Account books to be kept open and quarterly statement published.

An account shewing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter, and shall, with the account books, be open to the inspection of any tax-payer.

A similar account shall be prepared for each year as soon as possible after its close, and shall be open to inspection as aforesaid.

The former section provided that copies of the quarterly and yearly statements in question should be forwarded to the Magistrate of the District.

Rules 55—58 of the Account Rules refer to the quarterly and annual accounts.

72. (64) The Commissioners at a meeting held at least two months before the close of the year shall prepare in detail estimates shewing the probable receipts and expenditure during the ensuing year, and the objects in respect of which it is proposed to incur such expenditure.

Annual estimates to be prepared.

"Three months before the close of the year" in the former section.

The Legal Remembrancer has pointed out that the fact of estimates having been prepared under the corresponding section of Act V in no way prohibits the subsequent levy of a tax not estimated for. The estimates are merely intended to shew what the probable receipts and expenditure will be during the year, and there is nothing in the Act which prevents their being increased by the levy of other taxes. Compare sections 85 and 86, which enact that the Commissioners may, from time to time, levy taxes, &c.

The estimates should be carefully prepared after a thorough consideration of the probable wants of the Municipality within the year. The more carefully they are prepared, the less difficulty will be experienced in carrying on the Municipal work, without supplementary budgets and transfers.

Rules 10 and 11 of the Account Rules relate to the budget estimates.

Estimates to be published.

73. (55) Copies of the estimates and translations thereof in the vernacular of the district shall be lodged in the office of the Commissioners.

During fourteen days after the estimates shall have been so lodged in the said office, of which due notice shall be locally published, the estimates and translations in the vernacular of the district shall be open to inspection at all reasonable times by any tax-payer of such Municipality who may desire to inspect the same.

Any written suggestion which may be deposited in the office of the Commissioners shall be recorded and laid before them for consideration at the next meeting.

Estimates to be transmitted to Magistrate.

74. (66) After the expiration of the said fourteen days, and after such revision as may appear requisite, the estimates shall be transmitted to the Magistrate of the District.

Magistrate may record remarks.

75. The Magistrate may either forward the estimates to the Commissioner of the Division, or may return them to the Commissioners with such remarks and suggestions as he shall think fit to record. And the Commissioners at a meeting shall take into consideration the Magistrate's remarks, and shall either adopt his suggestions or shall record in writing their reasons for refusing to do so: and the estimates shall thereupon be returned to the Magistrate for transmission to the Commissioner of the Division.

Power of Commissioner as to estimates.

76. The Commissioner of the Division may either sanction the estimate as it stands or may cause it to be returned to the Commissioners for such modifications as he may think necessary; and when such modifications have

been made, the estimate shall be re-submitted for ratification to the Commissioner of the Division, "or if such modifications as may be recommended by the Commissioner of the Division are not made, it shall be open to him to make such alterations as may seem to him fit :"

Provided that the Commissioner of the Division shall not raise the total of the proposed expenditure above the sum shown by the estimate to be at the disposal of the Commissioners.

Estimate of expenditure may be revised.

77. (68) The Commissioners at a meeting may, from time to time, revise any estimate of expenditure with the view of providing for any modifications which they may deem it advisable to make in the appropriation of the amount at their disposal, and such revised estimate shall be published and forwarded in the manner hereinbefore prescribed ; and the Magistrate and the Commissioner of the Division may deal with such revised estimate in the manner provided above.

"The Magistrate and the Commissioner of the Division" have been substituted for "the Commissioner of the Division and the Lieutenant-Governor" in the latter part of this section.

Disbursement of expenditure sanctioned in estimate.

78. (69) After the estimates of the Municipality for the year shall have been sanctioned as above, the Commissioners at a meeting may, from time to time, by a general or a special resolution, authorize the expenditure of any sum provided in such estimates, or any part of such sum, for the purpose to which it has been assigned in such estimates.

Notwithstanding anything contained in this section, the Local Government may lay down such rules as it may think fit, limiting or regulating the powers of any Municipality in respect to the expenditure of money for purposes which are provided for in the budget estimates of the year.

Rule 95 of the Account Rules refers to this section.

The provisions of the first clause of this section were until recently rarely observed. The Accountant-General has stated that "the fact that the budget estimates have been approved by the Commissioners and by the Commissioner of the Division is universally accepted as sufficient authority for the disbursement of the items entered in the estimates." General as the practice was, it is, however, undoubtedly illegal. The sanction of the

Commissioners at a meeting ought to be taken beforehand for all expenditure. Compare section 84, the second clause of which distinctly enacts that no order for the payment of money shall be issued unless the expenditure *has been* authorized by the Commissioners at a meeting as provided in section 78.

Power of Local Government, if work estimated to cost more than Rs. 5,000.

79. (70) If any work is estimated to cost above five thousand rupees, the Local Government may require the plans and estimates of such work to be submitted for its approval, or for the approval of any officer of Government, before such work is commenced. And may require statements of the progress and completion of such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as it may prescribe, for its approval, or for the approval of such officer.

"Five thousand" has been substituted for "three thousand" in this section. The Account Rules suggest that a Sanction Register should be kept up. See Rule 95, *post*.

Disbursement of excess expenditure.

*80. (71) It shall not be lawful for the Commissioners to authorize the expenditure on any object during the year of a sum in excess of that which has been sanctioned in the estimate of the year, or in a revised estimate, for such object; but if it be found necessary in the course of the year, the Commissioners may recommend to the Commissioner of the Division that the allotments which have been made to the different heads of the estimate shall be modified by transfer of any amount from one head to another, and the Commissioner of the Division may sanction such transfers of allotment.

The practice of transferring and expending such amount in anticipation of sanction is illegal, and should be avoided. If application for sanction be made in due time, it cannot be necessary.

The amount of an estimate sanctioned for a given year for expenditure on any object must, of course, be expended within that year, or it lapses. The practice of drawing out such unexpended balances before the close of the year and keeping them in deposit, in order that they may appear in the accounts as disbursed in that year, is quite illegal and improper and an evasion of the budget system. It is not, however, an altogether unknown practice.

An annual report of proceedings, &c., to be submitted.

81. (72) The Commissioners shall, at such time and in such form as the Local Government shall direct, furnish annually a report of their proceedings and statements of the works executed by them, and of all sums received and expended by them.

The report and any orders which may be passed thereon by Government shall be open to the inspection of the tax-payers at the office of the Commissioners, with the account books and the quarterly and the annual accounts.

The Commissioners should obviously have an opportunity of considering and amending the report at a meeting before it is submitted.

The former section provided that the Lieutenant-Governor might cause any such report to be published in the *Calcutta Gazette*.

Municipal Circular No. I. T.—M. of the 29th April 1886, prescribes what the annual report should contain, and the date of its submission. It will be found, *post*.

"82. (73) The Commissioners shall keep such registers, use such forms and submit such returns as the Local Government may from time to time prescribe.

Keeping of registers and submission of returns.

The municipal accounts shall be audited each year in such manner as the Local Government may direct:

"Provided that if the officer appointed to make the yearly audit in any Municipality shall report that the accounts are in such confusion that the financial position of the Municipality cannot readily be ascertained, the Local Government may, by an order in writing, require the Commissioners to submit, within a time and to a person to be specified in such order, the accounts duly adjusted, and if the Commissioners fail to comply with such order, the Local Government may appoint a special officer to examine and report upon the accounts, and shall fix the salary of such special officer, which salary shall be paid from the Municipal Fund, unless the Local Government shall otherwise direct."

Local Government may appoint special officer to examine and report upon accounts.

83. (75) Unless the Local Government shall otherwise direct, all sums received on account of the Municipal Fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the Municipality, and shall be credited to an account, to be called the account of the Municipality to which they belong:

Custody of the Municipal Fund.

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities or in any other form of security which may be approved of by the Local Government.

The words "unless the Local Government shall otherwise direct" are new. "In the Government Savings Bank," has been omitted from the second clause.

Rules 15—21 of the Account Rules relate to transactions with banks and Government treasuries. Rules 32—41 refer to cheques. By Rule 16 all moneys received must be remitted to the Municipal banker, and no claims can be liquidated out of them.

Orders for payment of money.

84. (76) Unless the Commissioner of the Division shall expressly extend (as he is hereby empowered to do, on the recommendation of the Commissioners at a meeting), the limit of the powers of the Chairman or Vice-Chairman in this behalf, all orders for payment of money from the Municipal Fund, if for a sum not above five hundred rupees, shall be signed by the Chairman or Vice-Chairman ; and all orders for larger sums by both of the said officers or by one of the said officers and another Commissioner.

No such orders shall be issued otherwise than for the payment of money of which the expenditure has been authorized by the Commissioners at a meeting, as provided in section seventy-eight.

"Commissioner of the Division" has been substituted for "Lieutenant-Governor" at the beginning of the section. The other changes in the section are in consequence of the abolition of the distinction between first and second class Municipalities.

The second clause is important, though its provisions were until recently commonly disregarded or misunderstood. The authorization here referred to is required *in addition* to a provision in the sanctioned budget estimates, though the two things were commonly confounded. The Chairman or Vice-Chairman is not justified in signing the order for payment unless there has been a distinct resolution passed at a meeting, authorizing the expenditure for the purpose in question. Such a resolution cannot be legally passed at a meeting, unless there is a provision in the sanctioned budget estimates of a sum for the purpose in question, covering the proposed expenditure. Compare section 78 and note.

Rules 22—31 of the Account Rules deal with the payment of claims.

Circular No. 15 T.—M., of the 28th July 1885, in the Municipal Department has reference to this section, and is as follows :—

"It has been brought to the notice of Government that differences exist in regard to the interpretation put upon the words 'orders for payment of money from the Municipal Fund,' which occur in section 84 of Act III (B.C.) of 1884. In most cases these words are understood to refer to orders on the treasury, *i.e.*, cheques on the treasury issued by the administrators of the Fund. This interpretation, however, is not only incorrect, but gives rise to considerable difficulty in the keeping and checking of the accounts of Municipalities, which might otherwise be obviated, for when a cheque has once been signed, the amount for which it is drawn must be immediately entered in the cash-book of the Municipality as a payment from the Fund, even though the cheque be not immediately made over to the payee. It frequently happens that the Chairman and Vice-Chairman of a Municipality are absent when a creditor presents his claim. The creditor goes away leaving his bill, and does not return again perhaps for a month or more. Meanwhile a cheque is drawn for the amount of the bill, and is charged off in the cash-book as a payment, although no payment has actually been made, and no voucher is forthcoming. Added to this, there is the danger, in such a case, of the signed cheque being abstracted, since it is always made payable to 'bearer' and represents so much actual cash. These difficulties would disappear if the correct interpretation were applied to the words above quoted, and

that is the orders made upon bills or other forms of demand directing the same to be paid. It is these orders which are the authority for the payment, whether the payment is made from cash in the cash-chest kept in the Municipal Office, or by a cheque on the treasury. The mere order does not constitute actual payment, and cheques should only be drawn on presentation of the order by the payee. The signing of the cheques may, in the discretion of the Municipal Commissioners, be left either to the Chairman, the Vice-Chairman, or the Secretary."

PART IV.

Of Municipal Taxation.

Alternative tax upon persons or holdings.

85. (77) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, and with the sanction of the Local Government, impose within the limits of the Municipality one or other, "or" both, of the following taxes :—

(*a*) a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality :

Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum ; or

(*b*) a rate on the annual value of holdings situated within the Municipality :

Provided that such rate shall not exceed seven and a half per centum on the annual value of such holdings, except within the Municipalities of "Howrah, Patna," Dacca and Darjeeling in which it shall not exceed ten per centum on such annual value ; and provided also that no rate shall be imposed on any holding of which the annual value is less than six rupees :

"Provided further that both the taxes shall not be in force at the same time in the same ward."

The changes made in this section provide that the two taxes referred to are not necessarily alternative, but that both may be in force at the same time in the same Municipality, though not in the same ward. The difficulties in regard to introducing both taxes at the same time, and the theoretical objections to such a procedure, are stated further on in this note.

History of rating in England.—The following sketch of the development of the English law of rating is compiled from *Rosher on Rating* :—

The foundation of the existing law on the subject is the poor-rate prescribed by the 43 Eliz., c. 2. That statute commands taxation (*a*) of every inhabitant, parson, vicar and others; and (*b*) of every occupier of lands, houses, tithes impropriate, coal mines or saleable underwoods in the parish.

Two capacities are here designated in which a man should be liable to be rated. He might be rateable as an inhabitant of the parish, or as an occupier of property of one of the descriptions specified in the statute. In rating him as an occupier, the measure of his rateability is the annual value of the property occupied; in rating him as an inhabitant, the intention of the statute was that he should be rated according to his ability, as measured by his visible estate in the parish, both real and personal.

The earliest authorities unhesitatingly so interpret the statute. In Sir Anthony Earby's case (2 Bulst., 354) it was held that assessments ought to be made according to the visible estate of the inhabitants in the parish, both real and personal.

However, it appears that in some parishes personal property never was rated and the custom of abstaining from rating it gradually became very general. This was probably owing to the difficulty and inconvenience experienced in attempting to assess it. The question as to the rateability of personal property was from time to time brought before the Courts, and they usually declared it rateable, though the reports show that the custom of not rating it had become very general. Finally, in the latter part of the eighteenth century, the Courts began to show a disposition to hesitate in affirming the rateability of personalty apart from the usage hitherto prevailing in the parish in question.

The Parochial Assessment Act of 1836 (6 and 7 Will. IV, c. 96) seems to assume that the rateability of personalty was then obsolete, as it makes no allusion to the rating of personal property or of an inhabitant as such. The question, however, being still disputed, the 3 and 4 Vict., c. 89, was passed in 1840, which finally declared personalty to be generally not rateable.

Subject to certain exceptions, the general rule in England is that real property is rateable, but that personal property is not.

It will appear from the above that, although the rating of personal property was legally permissible in England for over three centuries, the practice of rating it never became general and at last became entirely obsolete. The reason is no doubt, as stated by Yates, J., in 1769, that personal property cannot be accurately rated, without inquisitorial proceedings which the law does not sanction. Real property, on the other hand, is visible, and can be rated comparatively without difficulty.

History of the tax on persons in Bengal.—The following extract from a note compiled by Mr. Risley gives the history of the tax:—

"*History of the tax.*—The earliest mention of the tax on circumstances and property that I can find is in section 10 of Act XX of 1856, an Act 'to make better provision for the appointment and maintenance of Police chaukidars in cities, towns, stations, suburbs and bazars in the Presidency of Fort William in Bengal.' This section says: 'The tax to be levied in any city, town, or other place as aforesaid, for the purposes of this Act, may be either an assessment according to the circumstances and the property to be protected of the persons liable to the same or a rate on houses and grounds according to the annual value thereof.' Section 11 limits the former tax to an average of two annas per mensem for each house, and provides that the amount assessed on any one house shall not be more than the pay of a chaukidar of the lowest grade. It next appears in a slightly modified form in Bengal Act VI of 1868, an Act for the better regulation of the Police in towns, and for the conservancy and improvement thereof. Section 44 of this Act runs thus:—

"The tax to be levied in any town for the purposes of this Act shall be an assessment according to the circumstances and the property to be protected of the persons liable to the same. Provided that the total sum to be raised by such tax in any year shall not exceed the sum which would be produced by an average rate of two rupees and four annas per annum for each holding, and the amount assessed in respect to any one holding shall not be more than seven rupees per mensem.

"Bengal Act VI of 1868 was intended for the large class of towns which were then considered not sufficiently advanced for the introduction of the Bengal District Municipal Improvement Act III of 1864. In such towns Act XX of 1856 was in force, or the corresponding regulations which preceded it (*vide* section 1, Act XX of 1856), but funds were required for conservancy

as well as for Police, and legal difficulties had arisen in raising them. For this reason Act VI of 1868, while retaining the mode of taxation in force under Act XX of 1856, to which the people were accustomed, *viz.*, 'an assessment according to the known circumstances and property to be protected of the tax-payer,'* raised the maximum leviable per house from an average of two annas to an average of three, the difference between the cost of Police and the total amount raised being devoted to conservancy and local improvements. As the Bill originally stood, the power to impose a rate for an annual value conferred by Act XX of 1856 was retained for cantonments, but this provision was afterwards struck out in Committee.

"Bengal Act VI of 1868 was repealed by Act V of 1876 under which every place where Act VI was in force became a second class Municipality, and every place where Act III of 1864 had been in force a first class Municipality. In first class Municipalities the rate on annual value was levied: in second class Municipalities the tax on circumstances and property. Both forms of tax were recognised by Act XX of 1856. Act III of 1864 adopted one form for large towns: Act VI of 1868 took the other form for small towns. In Act V of 1876, the tax on circumstances and property was maintained by section 77 (*a*), which authorises the levy of 'a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality.' The proviso contained in the last sentence of section 44, Act VI of 1868, was re-enacted in the same words.

"This brings us down to Act III of 1884, which re-enacted the provisions of 77 (*a*) of Act V of 1876, omitting the portion relating to an average rate of Rs. 2-4 for each holding.

"Without then going back to the earlier Regulations repealed by section 1 of Act XX 1856, it seems that this tax may fairly be described as a tax originally levied for the purpose of maintaining a town Police, and limited by the condition that no house should be required to pay more than the salary of a chaukidar of the lowest grade. After the Police had been paid, and charges for supervision, collection of the tax, uniforms, badges, weapons and contingencies had been met, the Magistrate was empowered by section 36, with the sanction of the Commissioner of Circuit, to 'appropriate any sum which may be available to the purpose of cleansing the city, town, or place, or of lighting or otherwise improving the same.' He was authorised, in fact, to apply to Municipal purposes the unexpended balance of a Police tax. As time went on, the Municipal element became more prominent, while the Police element dropped out of sight, so that at the present time, where Municipalities have been wholly relieved of Police charges, the tax is commonly believed to have been originally devised for Municipal purposes.

"Judged by modern English practice in respect of Municipal taxation, the tax on circumstances and property is open to objection; but the English system is a peculiar one, and has a curious history which does not concern us here. In Prussia and, I believe, throughout the German Empire, the chief Municipal tax is an income-tax pure and simple, levied in the form of a varying rate, added to the Provincial income-tax and collected with it. As usually administered in Bengal, the tax on circumstances and property is in effect an income-tax. That is to say, the Municipality fixes a percentage, say one per cent.: a valuation is made of the assessee's 'circumstances and property,' and the tax payable is arrived at by applying the percentage to this valuation. By whatever name this procedure is described, it evidently approaches closely to that adopted in levying an income-tax."

What is meant by "circumstances?"—An opinion of the Legal Remembrancer, given in 1892, is as follows:—

"I have the honor to say that the Balasore Municipality appears to imagine itself empowered to levy a second income-tax, because it is allowed to consider the 'circumstances' of residents in making its assessment. This view is clearly wrong. The 'circumstances' they may consider are not the sources of profit which a resident may have, but his style and mode of living, expenditure on servants, houses, etc., size of house, value of furniture and other contents of

* Act VI of 1868, Objects and Reasons.

the house which, lying within the Municipality, *are* protected by the Municipal officers."

The correctness of the above ruling is open to considerable question.

According to it a miser, who, though worth many lakhs, lived in a poor house and spent little on servants, furniture, etc., would almost escape assessment. It seems much more probable that "circumstances" refers to pecuniary position, and therefore practically means ability to pay. "Circumstance and property within the Municipality" in clause (*a*) of the present section have probably almost exactly the same meaning as the provision for the taxation of inhabitants in 43 Eliz., c. 2, under which an inhabitant was to be rated according to his ability as measured by his visible estate in the parish both real and personal.

The principle of the tax on persons is that of an apportionment.—It will be observed that no percentage is fixed for the tax, and that the Act contains no provision to limit the amount to be assessed on any one person, except the limit of the maximum of 84 rupees. What then limits the amount of assessment on any person not liable to pay the maximum tax?

The answer is "two different things;" one is the total amount of tax required to be raised, and the other the provision that such amount is to be rateably levied from the assessees according to their circumstances and property. The principle is, therefore, clearly that of an apportionment, unless we are to suppose that, except for the limit of Rs. 84 as a maximum, the scale of taxation is a perfectly arbitrary one. Moreover, the provisions of Act XX of 1856 and Bengal Act VI of 1868, already referred to, appear to indicate that the principle of the tax is apportionment. Under the former Act the total amount to be levied is limited to an average of two annas per mensem for each house, and under the latter to an average of two rupees and four annas per annum for each holding. Assume that the principle of the tax is that of an apportionment, and we at once get the ratio which fixes the amount of tax to be paid by each assessee. The amount of tax which each assessee has to pay must bear the same proportion to the total amount of tax required to be raised, as his circumstances and property in the Municipality bear to the total circumstances and property of all the assessees in the Municipality. Assuming that the principle is not that of an apportionment, there is obviously no standard on which an average income should be assessed, and the tax is an illogical and arbitrary one. It must therefore be taken for granted that the principle of the tax is that of an apportionment among persons occupying holdings within the Municipality, according to their circumstances and property. The theory of the tax being that of an apportionment amongst all the occupiers of holdings in the Municipality, the difficulties in the way of applying it to certain wards only in a Municipality, in accordance with the changes made in this section by the amending Act, are obvious. They are referred to in the following speech, which also points out the objections to introducing two different modes of taxation in the same town.

The Hon'ble Mr. Collier said:—"It appears to me that the Hon'ble mover of this amendment has failed to recognize the actual nature of the tax on persons, or he should have seen that his proposal is, for arithmetical reasons, an impossible one. The fallacy on which the amendment is based is the assumption that the tax on persons is a kind of rate which could be levied on *à priori* principles, on a single rate-payer or in a single street, or in a single ward of a Municipality. But the tax in question is obviously not a rate. Its principle is simply that of an apportionment, that is to say, that you must first fix the amount of tax to be raised and then apportion it amongst the rate-payers according to their circumstances and property. If you do not know the amount intended to be raised, you cannot assess any one.

"Now, the only kind of apportionment of the tax on persons provided for by section 85 is a general apportionment on all persons occupying holdings throughout the Municipality. The additions to the section proposed by the Hon'ble member provide that one or more wards may be excepted from this general apportionment and taxed on another system. But it is clear that if we except one or more wards from a general apportionment, the apportionment breaks down, and the calculation becomes all wrong.

"The Hon'ble member might possibly urge that to hold that section 85, as proposed to be amended, only authorizes a general apportionment, is to interpret

that section in too literal a manner. He might say that if we take a broad view of the section as proposed to be amended, the difficulty referred to disappears. We may assume—he might urge—that the apportionment is to be confined to those wards in which the tax on persons is to be levied.

"Now, I do not think this contention would be sound, as the language of section 85 seems to clearly imply that it only authorizes a general apportionment. But for argument's sake let us accept this contention. Well, the difficulty which now confronts us is that we cannot apply the principle of apportionment to certain wards only, as we do not know what we have to apportion. The section gives no power of fixing beforehand the amount of taxation to be raised in each ward, or in all the wards in which the tax on persons is to be levied, and until this is fixed, the principle of apportionment cannot be applied. The principle of apportionment gives you no assistance in determining what amount of tax a particular ward ought to pay. It merely enables you to apportion the tax after the amount is fixed. You can tax a whole Municipality on the principle of apportionment because you know beforehand what income you want to raise. You cannot tax one or more wards on that principle unless you have power to fix what such wards have to pay.

"There are two ways in which the section might be amended so as to carry out what is evidently the intention of the Hon'ble member. One way is as follows:—You must provide that the Commissioners shall first fix the total amount of taxation to be raised under this section Next, that they shall then proceed to apportion such amount among the different wards. Finally, that they shall then decide in the case of each ward whether the amount fixed for it is to be raised by a rate on holdings or according to the principle of apportionment, that is to say, by the tax on persons. An obvious objection to such a proposal would be, that to confer on the Commissioners the power of deciding what proportion of the tax each ward should pay, would be to confer a power of perfectly arbitrary taxation. The other way of amending the section would be as follows:—If both taxes are to be raised in the same Municipality, the section must provide that the Commissioners shall first decide the total amount of taxation to be raised. They must then decide in which wards the rate on holdings is to be in force, and estimate how much it will yield. They must then proceed to raise the required balance in the remaining wards on the principle of apportionment. Both these modes of proceeding would be logical. But the proposal before us is not. It is simply a proposal to levy a tax in certain wards of a Municipality on the principle of apportionment, without any suggestion as to how the amount to be apportioned is to be fixed. It is like a proposal to apply the principle of the lever without a fulcrum, and is clearly impossible.

"Apart from these considerations, any proposal to have two different kinds of taxes in force, side by side, in the same Municipality is open to grave objections. With your permission, Sir, I will read an extract referring to this point from the report which I wrote on the original draft Bill.

"This appears to me to be a most extraordinary suggestion. If carefully examined, I think it will be found to be irrational and impracticable. Even, if it could be carried out in practice, it would be liable to the grossest abuse.

"The most important and obvious principle of rating, or indeed, of any form of taxation, is that persons should be assessed according to their means as nearly as possible. In comparing the liability of a given number of persons to taxation, we adopt some standard by which their means can be judged. Whatever standard is adopted, the results cannot be absolutely correct, because the information supplied will not be correct. But whatever standard is adopted, it must be obviously the same for all, as otherwise the results *must* be incorrect. It is simply illogical to adopt two different standards of comparison in regard to one set of objects to be compared, and to use one for part of them, and the other for the remainder. The result would not be one comparison of the whole number of objects, but two different and independent comparisons of two sets of objects. The proposal, therefore, to introduce two modes of assessment, that is to say, of comparison of liability to taxation, in one and the same Municipality, is simply a proposal to depart from the most important fundamental principle of taxation. Each assessee is not to be assessed according to the proportion which his assessable property bears to the whole assessable property of the town, but

the whole number of assessees is to be arbitrarily divided into two groups, the members of each of which are to be compared one with another, but not with the members of the other group. If the object of this strange procedure is to compare the respective liability to taxation of the whole of the inhabitants of the town, it obviously fails to do anything of the sort, and the procedure is therefore irrational. If the object is not to compare the respective liability of the whole of the inhabitants of the town, the proposal sins against the most important fundamental principle of taxation. Obviously, the proposer of the provision in question is on the horns of a dilemma.

"It is interesting to note that the proposition that two different modes of assessment may properly be employed in the same assessable area was condemned by English Judges as long ago as 1633, in what is known as *Sir Anthony Earby's case*. It was then held that assessments of rates must be one and equal, that is to say, in proportion to the property of the assessees; and that in order to be so they must be made in an equal manner. The latter proposition is simply a logical consequence of the former. As Rosher remarks in his *Treatise on the Principles of the Law of Rating*: 'In order to rate in accordance with the principle of equality, a method of assessment is required that will affect all occupiers fairly and equally.' The ruling in *Sir Anthony Earby's case* has been settled law ever since. Two and-a-half centuries of English law look down on the rash innovator, who would propose that two different modes of assessment should be in force at the same time in the same town.

"I have said that the proposed provision would be liable to the grossest abuse, and I submit that this is tolerably obvious. To allow the Commissioners of a Municipality the option of assessing any person, either on his real property, or on both his real and personal property, for this is what it comes to, is obviously to allow them a dangerous amount of latitude in making assessments. The proposal appears to me to open a very wide door to jobbery and partiality. The inconsistency of such a proposal, with the remarks made on the subject of unfairness and partiality in Municipal assessments in the Government letter, and with certain provisions of the Bill, seems to me to be somewhat striking." (*P. C.*, 14*th April* 1894.)

Annual value.—Annual value means the annual letting value. The section must evidently be read with section 101. See *Nando Lal Bose* v. *The Corporation for the Town of Calcutta*, I. L. R., 11 Calc., 275, and compare section 101 and note.

Under the Municipal Taxation Act, 1881 (Act No. XI of 1881), section 3, the Governor-General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax payable by persons residing, on military duty, within the limits of a Municipality, or by Government itself.

By section 4, as long as such an order is in force, the amount of tax incurred by such person on military duty shall be paid by Government: Provided that Government shall not be liable to pay any tax in respect of a horse which such person is bound by the regulations of the service to which he belongs to keep.

By section 5, as long as such order is in force, the amount of tax due on account of Government in its own behalf shall be such as an officer appointed for that purpose by the Local Government shall decide to be fair and reasonable.

Two or more persons having separate sources of income, and occupying in severalty the same holding, may, it would seem, be separately assessed under clause (*a*). In such a case it appears somewhat doubtful whether each could be assessed up to the maximum of Rs. 84, or whether the total assessment upon all the occupiers of the holding must be within that amount. Probably the latter view is the correct one.

The proviso attached to the definition of "holding" in clause (3), section 6, must be borne in mind as regards clause (*a*) of this section. Where two or more adjoining holdings form part of the site or premises of certain classes of buildings, they shall be deemed to be one holding except for the purposes of the Act mentioned in clause (*a*) of section 85. If, therefore, a dwelling-house, manufactory, or other building of the kinds specified is built upon several holdings, the owner thereof can be separately assessed in respect of each of

such holdings, up to the limit of Rs. 84 per annum. If, on the contrary, such building is built on one holding only, the amount assessed cannot exceed Rs. 84 per annum, whatever may be the annual value of the building. In the case of a large manufactory or warehouse, it is, therefore, very much a matter of mere accident whether it can be adequately assessed or not in a Municipality where tax on persons is in force. The tax in question appears to be quite unsuitable to any very advanced Municipalities. It is admittedly illogical and arbitrary, though it may work well enough as a rough-and-ready mode of assessment in small Municipalities, where the incidence of taxation is very light. The most serious objections to it are that it is practically an income-tax without any machinery for ascertaining income, and that the low maximum laid down enables wealthy persons to escape due assessment. The following remarks on this tax may be quoted :—

"The Hon'ble Mr. Dampier said the scheme of the tax was none of his own. The Bill merely continued the rough mode of assessment which was in force throughout the length and breadth of the land, and had been so for the last score of years. At the same time, he admitted that this tax, if you came to look at it through a miscroscope, and to test it critically, was absolutely indefensible ; it was a rough and crude mode of taxation, which, on the whole, was well adapted to the circumstances of the country ; but he should be glad to improve upon it if it could be done."—(*P. C., February 19th*, 1876.)

The proviso that the total sum to be raised under clause (*a*) shall not exceed the amount which would be produced from an average rate of Rs. 2-4 per holding has been omitted. The following extract explains why :—

The Hon'ble Mr. Reynolds moved to substitute the following proviso for the proviso to (section 85), clause (*a*) : 'Provided that the amount assessed on any one person in respect of the occupation of any one holding shall not be more than eighty-four rupees per annum.' He said that this amendment was rendered necessary in consequence of the amendment which had been made in the definition of 'holding,' the effect of which would be to diminish the total number of holdings in Municipalities. There was some danger in retaining the words in the first part of the proviso : 'The total sum to be raised by the tax in any year shall not exceed the sum which would be produced by an average rate of Rs. 2-4 per each holding.'"—(*P. C., March 15th*, 1884.)

Additional taxes.

86. (78) The Commissioners may, from time to time, at a meeting convened as aforesaid, and with the sanction of the Local Government, order that the following tax, fee, tolls, and rates or any of them be levied within the limits of the Municipality in addition to either of the taxes mentioned in the last preceding section :—

(*a*) a tax on carriages, horses, and other animals named in the fifth Schedule ;

(*b*) a fee on the registration of carts ;

(*c*) tolls on ferries and (subject to the provisions of sections one hundred and fifty-eight and one hundred and fifty-nine) tolls upon bridges and metalled roads ;

(*d*) a water-rate not exceeding "seven and-a-half" per centum on the annual value of holdings when the houses and lands are situated in streets supplied with water, and not exceeding "six'

per centum when the houses and lands are situated in streets not so supplied ;

(*e*) a lighting rate not exceeding three per centum on such annual value ;

(*f*) a fee for the cleansing of latrines :

Provided that the taxes mentioned in clauses (*d*), (*e*), and (*f*) shall not be levied in any Municipality unless the provisions of Part VII in respect of clause (*d*), or of Part VIII in respect of clause (*e*), or of Part IX in respect of clause (*f*) shall have been extended wholly or partly to such Municipality in the manner hereinafter provided.

Clauses (*d*), (*e*), (*f*), and the proviso at the end of the section are new. The fact that any of the taxes specified in this and the preceding section have not been included in the estimates does not preclude the Commissioners from levying them in the manner prescribed. Compare section 72.

Of the Tax on Persons.

Assessment list to be prepared.

87. (79) When it has been determined that a tax shall be imposed on persons occupying holdings within the Municipality, according to their circumstances and property, the Commissioners, after making such inquiries as may be necessary, shall cause to be prepared an assessment list which shall contain the following particulars, and any others which the Commissioners may think proper to include :—

(*a*) name of the street or road in which the holding is situated ;

(*b*) number of the holding on the register ;

(*c*) name of the person occupying the holding, whether such person be assessed or exempted from assessment ;

(*d*) description of the holding, and of the property, within the Municipality, and the profession or business of the person assessed ;

(*e*) amount of annual assessment ;

(*f*) amount of quarterly instalment ;

(*g*) if the occupier of the holding is exempted from assessment, a note to that effect.

The tax upon persons shall be payable in quarterly instalments by persons occupying holdings.

Such tax shall not be assessed or levied on any person in respect of the occupation of any building which is used exclusively as a place of public worship,

"or in respect of the occupation of any public burial or burning ground registered under section two hundred and fifty-four."

It will be observed that the exemption in respect of the occupation of arable lands has been struck out by the Amending Act.

The holding may possibly not be situated near any street or road, and in such a case the omission of the particulars required by clause (*a*) could not reasonably be held to invalidate the assessment.

"Shall be payable in quarterly instalments." This provision imposes on the Commissioners the duty of collecting the tax quarterly, and they are not justified in collecting it half-yearly. They have obviously no power of collecting it half-yearly in advance as the tax-payers are only bound to pay it quarterly in advance. There is nothing in the Act which compels the Commissioners to maintain a staff for collecting the tax from door to door, though there is also nothing to prevent their doing so. They may require payment at their office if they are so minded. (L. R.)

As a place of public worship.—The feeding of Brahmins is not an act of public worship within the meaning of section 119 of the City of Madras Municipal Act of 1878.—*Thamba Chetti Subraya Chetti* v. *Arundel*, I. L. R., 7 Mad., 63.

A gomastah resided in a cutchery situated within a Municipality, in which a tax upon persons was in force. The zemindar, his employer, was a non-resident. *Held*, that as the gomastah paid no rent, and resided in the building solely to carry on the business of the zemindar, whose representative he was, the zemindar must be considered to be the person occupying the holding under this section, and to be liable for the tax. (L. R.)

If the holding is occupied in severalty by more than one person, each of such persons may apparently be separately assessed under this section. For the tax is not assessed on holdings, but on persons occupying holdings according to their circumstances and property within the Municipality. It seems probable in such a case that the total assessment must not exceed the maximum of Rs. 84.

"Except in the case of a joint occupation, there cannot be two persons liable to be rated for the same thing." *Per* Field, J., in *Smith & Son* v. *Lambeth*, 9 Q. B. D., 585.

"*Persons occupying holdings.*—To constitute occupation in regard to rateability three elements are necessary, *viz.*, possession, actual user, and permanence. Title is immaterial if possession exists.

The following extract from the judgment of Lush, J., in *R.* v. *St. Pancras*, 2 Q. B. D., 581, refers to all these elements:—

"It is not easy to give an accurate and exhaustive definition of the word 'occupier.' Occupation includes possession as its primary element, but it also includes something more. Legal possession does not of itself constitute an occupation. The owner of a vacant house is in possession, and may maintain trespass against any one who invades it; but as long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year. On the other hand, a person, who, without having any title, takes actual possession of a house or a piece of land, whether by leave of the owner or against his will, is the occupier of it. Another element, however, besides actual possession of the land, is necessary to constitute the kind of occupation which the Act contemplates, and that is permanence. An itinerant showman who erects a temporary structure for his performances, may be in exclusive possession, and may with strict grammatical propriety be said to occupy the ground on which his structure is placed, but it is clear that he is not such an occupier as the Statute intends.

POSSESSION.

"A person who has only an easement, or license, or anything short of possession of the soil is not rateable. This is recognized in *Sir Anthony Earby's*

case, in which it is specified that assessments are to be made according to 'visible estate.' The limitation of rateability to 'visible estates' excludes incorporeal hereditaments, such as easements and licenses in the nature of easements, and it proceeds apparently on the ground that there can be no occupier of property which is of such a nature that possession of it cannot be delivered, possession being essential to occupation."—*Rosher on Rating*, 38.

On this principle, a ferry-farmer could not as such be held to occupy a holding, and therefore to be rateable, unless he had exclusive possession of plots of land used as landing places in connection with the ferry.

Tolls *per se* are not rateable hereditaments, though the right to take them may enhance the value of the occupation of land in respect of which the tolls are taken: *Reg.* v. *Cassvell*, L. R., 7 Q. B., 328, and stalls in a market-house not fixed to the soil, let to persons who have the use or occupation of them only on certain days, and between certain hours, and at other times are excluded from the market-house, are not rateable in the hands of the persons to whom they are let.—*Spear* v. *Bodmin Union*, 49 L. J., M. C., 69.

"To form an element of rateability, possession must be free from the control of paramount occupation in a superior, and must also be sole and exclusive. The original occupier may grant away something which appears like the occupation; but if he retains to himself a right of (*a*) entry on, or (*b*) general control over, the property, he retains to himself a paramount occupation and is still rateable, or rather it would be more correct to say that, if he has made such a reservation, he has not parted with the possession, but has granted only the exclusive enjoyment of it. A grantee who has not the right of excluding the grantor is not in rateable occupation"—*Rosher on Rating*, 47.

On this principle it has been always held that the landlord of a lodger is the rateable occupier, if he retains dominion and control over the building as a whole.

"As a lodger is not rateable on account of the paramount occupation of the landlord, so one who resides in another's house as his servant is not rateable. The servant has the use of the rooms, but has no occupation distinct from, and independent of, that of his master, and the occupation of a servant, *as servant*, is in law the occupation of the master, and the master is the rateable occupier. In *R.* v. *Tynemouth* (12 East., 46), where it was attempted to rate a man who resided in a lighthouse as servant of the owner, his duty being to take care of the light, Lord Ellenborough, C. J., held, that the occupation was clearly that of the master, by his servant, and not that of the servant himself."—*Ibid*, 51, 52. A familiar case for the application of this principle in India is the occupation of a cutcherry by a gomastah on behalf of a non-resident zemindar.

Actual User.

The second essential required to constitute rateable occupation is some amount at least of actual user. Legal possession of itself does not amount to occupation; but legal possession plus even a slight amount of actual user does. The case of an owner furnishing a house and keeping it ready for habitation is an example of this principle.

Permanence.

Permanence in regard to rateable occupation refers to both time and place In *R.* v. *St. Pancras*, above referred to, Lush, J., said: "As the poor rate is not made day by day or week by week, it would be as absurd to hold that a person who comes into a parish with the intention to remain there a few days or a week only, incurs a liability to maintain the poor for the next six months Thus, a transient, temporary holding of land is not enough to make the holding rateable. It must be an occupation which has in it the character of permanence; a holding as a settler, not as a wayfarer."

Occupation does not, however, fail in permanence merely because the user is intermittent, nor on account of the shortness of the notice by which it may be determined.

Duration of assessment.

88. (80) Save as is herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by section one hundred and twelve is published, and shall be valid for three years and until the beginning of the year next after the date on which a new assessment of valuation may be published, or until the assessment and valuation be revised and amended :

Provided that when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice shall be published.

It follows that when the Act is first extended to any place, no tax upon persons can be raised during the current quarter. For the assessment cannot take effect until the beginning of the quarter following that in which the notice shall be published, so that even if the notice is published directly after the Act is extended, no tax can be raised until next quarter.

When under the former Act the Bally Municipality was formed out of a portion of the Howrah Municipality, it was held that no tax could be collected during the current quarter. For the Act containing no provision for the division of a Municipality had to be extended to the place as if it had never been in force there, and the notice referred to had therefore to be published. Section 9 of the present Act authorises the subdivision of a Municipality, and therefore provides against similar difficulties in future.

Assessment of public buildings.

89. (81) In any Municipality in which the tax on persons is imposed, no tax shall be assessed on any person in respect of his occupation of any holding which "contains any building" the property of Government, "or of a local authority," but a rate not exceeding seven and-a-half per centum may be assessed on the annual value of every such holding, to be ascertained in the manner prescribed by section one hundred and-one, and such rate shall be payable by Government "or the local authority concerned."

Act XI of 1881, the Municipal Taxation Act, has reference to taxation of Government property in Municipalities and will be found, *post*.

It is not very obvious why it has apparently always been taken for granted in this country that Government property in Municipalities ought to be rateable. It is not rateable in England, where the law on the subject has been thus stated :—

"The law is *primâ facie* presumed to be made for subjects only, and it is a well-recognized rule that the Crown is not bound by a statute unless named in it.

"The Crown is not named in the 43 Eliz., c. 2, and, therefore, when property is occupied by the Crown there is not an occupier within the statute, and, therefore, no one who can be rated.

"The exemption from rateability which exists when the property is in the occupation of the Crown includes cases when the occupation is that of the

servants of the Crown, occupying for the purposes of the Crown. The purposes of the Crown comprise the carrying on of the Government of the country, the administration of justice, and the discharge of such other duties as are theoretically the prerogatives of the Crown. Accordingly, it has been held that property is not rateable when occupied for the purposes of the Royal Army and Navy: or of the Post Office; for Assize Courts, or Judge's lodgings; or for Prisons."—*Rosher on Rating*, 75.

Procedure if aggregate amount of rates assessed on any person exceeds Rs. 84 per annum.

90. (82) Whenever any tax shall have been assessed on any person in respect of his occupation of two or more holdings, and the aggregate of the amount so assessed upon him shall exceed eighty-four rupees per annum, such person may, within fifteen days of the publication of the notice required by section one hundred and twelve, apply to the Commissioners to cancel such assessment, and to substitute for the total amount of tax so assessed upon him, in respect of the said holdings, a rate to be calculated at seven and-a-half per centum on the annual value of such holdings; and the Commissioners shall, thereupon, substitute such rate; and, for the purpose of calculating the amount of such rate, shall determine the annual value of the said holdings in the manner prescribed by section one hundred and one.

Every rate imposed under this section shall be payable by the occupier of the holdings so rated.

Power of exemption.

*91. (83) The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax; but the name of the occupier of every holding shall be included in the assessment list, whether he be assessed or exempted from assessment.

Power to apply for reduction of assessment in altered circumstances.

92. (84) If any person mentioned in the assessment list shall, at any time after the publication thereof, have ceased to occupy any holding in respect of the occupation of which he has been assessed, or, if the means and property in respect of which he has been so assessed shall have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct.

The following extract bears upon this section:—

"The Hon'ble Mahomed Yusuf moved that the words 'the Commissioners shall,' in line 8 of section 91, be substituted for 'the Commissioners may' in

line 8 of section 91. The section gave power to apply for a reduction in altered circumstances, but left it optional with the Commissioners to grant or refuse reduction of assessment in such cases. He contended that reduction of assessment should be imperative where the means and property of the assessee had been reduced, and notice of exemption should be given where a holding has ceased to be occupied."

"The Hon'ble Mr. Reynolds remarked that the amendment would require the Commissioners in these cases either to pass an order of exemption or to revise the assessment, but the clause did not apply only to the case of a man who ceased to occupy premises, but also to reduction of assessment. He, therefore, could not accept the amendment. He understood the object of the amendment to be that when a man had ceased to occupy the Commissioners must in that case exempt; but the fact of ceasing to occupy need not necessarily in every case give an absolute right to exemption. He should, therefore, prefer to give the Commissioners the discretion provided in the section. The words 'may exempt' *impose on the Commissioners the duty of exempting* if cause be shewn."—(*P. C., February 20th*, 1884.)

Power to alter assessment.

93. (85) The Commissioners may, at any time after the publication of the notice required by section one hundred and twelve, assess any person who was without authority omitted from the assessment list, or whose liability to assessment has accrued thereafter, and may enhance any assessment which appears to them to be inadequate, and to have been so made owing to mistake or fraud.

Any assessment or enhancement made under this section shall take effect from the beginning of the quarter next following that in which such assessment or enhancement is made.

The following extract from the Proceedings of the Council when Act V was under discussion is important as clearly showing the object and effect of this section:—

"The Hon'ble Baboo Kristodass Pal moved the omission of the words 'to be inadequate and' in line 8. He said that this section provided that the Commissioners might, at any time after the publication of the assessment list, assess any person who was without authority omitted therefrom, or whose liability to assessment had accrued thereafter; and might enhance any assessment which appeared to them to be inadequate, and to have been so made owing to mistake or fraud. He wished to be informed whether this enhancement might be made during the currency of the assessment, that was to say, within the three years for which the assessment was to remain undisturbed. [The Hon'ble Mr. Dampier said that it was so.] Then this section would override the other sections as to assessment. The ground of inadequacy was after all a very slender ground, and would be open to misconstruction. He submitted that where there had been mistake or fraud which could be proved, the assessment ought to be revised; but no assessment ought to be enhanced merely because it appeared to be inadequate; for if you allowed the assessments which were made for three years to be disturbed on so slight a ground, it would open a wide loophole for enhancement.

"The Hon'ble Mr. Dampier explained that the essence of the provision was that the assessment was made by mistake or fraud; according to the wording it must have been inadequate *and* have been so made by mistake or fraud."—(*March 2*, 1876.)

It is clear from the above that the only cases in which assessments can be disturbed before the expiration of the three years, is where there has been mistake or fraud.

Procedure on change of occupation.

*94. (86) The Commissioners may at any time substitute for any name mentioned in the assessment list the name of any new occupier of a holding and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced.

Assessment on vacant holdings when to cease.

*95. (87) If any holding shall become vacant in the course of the year, the assessment on account of the occupation of such holding shall cease to have effect from the first day of the quarter next following that in which it became vacant.

Of the Rate on the Value of Holdings.

Commissioners to determine the valuation of holdings.

*96. (88) When it has been determined that a rate shall be imposed on the annual value of holdings, the Commissioners, after making such inquiries as may be necessary, shall determine the valuation of all holdings within the Municipality as hereinafter provided.

Duration of assessment.

97. (89) Save as is herein otherwise provided, such valuation shall be valid for "five" years from the date on which it first takes effect in the Municipality, and until the beginning of the year next after the date on which a new valuation may be made, or until the valuation be revised and amended.

Effect of alteration of percentage.

"97A. If within the period prescribed in the last preceding section the percentage on the valuation of holdings at which the rate is to be levied is altered by the Commissioners under the provisions of section one hundred and two, the amount of the rate and the amount of the quarterly instalments thereof payable in each case shall be altered accordingly in the rating list, but the Commissioners shall not thereby be deemed to have made a new or revised assessment list."

Holdings exempted from tax.

98. (90) The rate on the value of holdings shall not be assessed or levied on any holding which is used exclusively as a place of public worship, or which is duly registered as a public burial

or burning ground under section two hundred and fifty-four.

"The Commissioners at a meeting may, with the sanction of the Local Government, exempt from assessment any holding used for purposes of public charity."

Exemption of charitable holdings from assessment.

"Public worship" has been substituted for "worship." The object of the alteration is obvious. Under the former section, places used for the purpose of private worship were exempted. The feeding of Brahmins is not an act of public worship.—*Thambu Chetti Subraya Chetti* v. *Arundel*, I. L. R., 7 Mad., 63.

The exemption of duly registered public burial or burning grounds is new.

It will be noticed that arable lands, which were formerly exempted from the tax on persons by section 87 are not exempted from the tax on holdings under this section. The ordinary and obvious inference appears to be that the intention of the Act is that they should not be exempted. As, however, contradictory opinions on the point have been given on high authority, it may be as well to see what evidence exists as to the intentions of the Council on the subject.

Before Act V of 1876 was passed, arable lands were expressly exempted under both Act III of 1864 and Act VI of 1868. Under the former Act a rate on holdings was in force, and under the latter a tax on persons. Arable lands were therefore at that time expressly exempted from all Municipal taxation. The following extract from the Proceedings of the Council, when the Bill of 1872 was under consideration, will shew, however, that, by that time, there was a strong opinion on the part of Government that they ought to be assessed:—

"Section 45 related to the tax upon buildings (holdings?) and exempted buildings used exclusively as places of public worship or applied solely to charitable purposes."

"The Hon'ble Rajah Jotendro Mohun Tagore moved the insertion of the words 'and arable lands' after 'purposes,' so as to exempt arable lands from the tax."

"The Hon'ble Mr. Beaufort said that he would move as a counter-amendment that the following words be added to the section:—"Provided that the annual value of any arable land shall be deemed to be one-half of the annual rent at which such land may be reasonably expected to be let."

"The Hon'ble Mr. Bernard said, it might be explained that lands taxed by Municipalities were exempted from road cess under Act X of 1871 of this Council, and if arable lands within Municipal limits were exempted from taxation under this Bill, they would escape taxation altogether. The amendment which the Hon'ble Member in charge of the Bill had proposed would reduce the rate on arable lands in Municipalities very nearly to what they were assessed for road cess outside Municipalities."

"His Honor the President said roads outside Municipalities were to be made by those taxed outside by the district road cess, and inside Municipalities, by Municipalities; and it was only fair that arable lands within Municipalities, which were exempted from the district road cess, should pay a tax such as the same lands outside Municipalities paid under the road cess. He quite thought with the Hon'ble Member that it would be hard that arable lands within Municipalities should pay a tax as high as that paid by houses and shops; and therefore it appeared to His Honor that the half-rate, which the Hon'ble Member in charge of the Bill had proposed, would meet the difficulty."

"The Hon'ble Rajah Jotendro Mohun Tagore said, that after the explanation that had been given he would withdraw his amendment."

"The Hon'ble Mr. Beaufort's amendment was then agreed to."—(*P. C., 18th July* 1872.)

The principle of the amendment in question was accepted by the framers of the Draft Bill which afterwards became Act V of 1876, as section 69 contained a clause *identically the same as Mr. Beaufort's amendment*. This clause was, however, omitted by the Select Committee. The only possible conclusion which can be drawn from this omission, is, that they were of opinion that arable lands should

be assessed at the full, and not at the half-rate. The fact having been already recognized by the Draft Bill, that arable lands were assessable under its general provisions referring to the tax on holdings, it would have been obviously necessary to introduce a distinct provision on the subject, had the Select Committee intended to exempt them altogether. Moreover, it appears from their report, that they had no such intention. They specify the classes of holdings which they have exempted from Municipal taxation, but arable lands are not among them.

When the Bill was considered in Council, a provision was added exempting arable lands from taxation with respect to the tax on persons. No such provision was inserted with regard to the rate on the value of holdings, and the obvious inference is, that it was not the opinion of the Council that they ought to be exempted.

In the Act now in force the provisions on the subject are taken from the former Act without alteration. It may be noticed, however, that the Bill, before it came into Council, contained a clause exempting arable and pasture lands from the lighting-rate, though it contained no such provision with regard to the rate on holdings. This exemption as regards the lighting rate was deliberately omitted by the Council. Compare note to section 311.

The correctness of the opinion expressed in the above note is now (1894) generally admitted. It is not now disputed that arable lands are liable to the rate on holdings. By the changes made in section 87 by the Amending Act, they are now no longer exempted from the tax on persons. As the present section has been made applicable to the lighting-rate (section 311) arable lands are subject to that rate also. The provisions of this section also apply to the water-rate (section 280); but section 279, as amended, exempts land used exclusively for purposes of agriculture from that rate.

The report of the Select Committee on the Amending Bill recognizes that arable lands are subject to the rate on holdings:—

"*By section* 34 *of the Bill* now presented we withdraw the exemption in section 87 of the Act of arable lands from consideration when a personal tax is assessed, but exempt burial and burning grounds, our object being to make the exemptions in the case of the rate on holdings and in that of the tax on persons similar."

What return may be required for ascertaining annual value.

*99. (91) The Commissioners, in order to prepare the valuation list, may, whenever they think fit, by notice, require the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof; and the Commissioners, or any person authorized by them in writing in that behalf, at any time between sunrise and sunset, may enter, inspect, and measure any such holding after having given forty-eight hours' previous notice of their intention to the occupier thereof:

"Provided that where an Assessor is appointed, such Assessor shall not be competent to authorize any other person to enter, inspect and measure any such holding."

Penalty for default in furnishing return.

100. Whoever refuses or fails to furnish any such return for the space of one week from the day on which he shall have been required to do so, or knowingly makes a false or incorrect return shall be liable to a fine not exceeding twenty rupees, and

to a further daily fine not exceeding five rupees for each day during which he shall omit to furnish a true and correct return; and whoever hinders, obstructs, or prevents any Commissioner or any person appointed by the Commissioners as aforesaid, from entering, or inspecting, or measuring any such holding, shall be liable to a fine not exceeding two hundred rupees.

A sentence by a court inflicting a daily fine until such time as an accused person shall desist from committing a continuous offence, is bad in law.—*In re Sujar Dutt*, 1 B. L. R., O. Cr., 41; 25 W. R.; 6 Cr. R., 21 W. R., Cr. R., 31.

Annual value of holding how to be ascertained.

101. (92) The gross annual rent at which any holding may be reasonably expected to let, shall be deemed to be the annual value thereof, and such value shall accordingly be determined by the Commissioner, and entered in the valuation list:

Provided that, "except in the Darjeeling Municipality," if there be on a holding any building or buildings, the actual cost of erection of which can be ascertained or estimated, the annual value of such holding shall in no case be deemed to exceed an amount which would be equal to seven and a half per centum on such cost, in addition to a reasonable ground-rent for the land comprised in the holding:

Provided also, that where the actual cost so ascertained shall exceed one lakh of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one lakh of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section one hundred and two:

Provided further, that, in estimating the annual value of a holding under this section, the value of any machinery that may be on such holding shall not be taken into consideration.

The first paragraph is unchanged. The remainder of the section is entirely new.

As regards the construction to be placed upon the first paragraph, Government has been advised that, in a town where there are both hired and unhired houses, "the annual value of unhired houses should be derived from a comparison of them with the hired houses in the vicinity, making such deductions from, or additions to, the rent of the latter as circumstances require."

"This is the construction which has been put on the 6 and 7 of William IV from which this section is taken."

"The law does not justify the Commissioners in going into calculations and determining what ought to be the rent from the capital expended on

the holding; nor, on the other hand, to take into consideration the contingency of all the houses being thrown into the market. In the one case the Commissioners would be levying a tax not according to the actual or presumed letting value, but on the capital; on the other, they would levy the rate on a hypothetical condition of things which had no existence in fact. What they should say in connection with each holding is: 'other things being as they are now, what do we, from a comparison of this unhired holding with such and such a hired holding, consider a reasonable rent?'" (L. R.)

In Nando Lal Bose v. *The Corporation for the Town of Calcutta*, I L. R., 11 Calc., 975, it was held that an assessment of rate upon a supposed annual rent calculated on the basis of the cost of the buildings and premises is illegal as being an arbitrary test which the law does not sanction. *Per* Garth, C. J.—That section 104 of the Calcutta Act providing what shall be deemed to be the annual value of property must be taken as explanatory of the other sections in which the term "annual value" is used. *Per* Wilson, J.—It seems doubtful as to whether such a provision is of the nature of an interpretation clause, or merely directory as containing instruction to the Commissioners how to proceed.

As regards the present section, there seems little room for doubt that the first clause, at all events, must be considered to furnish a general definition of annual value, though the remaining clauses would seem to be rather of a directory nature; the third and fourth are obviously so.

The main principles of the law of rating as stated in *Rosher on Rating* are as follows:—

(1) *Rating must be equal*, that is to say that the method of assessment must be such as to affect all occupiers (owners in respect of the rate on holdings) fairly and equally in proportion to the value of the p operty.

(2) *Property must be rated "rebus sic stantibus,"* that is to say, (*a*) it must be assessed at the value it possesses at the time the assessment is made; if it increases or diminishes in value from time to time, there will be a corresponding increase or diminution in the rate, for that must be always proportional to the then existing value, and the value of the property in the past or the future is immaterial. Moreover, (*b*) the hypothetical tenant must be assumed to use the property in the same way as the actual occupier, and to have the same facility for deriving profit from it, no more and no less. In *Staley* v. *Castleton* (33 L. J. M. C., 178; 5 B. & S., 505), Blackburn, J., said: "The Legislature intended that the rate should be made upon the rent which might be reasonably expected from a tenant who took the property from year to year *rebus sic stantibus*."

(3) *Property must be rated at its value "communibus annis."*—This principle is complementary to that of *rebus sic stantibus*.

Although by the principle of *rebus sic stantibus* property is to be rated at its present value, it must be added that its present value means, not the value shown by the balance sheet of the particular year, but the value which, under present circumstances, it would be worth to let *in an average year*, or taking one year with another. This is the principle of *communibus annis*.

(4) *Property must be rated in accordance with the principle of enhanced value.*"—Since the measure of the rateable value of a hereditament is the rent which it might reasonably be expected to fetch, and since that rent would be proportional to the benefits the tenant would derive from the occupation, it follows that any profits which the tenant would receive in virtue of the occupation must be taken into consideration in making the assessment.

It matters not that these profits are of such a nature as to be not rateable *per se*. If they are due to the occupation, they are to be taken into consideration in estimating the value of the occupation. The practical result of this is that trade profits are indirectly brought under contribution to the rates; *when*, that is, the occupation of something that is rateable *per se* is the meritorious cause of their existence *and so far as* their existence would influence the rent obtainable in the market for the occupation. Lord Denman, C. J., said in *R.* v. *The Grand Junction Ry. Co.*, 15 L. J. M. C, 94; 4 Q B., 18:—"If the ability to carry on a gainful trade on land adds to the value of the land, that value cannot be excluded on the ground that it is referable to the trade," and in *R.* v. *G. W. Ry. Co.*, 15 L. J. M. C., 80; 6 Q. B., 179, he says that although the profits of trade carried

on by the occupier of land upon it cannot be made directly the subject of the rate assessed in respect of such occupation, and the value of the occupation alone is the proper subject of rating, yet in that value is to be included whatever at the time forms part of it, whether permanently or not, and from whatever source derived, and, therefore, of course, not the less so although derived in any proportion from the fact of the trade being so carried on upon it. It must be borne in mind that trade profits, however directly arising out of the occupation, cannot be directly rated ; the rate must be upon something which is *per se* rateable, but in assessing anything that is so rateable, regard may be had to the fact that it is enhanced in value by being available for earning profits. For instance, a railway company is practically rated on profits, but it is solely in the capacity of an occupier of land it is rateable at all

Now, although a railway company is practically rated on its actual profits, the profits made by an ordinary tradesman, who could remove to another shop next door or in the next street and still make the same profits as before, do not affect the amount of his assessment. His profits are not due to the occupation of a particular hereditament, but the profits of a railway company are attached to the particular hereditament they occupy.

The principles of the English law of rating as applied to Municipal assessments in this country have been discussed at considerable length in *The Secretary of State* v. *Madras Municipality*, I. L. R., 10 Mad., 38 :—

"Under section 123 of the City of Madras Municipal Act, the gross annual rent at which a building might reasonably be expected to let from month to month or from year to year is for the purpose of assessment to house-tax under the Act, to be deemed the annual value of such building. The Lying-in Hospital at Madras, built and supported by Government, having been assessed by the President of the Municipality as on a rental of Rs. 1,000 a month, the Magistrates, on appeal, reduced the assessment, finding that Rs. 7,920 per annum would be a reasonable rent, having regard to the letting value of the buildings in the neighbourhood, but, at the request of the Municipality, referred the following questions to the High Court :

"Whether (as contended by Government) the property in question should be valued and assessed on the rent which, on the property being offered in the open market without reserve, a person desirous of securing it would have to pay ; or whether (as contended by the Municipality) it should be valued and assessed on the highest reserve rent which an owner of the property offering it in the open market would reasonably demand, and below which sum he would not be willing to let :

"*Held*, that the standard value was what the hypothetical tenant requiring the building for use as a hospital would be willing to pay rather than rent a less suitable building and adapt it to his requirements at his own expense, and that in this sense the contention of the Municipality was correct."

As the questions involved are of very great importance, the following extract from the judgment in the above case is here given :—

"The standard of value is certainly, as observed by the Magistrates, the value of the property to the owner, which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant on the terms laid down by the Legislature. Having regard to the course of decisions under the English Statute, there are several matters which ought to be kept in view in fixing the rateable value. The standard value is the rent which the building would be worth to a hypothetical tenant on the terms laid down by the statute. The terms on which any particular property is, in fact, let are, therefore, immaterial, and the tenancy from month to month or year to year is prescribed as the standard by which all buildings should be valued in order that their assessments might be equal. Again, the standard value is the value which the building possesses at the time the assessment is made ; hence, the value of the property in the past or future is immaterial. The present value is not the value of any exceptional year, but the value which, under present circumstances, the building would be worth to let in an average year or taking one year with another. Neither exceptional repairs nor exceptional profits made in a particular year are to be considered. In letting a building from year to year, the rent would ordinarily be regulated

by two matters, as observed by Blackburn, J., in *The Queen* v. *London and North-Western Railway Co.*, L. R. Q. B., 134, on the one hand by the benefit which the tenant could be likely to derive from the occupation, because he would not give more; on the other hand, by the nature of the property, such as local situation or the number of persons there are who could supply him with an equally eligible building and be willing to let it to him; for while he would not be willing to give more than he expects to gain by the occupation, he would not give even that if he could get a similiar building at a lower price. Further, in rating property, it must generally be assumed that the hypothetical tenant would be in the same position, and use the building in the same way as the party rated, for the object is to ascertain its intrinsic value to the owner in its present condition. In *The Queen* v. *The School Board for London*, 55 L. J., Q. B. D., 53, it was contended, *inter alia*, for the respondent before a Divisional Court of Queen's Bench, that the rent which the School Board might be supposed to be willing to give for the school premises if the Board were in the market anxious to rent premises suitable for use as a school, was a fair test of rateable value. On the other hand, it was urged for the appellant: 1st, that the School Board owning the premises should not be supposed to be in the market anxious to rent premises, but should be excluded from the number of hypothetical tenants who might be supposed to be willing to rent the school premises; and, 2ndly, that the only true indication of rateable value was the rent for which the premises could in their present condition be let to a hypothetical tenant from year to year, supposing they were not used for Board Schools but were applied to any other use or purpose for which they could be made available for a tenant. The respondent's contention was allowed, and the appellant's objections over-ruled. Cave, J., said: 'When you want to find what a hypothetical tenant will give, you must not take a man who does not want the premises for the purpose for which they were built, but wants to use them for some other purpose, unless you can first show that they cannot be let for the purpose for which they were built. If they cannot be let for the purpose for which they were built, then, no doubt, you may go and see what you can do with them for some other purpose, and the best subsidiary purpose you could put them to. But as long as they can be let for the purpose for which they were built, it seems to be idle to say well, if this man were not occupying them, they could not be let to anybody else.'

"The Court of Appeal confirmed the decision (the case is not yet reported). Lord Esher, M. R., observed: 'In this case there was no tenant, as the Board were owners and occupiers. All possible tenants must be looked at. In estimating the rent, no tenant was excluded, and the actual occupier might be included and the owner, if he was the occupier, as to whom it might be considered what rent he might be reasonably expected to pay. The School Board might be tenants, and therefore the rent they would be willing to pay might be considered.'

"Lord Justice Brown says: 'The test of rateable value was the rent for which the premises might reasonably be expected to let to a tenant. In estimating that, in the present case, the rent for which the premises might be reasonably expected to be let to the Board themselves may be considered, for how could the only body likely to require the premises be excluded from the estimate, that is, why should the only body likely to require or use the premises be excluded from the estimate of rent payable?'

"Having these principles in view, we are of opinion that the Lying-in-Hospital should not be valued at the rent which it would fetch if it were offered in the open market without reserve. Admittedly there is but one building in Madras specially eligible for use as a Lying-in-Hospital, and it is occupied by the owner. If the owner, the only person likely to require the premises, were excluded from the market, then the hypothetical tenant would take advantage of the absence of demand for it and pay no more than those who require it for use other than as a hospital would choose to pay. No prudent landlord, who is aware of the fact that only one person requires the building for use as a hospital, would offer it in the open market without reserve."

"Nor can any reserve rent which the landlord may arbitrarily demand, be taken to represent the standard value. If such demand is far in excess of the special convenience or benefit which the hypothetical tenant can expect to derive from the occupation, the tenant would prefer to rent less suitable buildings and adapt them to his requirements, though at some expense, or to forego the special convenience if it is not indispensable."

The proviso that the annual value shall in no case be deemed to exceed 7½ per cent. on the cost of erection merely lays down a maximum. The gross annual rent which the hypothetical tenant might be presumed to pay is the annual value. Should such gross annual rent exceed 7½ per cent. on the cost of construction, then the proviso in question limits the annual value. If the gross annual rent payable by the hypothetical tenant fall below 7½ per cent on the cost of construction, the proviso of course has no application. It obviously confers on the Commissioner no power of always estimating the annual value as high as 7½ per cent. on the cost of construction. The meaning of the section is that the annual value, for the purpose of rating, shall be either the rent payable by the hypothetical tenant, or 7½ per cent. on the cost of construction, *whichever is less.*

The Darjeeling Municipality has been excepted from the proviso in question on account of the heavy expenses of that Municipality, and of the fact that while rents are very high there, the cost of the construction is often low.

Determination of rate of tax on holdings.

102. (93) Subject to the provisions of section eighty-five the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which the rate shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year:

Provided that when this Act is first extended to any place, the first rate may be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting.

It follows that when the Act is first extended to any place no such rate can be levied during the quarter then current. Compare notes to sections 9 and 88.

Preparation of valuation and rating list.

*103. (94) As soon as possible after the percentage at which the rate is to be levied for the next year shall have been determined under the last preceding section, the Commissioners shall cause to be prepared a valuation and rating list, which shall contain the following particulars, and any others which the Commissioners may think proper to include:—

(*a*) name of the street or road in which the holding is situated;

(*b*) number of the holding on the register;

(*c*) description of the holding ;
(*d*) annual value of the holding ;
(*e*) name of owner ;
(*f*) amount of rate payable for the year ;
(*g*) amount of quarterly instalment ;
(*h*) if the holding is exempted from assessment, a note to that effect.

The rate upon holdings shall be payable in quarterly instalments by the owner of the holding.

It is obvious that the information required by clause (*a*) cannot always be forthcoming in Mofussil Municipalities, as the holding will often not be situated anywhere near a street or road. In such cases the law will be complied with if the remaining particulars are recorded.

Compare section 358, by which no assessment or rating shall be invalid for error or defect of form.

The tax being payable quarterly, it is obviously the duty of the Commissioners to take proper measures for having it paid quarterly, and they are not justified in collecting it half-yearly. Half-yearly collections in advance are illegal, as the rate-payers are only bound to pay quarterly in advance. The Commissioners are not bound by the Act to collect the tax from door to door, but there is nothing in it which prevents their doing so. (L. R.)

Power to assess upon a house consolidated tax for house and land on which it stands.

104. (95) If any house belongs to one owner, and the land on which it stands and any adjacent land which is usually occupied therewith, belongs to another, the Commissioners may value such house and land together, and may impose thereon one consolidated rate.

The total amount of the rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

If the owner of the house and the owner of the land do not agree in respect of the proportion of the rate so deducted by the owner of the house, the Commissioners shall, on the application of either party, make an award declaring the amount payable by each, and such award shall be final.

Tax due from non-resident owner may be recovered from occupier and deducted by him from his rent.

* 105. (96) If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the Municipality, or the place of abode of such owner be unknown, the same may be recovered from the occupier for the time being of such

holding, who may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him :

Provided that no arrear of rate, which has remained due from the owner of any holding for more than one year, shall be so recovered from the occupier thereof.

Power of Commissioners in cases of excessive hardship.

* 106. (97) Whenever from the circumstances of the case, the levy of the rate on any holding in the Municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same.

The 'excessive hardship' here referred to must be caused by actual indigence. The words cannot reasonably be held to apply to the case of any person who can, without difficulty, afford to pay the rate.

Application for reduction of assessment.

* 107. (98) If the value of any holding shall be diminished from any cause beyond the control of the owner thereof, the owner thereof may apply for reduction of the valuation of the same.

Power to revise valuation and assessment.

108. (99) The Commissioners may, at any time after the publication of the notice required by section one hundred and twelve, value and rate any holding which was, without authority, omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof ; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight, or fraud ; and may re-value and re-assess any holding the value of which has been increased by additions or alterations to any building thereon.

Any rate imposed or enhancement made under this section shall take effect from the beginning of the quarter next following that in which the rate shall be imposed or enhancement made.

The note to section 93 may be taken into consideration with reference to this section. The only case in which the Commissioners can enhance an insufficient valuation during the time of its currency is where there has been mistake, oversight, or fraud. Where the value of a holding has been increased by building on it, they may at any time re-value and re-assess it. Where a holding has been omitted from the list without authority, they may at any time value and assess it.