

172.6.75

THE

BENGAL MUNICIPAL ACT;

BEING

B. C. ACT III OF 1884,

WITH

NOTES.

BY

F. R. STANLEY COLLIER, C.S.

Calcutta:

THACKER, SPINK AND CO.,

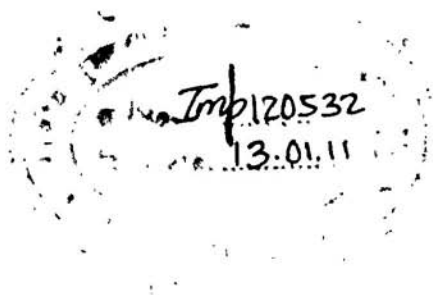
LAW PUBLISHERS.

1884.



CALCUTTA

PRINTED BY THACKER, SPINK AND CO.



172 2 75

PREFACE.

THESE notes are chiefly based on the decisions of the Courts ; the Municipal correspondence in the Bengal Secretariat ; the proceedings of the Bengal Council ; and on various English treatises dealing with the Law of Corporations.

The reported cases are taken from the Bengal and Indian Law Reports and Sutherland's Weekly Reporter. Some unreported cases have also been obtained from private sources.

By the kind permission of the Bengal Government, I have been allowed free access to the Municipal correspondence in the Secretariat, and have been furnished with copies of the opinions of the Legal Advisers of Government upon all the disputed points of Municipal Law which have arisen from time to time. These opinions, though of course not authorities in a legal sense, will be found to afford very valuable guidance to Municipal Committees and their Executive Officers. Each section of the present Act shews in brackets the corresponding section of the former Act ; such sections as are unchanged being marked. As a rule, any changes which have been made are pointed out in the notes.

PREFACE.

The rules for elections issued by Government under section 15, and the notification under section 13 fixing the number of Commissioners for all the Municipalities in the Province, have been appended to the Act for convenient reference.

The Index will, I trust, be found to be tolerably complete. In preparing it I have made some use of an index to Act V of 1876, compiled by Mr. Donnithorne, lately Secretary of the Howrah Municipality. I have also to thank Mr. Donnithorne for kindly furnishing me with some interesting notes of Municipal cases.

F. R. S. C.

SERAMPORE,

November 10th, 1884.



CONTENTS.

ABBREVIATIONS USED IN THIS WORK	Page vi
COMPARATIVE STATEMENT OF THE TWO ACTS	vii
TABLE OF CASES CITED	xi

THE BENGAL MUNICIPAL ACT.

CONTENTS	xiii
PREAMBLE	1
PRELIMINARY	<i>ib.</i>
PART I.—OF THE CREATION OF MUNICIPALITIES	6
PART II.—OF THE MUNICIPAL AUTHORITIES	10
Of the Constitution of the Municipality	<i>ib.</i>
Of the Property of the Commissioners	20
Of the mode of transacting the business of the Municipality	23
Of Ward Committees	27
Liability of Commissioners and Ward Committees	29
Control	31
PART III.—OF THE MUNICIPAL FUND	35
PART IV.—OF MUNICIPAL TAXATION	43
Alternative and additional taxes	<i>ib.</i>
Of the Tax on Persons	45
Of the Rate on the value of Holdings	50
Of general provisions relating to the Tax on Persons and the Rate on Holdings, and to the recovery of the same	58
Of the Tax on Carriages, Horses, and other Animals	65
Of the Registration of Carts	69
Of Tolls on Ferries	72
Of Tolls on Bridges and Roads	75
Of general provisions relating to Tolls on Ferries and Roads	78
PART V.—MUNICIPAL REGULATIONS WHICH SHALL BE GENERALLY IN FORCE IN ALL MUNICIPALITIES	81
General	<i>ib.</i>
Of Sewage, Offensive matter, Rubbish, Privies, & Drains	86
Of Bathing and Washing Places and Tanks	90
Of Obstructions and Encroachments on Roads	91
Of General Conservancy and Improvement	96
Penalties	99

	Page
PART VI.—OF SPECIAL REGULATIONS	101
Of the extension of this Part to Municipalities	<i>ib.</i>
Of Privies, Drains, and Excavations	102
Of Obstructions and Encroachments on Roads	105
Of Building Regulations	107
Of Sanitary measures with regard to blocks of huts	111
Of the Regulation of the Sale of Food, Drink, and Drugs	113
Of Burial and Burning Grounds	116
Of certain Offensive and Dangerous Trades or Occupations	116
Penalties	122
PART VII.—OF WATER-SUPPLY	127
PART VIII.—OF LIGHTING WITH GAS	137
PART IX.—OF THE CONSTRUCTION AND CLEANSING OF LATRINES	142
PART X.—REGULATION OF MARKETS...	147
PART XI.—OF THE REGISTRATION OF BIRTHS AND DEATHS	151
PART XII.—MISCELLANEOUS	152

APPENDIX.

NOTIFICATION FIXING NUMBER OF COMMISSIONERS FOR EACH MUNICIPALITY.	176
RULES FOR ELECTION	178
INDEX.	183

EXPLANATION OF ABBREVIATIONS USED IN THIS WORK.

P. C.	. . . . .	Proceedings of Council.
Rep. S. C.	. . . . .	Report of Select Committee.
P. Rep. S. C.	. . . . .	Preliminary Report of Select Committee.
L. R.	. . . . .	Opinion of Legal Remembrancer.
Bl. Com.	. . . . .	Blackstone's Commentaries.
Steph. Com.	. . . . .	Stephen's Commentaries.
B. L. R.	. . . . .	Bengal Law Reports.
I. L. R., Cal., Bom., Mad, }		Indian Law Reports, Calcutta, Madras, Bom-
All.	. . . . .	bay, Allahabad.
W. R.	. . . . .	Weekly Reporter.
Q. B. R.	. . . . .	Queen's Bench Reports.

COMPARATIVE STATEMENT OF THE TWO ACTS.

Section of Act V of 1874.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.
2	2	32	30	51	51	70	79
4	4	33	31	52	52	71	80
5	5	34	32	53	53	72	81
6	6	35	33	54	54	73	82
7	7	36	34	55	55	74	68
8	8	37	35	56	56	75	83
10	9	38	36	57	57	76	84
11	10	39	37	58	58	77	85
13	11	40	38	59	67	78	86
14	12	41	39	60	68	79	87
15	13	42	40	61	69	80	88
16	15	43	41	62	70	81	89
20	18	44	42	63	71	82	90
21	19	45	43	64	72	83	91
22	20	46	44	65	73	84	92
23	21	47	45	66	74	85	93
28	22	48	46	67	76	86	94
30	25	49	49	68	77	87	95
31	29	50	50	69	78	88	96

Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.
89	97	108	117	127	136	146	155
90	98	109	118	128	137	147	156
91	99	110	119	129	138	148	157
92	101	111	120	130	139	149	158
93	102	112	121	131	140	150	159
94	103	113	122	132	141	151	160
95	104	114	123	133	142	152	161
96	105	115	124	134	143	153	162
97	106	116	125	135	144	154	163
98	107	117	126	136	145	155	164
99	108	118	127	137	146	156	165
100	109	119	128	138	147	157	166
101	110	120	129	139	148	158	167
102	111	121	130	140	149	159	168
103	112	122	131	141	150	160	169
104	113	123	132	142	151	161	170
105	114	124	133	143	152	162	171
106	115	125	134	144	153	163	172
107	116	126	135	145	154	177	173

COMPARATIVE STATEMENT OF THE TWO ACTS.

Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.
178	174	201	193	218	204	236	270 cl. (1)
179	175	202	194	218	218	236	216
180	176	202	217 cl. (2)	220	205	237	270 cl. (2)
181	177	203	217 cl. (3)	221	206	238	225
182	178	204	195	222	208	239	266
183	179	204	219	222	218	240	226
184	180	206	196	224	209	241	272 cl. (1)
185	181	207	197	224	219	242	227
186	182	208	198	226	210	243	228
188	183	209	199	226	219	244	229
189	184	210	217 cl. (4)	228	211	245	272 cl. (2)
190	185	210	217 cl. (4)	229	212	246	230
193	186	211	200	230	213	247	231
194	187	211	219	231	214	248	270 cl. (3)
195	188	213	201	232	215	249	232
196	189	214	217 cl. (5)	233	220	250	270 cl. (4)
198	217 cl. (1)	215	202	234	221	251	233
199	190	215	218	234	222	253	234
200	191	217	203	235	223	254	235
		217	217 cl. (3)	235	224	255	273 cl. (1)

COMPARATIVE STATEMENT OF THE TWO ACTS.

Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.	Section of Act V of 1876.	Corresponding Section of present Act.
256	236	279	255	296	317	316	352
257	239	280	256	297	348	317	353
258	240	281	257	298	349	365	354
259	241	282	274	300	335	366	355
260	240	283	259	302	336	367	356
261	243	284	260	303	337	368	357
262	244	285	261	304	338	369	358
263	267	286	273 cl. (2)	305	339	370	359
264	245	287	262	306	340	371	360
265	246	288	277	307	340	372	361
266	247	289	263	308	341	373	362
267	248	290	273 cl. (2)	309	342	374	363
271	249	291	273 cl. (3)	310	343	375	364
272	268	292	265	311	344	376	365
273	250	293	273 Cl. (5)	312	345	377	366
274	251	294	278	313	350	378	367
278	254	295	346	315			

TABLE OF CASES QUOTED.

	Page
Abhayanath Bose v. The Chairman of the Municipal Committee of Krishnaghur, 92 C. R., 7 W. R.	162
Baroda Pershad Mustafi v. Gora Chand Mustafi, 3 B. L. R., A. C., 295; 160 C. R., 12 W. R.	166
Browne v. Umesh Chunder Roy, 213 C. R., 7 W. R.	89
Chairman of the Howrah Municipality v. Montanee Bewah, 70 Cr. R., 24 W. R.	107
Chunder Sekur Bandopadya v. Obhoy Charan Bagchi, I. L. R., 6 Cal., 8	163
Corporation of Calcutta v. Anderson, I. L. R., 10 Cal., 445	106
Dino Manjee, In the matter of, unreported case	120
Dwarkanath Hazrah, In the matter of the petition of, 70 Cr. R., 16 W. R.	100
Edwards v. The Midland Railway Company, 6 Q. B. D. Rep., 287	19
Empress on the Prosecution of Jadunath Ghose v. Brojonath Dey, I. L. R., 2 Cal., 425	92
— v. The Municipal Corporation of Calcutta, I. L. R., 3 Cal., 758	19
Fazal Hak v. Maha Chand and another, I. L. R., 1 All., 557	22
Gobind Lal Seal and others v. The Howrah Municipality, unreported case	111
Gopee Kishen Gosain v. Mr. W. H. Ryland and others, 279 C. R., 9 W. R.	163
Joharmal v. The Municipality of Ahmednagar, I. L. R., 6 Bom., 580	163
Jogesh Chunder Dutt, In the matter of the petition of, 285 C. R., 16 W. R.	84
Joshi Kalidas v. The Dakor Town Municipality, I. L. R., 7 Bom., 399	163
Kharak Chand Pal v. Tarack Chunder Gupta, I. L. R., 10 Cal., 1030	158
Love, W. N., In re, 9 B. L. R., App., 35.	75
Manessar Dass v. The Collector and Municipal Commissioners of Chuprah, I. L. R., 1 Cal., 409	59
Manni Kasanudhan v. Crooke, I. L. R., 2 All., 296	162
Mattu Miah v. Nand Rani, 8 B. L. R., 517	62
Mayandi v. McQuhae, I. L. R., 2 Mad., 124	162
Municipal Commissioners of the Suburbs of Calcutta v. Zamir Sheikh and others, 4 Cr. R., 16 W. R.	120
— v. Mohammad Ali, 7 B. L. R., 499; 6 Cr. R., 16 W. R.	120
Municipal Committee of Dacca v. Someer, I. L. R., 9 Cal., 38	93
Price v. Khilat Chandra Ghose, 5 B. L. R., App., 50	162
Purno Chunder Roy v. Balfour, 535 C. R., 9 W. R.	162
Queen v. Brojo Lal Mitter, 45 Cr. R., 8 W. R.	100
— v. Nachimattu and others, I. L. R., 7 Mad., 18	63
— v. Tarini Charan Bose, 31 Cr. R., 21 W. R.	75

	Page
<i>Regina v. The Birmingham and Gloucester Railway Company</i> , 3 Q. B. Rep., 223 ...	19
— <i>v. Scott</i> , 3 Q. B. Rep., 547 ...	19
— <i>v. The Great North of England Railway Company</i> , 9 Q. B. Rep., 315 ...	19
<i>Ranchhod Varajbhai v. The Municipality of Dakor</i> , I. L. R., 8 Bom., 421 ...	163
<i>Sagur Dutt, In re</i> , 1 B. L. R., O. Cr., 41 ...	75
<i>Salku Valad Kadir Sausaree v. Ibrahim Aga Valad Mirza Aga</i> , I. L. R., 2 Bom., 457 ...	166
<i>Soonder Ball v. Dr. N. B. Baillie and another</i> , 287 C. R., 24 W. R. ...	45
<i>Sorabjee Nassarvanji v. The Justices of Peace of Bombay</i> , 12 Bom. H. C. Rep., 250 ...	163
<i>Sreeram Chunder Haldar, In the matter of</i> , 65 Cr. R., 20 W. R. ...	119
<i>Tara Chand Matwar or Tara Chand Kowr v. The Crown</i> , 2nd June 1882, unreported case ...	107

CONTENTS OF ACT III (B.C.) OF 1884.

THE BENGAL MUNICIPAL ACT, 1884,

1. PRELIMINARY.—From section 1 to section 6, which contains 19 clauses (definition of words and expressions used in the Act).
2. PART I.—Of the creation of Municipalities, from section 7 to section 12.
3. PART II.—Of the Municipal Authorities—
 - (a.) Of the constitution of the Municipality, from section 13 to section 29.
 - (b.) Of the property of the Commissioners, from section 30 to section 37.
 - (c.) Of the mode of transacting the business of the Municipality, from section 38 to section 49.
 - (d.) Of Ward Committees, from section 50 to section 55.
 - (e.) Liability of Commissioners and Ward Committees, from section 56 to section 58.
 - (f.) Control, from section 59 to section 66.
4. PART III.—Of the Municipal Fund, from section 67 to section 84.
5. PART IV.—Of Municipal Taxation—
 - (a.) Alternative Tax upon persons or holdings, section 85.
 - (b.) Additional Taxes, section 86.
 - (c.) Of the Tax on Persons, from section 87 to section 95.
 - (d.) Of the Rate on the value of Holdings, from section 96 to section 111.
 - (e.) Of general provisions relating to the tax on persons and the rate on holdings, and to the recovery of the same, from section 112 to section 130.
 - (f.) Of the Tax on Carriages, Horses, and other animals, from section 131 to section 141.
 - (g.) Of the Registration of Carts, from section 142 to section 147.
 - (h.) Of Tolls on Ferries, from section 148 to section 156.
 - (i.) Of Tolls on Bridges and Roads, from section 157 to section 163.
 - (j.) Of general provisions relating to Tolls on Ferries and Roads, from section 164 to section 172.

xiv CONTENTS OF THE BENGAL MUNICIPAL ACT.

6. PART V.—Municipal Regulations which shall be generally in force in all Municipalities—
- (a.) General, from section 173 to section 185.
 - (b.) Of Sewage. Offensive matter. Rubbish, Privies, and Drains, from section 186 to section 197.
 - (c.) Of Bathing and Washing Places and Tanks, from sections 198, 199, and 200.
 - (d.) Of Obstructions and Encroachments on Roads, from section 201 to section 208.
 - (e.) Of General Conservancy and Improvement, from section 209 to section 215.
 - (f.) Penalties, section 216 to section 219.
7. PART VI.—Of special Regulations—
- (a.) Procedure to be followed in extending the provisions of this Part, section 220 to 223.
 - (b.) Of Privies, Drains, and Excavations, from section 224 to section 232.
 - (c.) Of Obstructions and Encroachments on Roads, from section 233 to section 235.
 - (d.) Of Building Regulations, from section 236 to section 244.
 - (e.) Of Sanitary measures with regard to blocks of huts, from section 245 to section 248.
 - (f.) Of the Regulation of the sale of Food, Drink, and Drugs, from section 249 to section 253.
 - (g.) Of Burial and Burning Grounds, from section 254 to section 260.
 - (h.) Of certain Offensive and Dangerous Trades or Occupations, from section 261 to section 265.
 - (i.) Penalties, from section 266 to section 278.
8. PART VII.—Of Water-Supply, from section 279 to section 307.
9. PART VIII.—Of Lighting with Gas, from section 308 to section 319.
10. PART IX.—Of the Construction and Cleansing of Latrines, from section 320 to section 334.
11. PART X.—Regulation of Markets, from section 335 to section 345.
12. PART XI.—Of the Registration of Births and Deaths, from section 346 to section 349.
13. PART XII.—Miscellaneous, from section 350 to section 366.
14. FIRST SCHEDULE.—*See* sections 8 and 17. Contains the names of Municipalities in which the Commissioners shall be appointed by the Local Government.
15. SECOND SCHEDULE.—*See* sections 8 and 23. Contains the names of Municipalities in which the Chairman shall be appointed by the Local Government.
16. THIRD SCHEDULE.—Section 112. Form A contains the form of notice to be published of the preparation of the list of assessment on persons.
- Form B, section 112, contains the form of notice to be published of the preparation of the valuation and rating list of holdings.

17. **FOURTH SCHEDULE.**—Form A contains the form of notice of demand under section 120.
 Form B contains the table of fees payable upon distraints under section 121.
 Form C contains the form of distress warrant under section 122.
 Form D contains the form of inventory and notice under section 122.
 Form E contains the form of register of distraints of property and sale held on account of arrears.
18. **FIFTH SCHEDULE.**—Contains the table of rates of tax on carriages and animals under sections 86 and 131.
19. **SIXTH SCHEDULE.**—Under sections 2 and 4. Contains the list of the Acts of the Governor-General's Legislative Council and the Lieutenant-Governor's Legislative Council which have been repealed.

NOTE.

The Act was passed in the Council on the 29th March 1884, received the assent of the Governor-General on the 15th April, was published in the *Calcutta Gazette* on the 7th May, and came into force by order of the Lieutenant-Governor on the 1st August.



THE
BENGAL MUNICIPAL ACT,
BEING
B. C. ACT III OF 1884.

[NOTE.—The numbers in brackets denote the corresponding sections of Act V of 1876. The sections marked with an asterisk have been reproduced *verbatim*.]

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

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

PRELIMINARY.

1. This Act may be called the “Bengal Municipal Act,
Short title and com- 1884:”
mencement.

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

But any notification, order or rule, and any appointment
to an office, may be made, or election held, under this Act
at any time after it shall have received the assent of the
Governor-General, but shall not take effect until the Act
comes into force.

Preliminary.

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

Enactments repealed.

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

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

And all references to any such enactment shall (so far as may be practicable) be deemed to be made to this Act.

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

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

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

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

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

It will be observed that this section does away with Unions and Stations, by omitting all mention of them. It also omits the distinction

drawn between first class and second class Municipalities by the corresponding section of the former Act. The subject is referred to as follows in the "Statement of Objects and Reasons :—"

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

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

4. (4) All property, moveable and immoveable, and all interest of any kind whatsoever, derived under any of the enactments specified in the sixth Schedule, or otherwise, and vested in, or held in trust for, the late Commissioners under the said Bengal Municipal Act, 1876, shall become vested in the Commissioners and their successors; and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act.

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

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

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

Definitions.

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

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

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

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

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

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

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

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

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

(5) "Immoveable property" and "land" include (besides land) benefits arising out of land, houses, things attached to the
"Immoveable 'pro-
perty" and "land."

earth, or permanently fastened to anything attached to the earth.

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

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

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

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

The term is unknown to English law. The corresponding term in English law is the word "borough," which is defined in section 7 of the Municipal Corporation Act, 1882, to mean a city or town to which that Act applies. A "Municipal Corporation" is defined in the same section as "the body corporate constituted by the incorporation of the inhabitants of a borough." Under the present Act the body corporate is constituted by the incorporation of the Commissioners, and does not include the inhabitants of the Municipality. See section 29.

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

"Owner." (11) "Owner" includes—

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

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

(c) an agent for any such person;

(d) a trustee for any such person.

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

hands as such manager, agent or trustee to do such thing.

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

(13) "Road" means any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the Public

have a right of way.

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

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

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

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

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

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

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

PART I.

OF THE CREATION OF MUNICIPALITIES.

7. (7) In every place which, in accordance with the provisions of section three, becomes a Municipality under this Act, every person who has been appointed or elected to be a Commissioner for such place under the Bengal Municipal Act, 1876, and who is holding office as such Commissioner at the commencement

Existing Commissioners and existing rates and taxes temporarily continued.

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

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

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

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

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

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

9. (10) The Local Government may, on the recommendation of the Commissioners at a meeting, by a like notification, at any time vary the limits of any Municipality or subdivide any Municipality into two or more Municipalities, or withdraw any town, village or land from the operation of this Act, or alter the number of the Commissioners of such Municipality.

The provision for subdividing a Municipality is new, and is rendered necessary by section 88. Under that and the corresponding section of Act V. when the Act is first extended to any place, no tax can be raised until the following quarter. Now, in the absence of a distinct authority to subdivide a Municipality, the only legal method of forming it into two is to withdraw one part from the operation of the Act, and then to extend the Act to it as a new Municipality.

Consequently, in such a case, according to section 88, no tax can be levied during the first quarter after the Act is so extended. This difficulty actually occurred when the Bally Municipality was formed by the separation of that town from Howrah, and one quarter's taxation was lost. The provision for subdividing a Municipality, contained in the present section, is designed to meet such cases. Authority being given under the Act for such a subdivision, the provisions of the Act, and taxes already in force under it, would continue in force after the subdivision was carried out.

The section, however, does not provide for the joining of two Municipalities into one, and precisely the same difficulty would occur in such a case. The only legal method of carrying out such a union would be, by withdrawing under this section each Municipality from the operation of the Act, and then, by extending its provisions to them jointly under section 8. One quarter's taxes would, however, be lost, as the joint Municipality would be exactly on the same footing as a place to which the Act had been extended for the first time.

Government has been advised that the phrase "like notification," as here used, is to be understood as denoting merely the same form and method of notification as that referred to in the preceding section, but not to include the provisions of the second and third paragraphs of the same. The provision contained in the phrase "on the recommendation of the Commissioners at a meeting" sufficiently provides for discussion and publicity. (L. R.)

Hon. Mr. Reynolds.—"I ought also to call particular attention to the alteration made in section 9 of this Bill, as compared with section 10 of the present law. The present law permits the Government at any time to withdraw any place from the operation of the Act. The Bill declares

that this shall only be done on the application of the Commissioners themselves." (P. C., January 12th, 1884.)

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

11. (13) The Local Government may, from time to time, by notification in the *Calcutta Gazette*, declare that any place in which three-fourths of the adult male population are chiefly employed in pursuits other than agricultural shall be united with any town or village as aforesaid for the purposes of forming a Municipality:

Provided that no such place shall be so united unless some part of such place be situated within the distance of one mile from some part of such town or village.

Every such declaration shall specify the boundaries of every place so to be united.

Every town or village with which any such place is united, and all places so declared to be united with any such town or village, shall be deemed, for purposes of taxation, and for all other purposes, to form part of one and the same Municipality.

This section is practically unaltered. A Cantonment, having a distinct legal status, cannot be united with a Municipality under this section. (L. R.)

12. (14) Notwithstanding anything hereinbefore contained, whenever the Local Government shall declare any place or places as aforesaid to be united with any town or village for the purpose of forming one Municipality, the Local Government may similarly declare that any land by which any such place is separated from the town or village with which it is united, and any land by which any such place is separated from

any other such place which is united with the said town or village, shall be deemed to form part of the Municipality for all purposes other than those of taxation.

And such declaration shall specify the exterior boundaries of the entire Municipality as constituted under this and the last preceding section.

The only change which has been made in this section is in the substitution of the words "Local Government" for "Lieutenant-Governor."

PART II.

OF THE MUNICIPAL AUTHORITIES.

Of the Constitution of the Municipality.

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

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

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

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

Under this section the number of Commissioners must be determined by a notification of the Local Government, published immediately after the Act comes in force, and after such publication the number can only be altered on the recommendation of the Commissioners at a meeting, as provided in section 9. Under section 15 of the former Act, the Lieutenant-Governor could, within the limits laid down, vary the number at any time. The notification referred to in the first clause was published in the *Calcutta Gazette* of the 6th August 1884, and will be found in the Appendix.

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

The remaining one-third of such Commissioners shall
be appointed by the Local Government immediately after
the result of the election hereinbefore mentioned shall have
been notified to the Local Government, and such appoint-
ment shall be deemed to have been made on the date on
which such election takes place :

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

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

This is altogether new.

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

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

(1) has, during the year immediately preceding such
election, paid, in respect of any of the rates imposed by

this Act, an aggregate amount of not less than three rupees; or,

(2) being a member of a joint undivided family, one of the members of which has, during the year immediately preceding such election, paid in respect of any of the rates imposed by this Act an aggregate amount of not less than three rupees, is a graduate or licentiate of any University, or holds a certificate as a pleader or a mockhtear, or holds any office or employment carrying a salary of not less than fifty rupees per mensem,

shall be entitled to vote at the election of Commissioners of such Municipality.

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

The rules laid down by Government under this section will be found in the Appendix.

By comparing this with the preceding section, it becomes obvious that an elected Commissioner must be a resident of the Municipality. For the electors must be residents (section 11), and the elected Commissioners must be qualified to vote.

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

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

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

The term "rates" is not defined anywhere in the Act, and questions will very probably arise as to its meaning in this section. It is defined in Webster's Dictionary to be "a tax or sum assessed by authority of property, for public use, according to its income or value; as parish

rates; town rates; highway rates." The following extracts from the Proceedings of the Council (March 8th, 1884) have reference to the point:—

Hon. Mr. Beverley.—"It had been assumed by the Hon'ble Mover of the amendment (and a good deal of his argument was based on the assumption) that fees for house-service, levied under Part IX of the Bill, would be taken into account as rates under section 15. It seemed to Mr. Beverley that this was open to question; and if it was the intention of the Hon'ble Member in charge of the Bill that such fees should be taken into consideration in estimating the property qualification, Mr. Beverley would suggest the expediency of amending the working of the section to that effect."

Hon. Mr. Reynolds.—"In answer to the Hon'ble Member on his right (Mr. Beverley) he said he certainly understood that rates included the payment of fees."

There can be no doubt that fees under Part IX should be included in the rates referred to in this section, as although termed fees in the Act, they are really rates on the annual value of holdings.

The term rates in this section must, therefore, be held to include:

- (1) The tax upon persons occupying holdings levied under section 85, clause (a).
- (2) The rate on the annual value of all holdings levied under section 85, clause (b).
- (3) The water-rate on the annual value of holdings levied under Part VII.
- (4) The lighting-rate on the annual value of all holdings levied under Part VIII.
- (5) The fees for house-service levied under Part IX.

The opinion of the Hon'ble Mr. Reynolds above quoted is to the effect that rates included the payment of fees. It seems probable, however, that the Hon'ble Member had only the particular class of fees under discussion (*i.e.*, fees under Part IX) in view at the time of speaking. For the term rates is obviously inapplicable to fees for the registration of carts under section 143, to fees for permission to enclose or otherwise deal with roads under section 234, to fees for licenses under section 261 and to other sections where the term is used. None of these fees can be held to be rates, as they are not rated or calculated on the value of any property.

For the same reason it would appear that the tax levied upon carriages, horses, and other animals, under section 131, cannot be regarded as a rate; and, therefore, cannot be included in the rates referred to in this section. For it is not a tax assessed upon property according to its income or value, but a fixed tax levied without reference to the value of the property assessed. At the same time, however, the term rates in the present section is obviously not used in a very strict sense, as otherwise it would not include the tax upon persons levied under section 85, clause (a). Such a tax is not, strictly speaking, a rate, as it is levied according to the circumstances of the person taxed, as well as with reference to his property within the Municipality.

The tax upon persons levied under section 85, clause (a), must obviously be intended to be included in the term rates for the purpose of this section. For, in many Municipalities, it is the only tax in force, and if it is not so included, none of the inhabitants would be qualified to vote, whatever the voting qualification might be fixed at. Although therefore it is not, correctly speaking, a rate, it must be taken as one for the purposes of the present section.

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

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

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

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

These two sections are entirely new. It will be observed that *ex-officio* Commissioners are abolished by sections 14 and 17.

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

18. (20) The Local Government may, from time to time, accept the resignation of any Commissioner appointed or elected under this Act.

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

The words "if it thinks fit" and "at a meeting" are new, the remainder of the section being unchanged. The term "disgraceful conduct"

has been often objected to as being too vague. It is difficult to see, however, how any more precise term could be used. The following extract from the Proceedings of the Council, when Act V was under consideration, bears upon the point:—

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

Commissioner who neglects to attend meetings, or is convicted of non-bailable offence, to cease to be Commissioner.

and any Commissioner who shall have been convicted of a non-bailable offence, or shall have been declared insolvent by a competent Court, shall cease to be a Commissioner.

The words "at a meeting" are new.

The second clause formerly stood "shall have been sentenced to imprisonment."

The provision as to insolvents is new.

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

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

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

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

22. (28) Any person who has resigned the office of Commissioner under section eighteen, or who has ceased to be a Commissioner in consequence of his failure to attend meetings, or in consequence of his insolvency, as provided in section twenty, may be at any time re-appointed or re-elected a Commissioner; but no person removed by the Local Government from his office under section nineteen, or who has ceased to be a Commissioner in consequence of

being convicted of a non-bailable offence, may be elected or re-elected a Commissioner without the sanction of the Local Government.

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

From some of the opinions submitted on the draft Bill, this does not seem to have been generally understood. It would have been more satisfactory if the Act had contained a distinct provision on the subject. The N. W. P. and Oudh Municipalities Act and the English Municipal Act both contain distinct provisions on the point. The corresponding section of the former Act (Act V of 1876) also provided for the re-election or re-appointment of retired Commissioners. The lost Bill of 1872 contained a similar provision.

23. The Local Government shall appoint the Chairman of every Municipality mentioned in the second Schedule of this Act.

Every Municipality, the name of which is not included in the said Schedule, shall, at a meeting, elect one of its Commissioners to be Chairman; or may, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman.

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

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

This section is new.

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

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

Every Chairman, whether appointed or elected, shall hold office for three years from the date of his appointment

or election, and shall be eligible for reappointment or re-election.

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

This section is new.

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

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

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

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

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

26. The term of three years mentioned in sections twenty-one, twenty-four, and twenty-five shall be held to include any period which may elapse between the expiration of the said three years and the date of the next subsequent appointment or election, not being an appointment or election under the next succeeding section.

27. If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office, the vacancy caused by his resignation or removal or death shall be filled by the appointment or re-appointment of a Commissioner, Chairman or Vice-Chairman for unexpired term of office.

election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office.

These two sections are entirely new.

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

Under section 30 of Act V, a salaried Vice-Chairman might be elected. The sanction of Government would be necessary in the case of an official Chairman or Vice-Chairman.

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

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

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

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

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

"In the name of their Chairman," etc.—"When a corporation is erected, a name is always given to it; and, supposing none to be given, will, attach to it by implication, and by that name alone it must sue and be sued and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation in other respects. But some name is the very being of its constitution, and

though it is the will of the Sovereign that erects the corporation, yet the name is the knot of its combination, without which it cannot perform its corporate functions." (1 *Steph. Com.* 11.)

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

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

A corporation, "as the general rule, can be guilty of no crime in its corporate capacity. Yet it is liable in certain cases to an indictment, as where it allows a bridge the repair of which belongs to it by law to fall into decay. And it is capable of suing or being sued for breach of contract, and for many other kinds of civil injury, as for example a libel." (3 *Steph. Com.* 13.) "It must always appear in Court by attorney, for it cannot appear in person, being, as Sir E. Coke remarks, invisible and existing only in intentment and consideration of law." (*Ibid.*)

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

An action for malicious prosecution will lie against a corporation. *Edwards v. The Midland Railway Company*, 6 Q. B. D. Rep. 287.

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

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

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

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

Of the Property of the Commissioners.

30. (32) All roads, bridges, tanks, ghats, wells, channels, and drains in any Municipality ^{Public roads, &c., vested in the Commissioners.} (not being private property, and not being maintained by Government or at the public expense), now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all erections, materials, implements, and other things provided therefor, shall vest in, and belong to, the Commissioners.

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

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

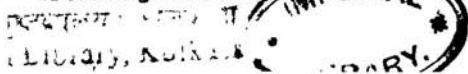
* This section differs from section 32 of Act V of 1876 in omitting embankments, wharves, and jetties from the first two clauses. The words "at a meeting," at the end of the third clause, are new.

The provisions of this section cannot be held to interfere with the rights of the public. (See note to section 201.)

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

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

This section also differs from section 33 of the former Act (V of 1876) in omitting the words "embankment, wharf, and "jetty."



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

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

The only change made by this section is in the use of the term "Local Government" for "Lieutenant-Governor."

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

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

The word "exchange" is new.

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

"While certain land formed part of a certain public thoroughfare, F had immediate access to such thoroughfare and the use of a certain drain. The Municipal Committee sold such land to M, and constructed

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

35. (37) The Local Government, on the application of the Commissioners at a meeting that Land may be taken up under Land Acquisition Act, 1870. any land be acquired for the purposes of this Act, may, on being satisfied that the Commissioners are in a position to pay for such land either at once or in such instalments as the Local Government may think proper, notify under the provisions of the Land Acquisition Act, 1870. or any similar Act for the time being in force for the acquisition of land for public purposes, that such land is required for a public purpose, and may cause such land to be acquired under the provisions of such Act; and on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

No alteration beyond the usual substitution of "Local Government" for "Lieutenant-Governor."

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

By section 56, India Act X of 1870 (the Land Acquisition Act), the charges incurred by the Collector in acquiring land at the cost of a Municipal Fund shall be defrayed by such Fund.

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

Every contract made on behalf of the Commissioners of a Municipality in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding

five hundred rupees, shall be sanctioned by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

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

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

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

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

Of the Mode of Transacting the Business of the Municipality.

38. (40) The Commissioners shall meet for the trans-
Commissioners to meet action of business (if there be any
ordinarily once a month. 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.

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

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."—*Price on Ultra Vires*, 840.

*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.

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

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

The words "unless otherwise provided by this Act" are new, but obviously necessary. In certain cases a two-thirds majority is necessary.

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, nor unless a quorum shall be present.

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 Chairman or Vice-Chairman, 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.

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

*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.

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).

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

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 words "or modify" in the first clause are new, as are also the words "previously or subsequently obtained" at the end of the second clause.

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.*

46. (48) The Commissioners at a meeting shall, from time to time, decide whether a paid subordinate officers. Secretary, Engineer or Health Officer 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.

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—

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

(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.

This section is entirely new. 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."

48. In the case of a Government official employed Pensions, &c., to by the Commissioners, the Commissioners may—
Government officials.

(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.

49. (49) The Commissioners may take such security as Security from officers they may think proper from any or servants. 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 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.

Of Ward Committees.

*50. (50) The Commissioners at a meeting may divide any Power to appoint Municipality into Wards, and there- Ward Committees. upon 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.)

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.

*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.

*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.)

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.

Certain sections applicable to transaction of business by Ward Committees.
 *55. (55) All questions regarding the removal, resignation, and appointment of Members of Ward Committees shall be settled by the Commissioners at a meeting.

Removal, resignation, and appointment of members.
 It does not appear that much use has been made of these sections in Municipalities generally.

Liability of Commissioners and Ward Committees.

*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.

Personal liability of Commissioner or Member of Ward Committee.
 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 287 C. R., 24 W. R., 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 the 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." (*Price on the Doctrine of Ultra Viris*, 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 concerned in placing in 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

57. (57) No Commissioner or Member of a Ward Com-

Disqualification of Commissioners having share or interest in contracts.

mittee shall have, directly or indirectly, by himself or through others, any share or interest in any contract made with the Commissioners; and if any Commissioner shall have such share or interest, he shall thereby become disqualified to continue in-office as Commissioner, and shall be liable to a fine not exceeding five hundred rupees.

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 *verbatim* from the English Municipal Corporation Act of 1882.

58. (58) No Commissioner or Member of a Ward Committee shall vote on any question which regards exclusively the assessment of himself, or the valuation of his property, or of the property for which he is manager or agent, or his liability to any tax.

Control.

This and the two following sections are entirely new. The remaining sections under this head are taken from other Acts. 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 to Municipalities the greatest possible freedom of action, so long as precautions are taken to ensure that the 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 a 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 " 59 All resolutions passed by the subject to approval of Commissioners under the following Government. sections, that is to say—

(a) under section twenty-three 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.

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.

61. The appointment by the Commissioners 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 person 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.

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 immovable 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 Sub-divisional Magistrates are appointed Visitors of the Corporation.

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.

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.

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.

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).

PART III.

OF THE MUNICIPAL FUND.

67. (59) All sums received by the Commissioners, and What shall constitute 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.

"All sums received by the Commissioners." This can hardly be taken literally, as it does not include Water-rates under Part VII, Lighting-rates under Part VIII. and House-service fees, or in other words Latrine-rates, under Part IX. For these rates can only be expended upon the special purposes for which they are levied, and are not, therefore, available for the general purposes specified in section 68 and section 69.

68. (60) The Commissioners shall Payment on account of interest on loans and establishment. 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, and towards the cost of establishments in any office of account or in any treasury:

Provided that the total amount which any Municipality may be required to pay under clause (c) shall not in any year exceed two per centum on the amount of the Municipal income for such year.

India Act XXIV of 1871 enacts in what manner loans may be raised by Municipal Committees and other bodies corporate.

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.

69. (61) After the said sums have been set apart under Purposes to which the last preceding section, the Com-Fund may be applied. missioners 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, 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 is to say—

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

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

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

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

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

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

(7) the promotion of vaccination ;

(8) the maintenance of a fire-brigade ;

(9) and generally to carrying out the purposes of this Act ;

Provided that no portion of the Municipal Fund shall be applied to the establishment and maintenance of any school, hospital or dispensary, or to the promotion of vaccination, unless such application be sanctioned by the consent of a majority of the Commissioners present at a meeting specially convened for considering such application, or held after special notice has been given that such application will be considered at such meeting.

The Commissioners may do all things, not being incon-

sistent with this Act, which may be necessary to carry out the purposes of this section.

The changes made by this section are as follows :—

Para. 1. Embankments, wharves, jetties, latrines, and urinals are omitted.

Para. 2, clause (1). The same words are omitted, and the word "tramways" added. The proviso after clause (4) is omitted.

The "maintenance of a fire-brigade" is new.

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.)

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 the last preceding section; or towards 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.

"Local Government" for "Lieutenant-Governor," otherwise the section is unchanged.

"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 taxpayer 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 taxpayer. *

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.

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.

"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.

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

Estimates to be published.

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.

"In the office of the Magistrate" has been omitted from para. 1.

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.

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.

This section is new.

76. (67) The Commissioner of the Division may either sanction the estimate as it stands, or sanction it after making such alterations therein as may seem to him fit, 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:

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

Under the former section, the power of altering the estimate rested with the Lieutenant-Governor.

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.

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 estimate.

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.

The provisions of the first clause of this section are 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 is, 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 2nd 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.

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