

345. (312) The Magistrate, on the application of the Commissioners, may order any land, in respect of which a conviction shall have been obtained under the last preceding section, to be closed as a market place, and thereupon may take order to prevent such land being so used; and every person who shall sell or expose for sale, meat, fish, butter, ghee, fruits, vegetables, or similar provisions, on any land which shall have been so closed, shall be liable, for every such offence, to a fine not exceeding ten rupees.

In the former section "may appoint persons or otherwise take order."  
For definition of "the Magistrate," see section 6, clause (8).

## PART XI.

This Part reproduces, with only some unimportant verbal alterations, Part VIII of the former Act.

### OF THE REGISTRATION OF BIRTHS AND DEATHS.

346. (295) The Commissioners of any Municipality, when required by the Local Government to do so, shall provide for the registration of births and deaths within the limits of the Municipality in accordance with the provisions of Bengal Act IV of 1873 (*for registering births and deaths*), or any other similar Act for the time being in force.

This section is practically unaltered.

347. (296) The Local Government may require the Commissioners of any Municipality to appoint and maintain, at any burning-ghat and burial-ground, a Sub-Registrar for the registration of all corpses brought to such burning-ghat or burial-ground for cremation or interment.

"Local Government" for "Lieutenant-Governor" is the only alteration.

\*348. (297) Whenever a Sub-Registrar shall have been appointed for any burning-ghat or burial-ground under the last preceding section, information of the particulars required by section eight

Information required by Bengal Act IV of 1873 to be given to such Sub-Registrar.

of Bengal Act IV of 1873 to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall be deemed to be information given to the Registrar of the District as required by the said section.

Section nine of Bengal Act IV of 1873 shall be applicable to all Sub-Registrars appointed under this Act.

Section 9 of Bengal Act IV of 1873 is as follows: "Any Registrar who refuses or neglects to register any birth or death occurring within his district which he is bound to register, within a reasonable time after he shall have been duly informed thereof, or demands or accepts any fee or reward or other gratification as a consideration for making such registry, shall be punishable, at the discretion of the Magistrate, with fine which may extend to fifty rupees for each such refusal or neglect."

The particulars required by section 8 of the Act are such as may be prescribed in the forms which the Lieutenant-Governor may, from time to time, sanction.

349. (298) Whenever a death shall occur in any hospital within the limits of any Municipality in respect of which the Local Government has directed that all deaths shall be registered under Bengal Act IV of 1873, it shall be the duty of the Medical Officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe; and in such case no other person shall be required to give information of such death to a Registrar under Bengal Act IV of 1873, or to a Sub-Registrar under this Act.

"Local Government" for "Lieutenant-Governor;" otherwise unaltered.

## PART XII.

### MISCELLANEOUS.

350. (313) The Commissioners of any Municipality may, from time to time, at a meeting which shall have been convened expressly for the purpose, and of which due notice shall have been given, frame such bye-laws as they deem fit, not being inconsistent with this Act, or with any other

Power to impose  
penalties on breach of  
bye-laws.

general or special law, for giving effect to the objects of this Act, and may by such bye-laws impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of fifty rupees for each offence, and in case of a continuing offence a further penalty not exceeding twenty rupees for each day after written notice of the offence from the Commissioners.

The changes made in this section are very important. Their object will be explained by the following quotation :

"On the subject of bye-laws, the provisions of the existing Act, which were reproduced (with an inconsiderable alteration) in the Bill as originally drafted, have been found in practice to be inconvenient. The section first specifies certain matters in respect of which bye-laws may be made, and then gives power to make bye-laws generally for the purposes of the Act. This has led (as Mr. Kilby has pointed out in his note) to some uncertainty as to whether this general power extends to cases which do not fall under any one of the specified classes ; and different legal advisers of Government have held different views upon this point. We think that a general power to make bye-laws should be given, and that it is needless to particularize in the Bill the subjects to which such bye-laws may apply."

"Bye-law," or perhaps more correctly "by-law," is derived from the Scandinavian "by," a town or borough, and therefore, originally meant a town or borough law. It afterwards came to mean a rule or law passed by any Corporation. Wharton defines bye-laws as "the rules, regulations, and constitutions of Corporations for the government of their members." Blackstone remarks, that it is one of the inherent rights of Corporations "to make by-laws or private statutes for the better government of the Corporation, which are binding on themselves, unless contrary to the law of the land, when they are void. This is also included by law in the very act of incorporation, for as natural reason is given to the natural body for the governing it, so by-laws or statutes are a sort of political reason to govern the body politic."—1 *Bl. Com.*, 476. "And this is held to be a right so much of course, that when a charter of incorporation gave to a select body of the members a power to make bye-laws as to certain specified matters, it was held that the body at large was nevertheless at liberty to legislate with regard to all matters not so specified"—4 *Steph. Com.*, 13.

Grant, in his treatise on the Law of Corporations, holds, that the inherent right of Corporations to make bye-laws is by no means of so general a nature. The following extracts bear upon the question :

"Where it is necessary for the accomplishment of the objects of their incorporation, a body politic has as an incident to it, the power of making bye-laws, and of enforcing them by penalties ; and such bye-laws in the case of Municipal Corporations, and of other corporations entrusted with local, popular, or territorial government, will bind both members and strangers, and not members of the Corporation only."

"A bye-law is a rule obligatory on a body of persons or over a particular district, not being at variance with the general laws of the realm, and being reasonable and adapted to the purposes of the Corporation ; and any rule or ordinance of a permanent character, which a corporation is empowered to make either by the common or statute law."

It appears to be clear from the extract from the preliminary report of the Select Committee already quoted, that the changes made in this section are intended to enlarge, and not to restrict, the powers of the Commissioners with regard to the making of bye-laws. It would seem, therefore, that they may now make all the classes of bye-laws specified in section 313 of the former Act, as well as any others, which may be necessary for carrying out the purposes of the present Act. The classes of bye-laws specified in section 313. —, omitting the general class at the end of the section —, were as follows:—

- (a) Regulating the conduct of business at their meetings.
- (b) Regulating the time and mode of collecting taxes.
- (c) Regulating the conduct of persons employed by them.
- (d) For the prevention of the construction or opening of cesspools.
- (e) Regulating the disposal of offensive matter, rubbish, and dead bodies of animals.
- (f) For the regulation and management of privies.
- (g) Regulating traffic in the streets.
- (h) Regulating or prohibiting the use of fire-balloons, fireworks, fire-arms, or other missiles (*sic*) in the vicinity of public roads.
- (i) For the registration of births and deaths.

Whatever other bye-laws the Commissioners may, or may not, pass, there seems no reason to doubt that they may make bye-laws of all the classes above specified.

The bye-laws which a Municipal Corporation is empowered to pass, may be divided into three classes:—

- (1.) Those which are binding on the members of the Corporation only, such as bye-laws regulating the conduct of business at their meetings.
- (2.) Those which are binding on the servants of the Corporation only, such as rules regulating their conduct.
- (3.) Those which are binding on the subjects of the Corporation, or the public generally, such as laws relating to nuisances.

Now, in the case of class (1), penalties are practically out of the question. As regards class (2), they are usually unnecessary, and are therefore seldom prescribed. Bye-laws of the third class would obviously be inoperative without penalties. Of the three classes, it appears therefore that only the third are laws in the sense in which that term is used in modern legislation. The other two classes, from a modern point of view, must be regarded as rules only. According to Austin positive laws are commands addressed by Sovereigns to their subjects, imposing a duty or obligation on those subjects, and threatening a sanction or penalty in the event of disobedience to the command; and according to this definition the two first classes enumerated are obviously not positive laws, or laws proper, at all. As Maine has, however, clearly shewn (*Early History of Institutions*, Lects. XII and XIII) the theories of Austin as to the essential attributes of laws are only applicable to modern and highly centralized States. The term bye-law dates back to a much less centralized stage of society, and to a much more primitive and less analytical conception of the nature of law.

Tried by the modern standard, it could not be said that under the common law of England, bye-laws were penal laws at all. No indictment lies at common law for the breach of a bye-law, and the only method of enforcing the penalty was by action of debt or *assumpsit*. The only exception was where a local custom allowed of the enforcement of the penalty by distress.

The following important provision contained in section 313 has been omitted from the present section: "Provided that no fee or toll, which is not expressly sanctioned by this Act, shall be levied under any such bye-law." At first sight the effect of this omission would appear to be to legalize the levy by bye-laws of tolls and fees not expressly sanctioned by this Act. It seems, however, very improbable that the omission has been made with any such intention. The cases in which tolls and fees may be levied are distinctly specified in the Act, and it appears highly improbable that there should have been an intention of giving, in addition, a general power of levying other fees. Supposing, however, that such fees and tolls could be imposed by bye-laws, it does not appear that they could be recovered under the Act. They would not be recoverable under section 360, as that section only provides for the recovery of fees due under this Act, and a distinction must obviously be drawn between fees due under this Act and fees due under bye-laws made under this Act.

It does not appear that the common law of England recognizes any general power on the part of Corporations to levy fees and tolls not specified in their charters. In the case of Trading Corporations, the rule is clear that no such power exists, and as regards Municipal Corporations, it seems probable that the same rule would be held to apply. Thus it has been held that "generally if a statute either incorporating a company *de novo*, or extending the powers, &c., of a Chartered Corporation, prescribes certain regulations with regard to its dealings with the public on certain specified occasions, and for certain purposes, it is very doubtful whether the Corporation can enforce against the public any further regulations with regard to these occasions and purposes, by making bye-laws cumulative to the regulations imposed by Parliament."—*Grant on Corporations*, p. 78.

"So a bye-law may levy a toll or tallage on the *members* of the Corporation towards the necessary expenses of the Corporation; though clearly a bye-law to levy money of the subjects generally would be bad." (*Ibid.*)

On the whole, there does not seem any probability that bye-laws imposing fees or tolls would be sanctioned by the Local Government. Whether, if sanctioned by the Local Government, they would be held by the Courts to be consistent with the Act, is a question which appears to admit of some doubt.

The following provision of section 313 has also been omitted "The Commissioners may, from time to time, at a meeting as aforesaid, repeal, alter, or add to any such bye-laws." This has probably been omitted as unnecessary: "Every Corporation too has a right, as of course, to alter, or repeal, the bye-laws, which itself has made."—3 *Steph. Com.*, 13.

351. (314) Bye-laws made under this Act shall not take effect unless and until they have been confirmed by the Local Government; nor shall such bye-laws be confirmed—

Confirmation of bye-laws. submitted to, and confirmed by, the Local Government; nor shall such bye-laws be confirmed— unless one month at least before the making of the application, notice of the intention to apply for confirmation has been given in one or more of the local newspapers circulated within the Municipality to which such bye-laws relate, or if there be no such newspapers, then in such

manner as the Commissioners may direct; and unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the Commissioners, and has been open during office hours thereat to the inspection of the inhabitants of the Municipality to which such bye-laws relate, without fee or reward.

The Commissioners shall, on the application of any inhabitant of the Municipality, furnish him with a copy of such proposed bye-laws, on payment of four annas for every hundred words contained in the copy.

A bye-law requiring confirmation by the Local Government shall not require confirmation, allowance or approval by any other authority.

The alterations made in this section provide for the more effective publication of bye-laws.

"We are also of opinion that better provision should be made for the publication of proposed bye-laws within the Municipality, previous to their being submitted to the confirming authority for sanction."—*P. Rep., S. C.*

The last clause cannot be taken to mean that the legality of the bye-laws shall not be called in question in any Court. For it follows from section 350, that if a bye-law is inconsistent with this Act, or with any other general or special law, it must be void *ab initio*, and the act of the Local Government in confirming it must be *ultra vires*. This is in accordance with the common law of England in which "the general rule is, that no bye-law will be held good in any Court of law or equity which is repugnant to, or inconsistent with, the laws of the land in any one instance."—*Grant on Corporations*, p. 17.

On the other hand, the Local Government is the sole judge as to whether the bye-law is a reasonable one or not, and this is, no doubt, what the section refers to. By the common law of England, however,— "A bye-law, if unreasonable, will be held bad, although it may have been duly passed and published and notified to the proper authorities, and not objected to by them."—*Grant on Corporations*, p. 81.

352. (316) The Commissioners may direct any prosecution for any public nuisance, and may direct prosecution for order proceedings to be taken for the public nuisance. recovery of any penalties under this Act, and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the Municipal Fund.

Practically unaltered. A complaint filed by a Municipal officer is exempted from stamp-duty — Act VII of 1870, section 19, clause (18).

## 353. (317) No prosecution for an offence under this Act

No prosecution for an offence under this Act to be instituted without consent of Commissioners.

or any bye-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within three months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within three months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman of the Commissioners :

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

This section is practically unaltered.

"Continuing offence." A sentence imposing a daily fine until such time as an accused person shall desist from an offence, is bad in law, as being an adjudication in respect of an offence not yet committed. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See also 9 B. L. R., App., 35.

## 354. (365) Every bye-law, order, notice, or other document directed to be published under

Publication of order.

this Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct.

And a public proclamation shall be made throughout such Municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

## 355. (366) Fines under this Act may be imposed by a

Levy of fines.

Magistrate on any person who is convicted of the offence to which the fine attaches, and may be levied under the provisions of the Code of Criminal Procedure, 1882.

Section 555 of the Criminal Procedure Code enacts that a Judge or Magistrate shall not, except with the permission of the Court to which an appeal lies, try or commit for trial any case in which he is a party, or personally interested, but provides that such Judge or Magistrate shall not be deemed to be a party or personally interested merely because he is a Municipal Commissioner.



Notwithstanding anything contained in section 555 of the Criminal Procedure Code, a conviction for an offence against any Municipal law or regulation, tried before a Bench of Magistrates which includes a salaried officer of the Municipality, is bad. I.L.R., 10 Cal., 194.

In a very recent case decided on the 22nd August 1884.—*In the matter of Kharak Chand Pal (Petitioner) v. Tarack Chunder Gupta, Municipal Overseer (Opposite Party)*, I. L. R., 10 Cal., 1030. Prinsep, J., ruled as follows:—"The petitioner has been convicted under section 188 of the Penal Code of having disobeyed an order of the Municipal Commissioners of Commillah under section 256, Bengal Act V of 1876, dated the 29th March 1883.

"On enquiry we have ascertained that the District Magistrate, who tried and convicted the petitioner, was present as Chairman of the Municipal Commissioners at the meeting of the 29th March 1883, when the order was passed, the disobedience of which forms the subject of the present case.

"Section 555 of the Code of Criminal Procedure provides, that no Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested." (No permission has been applied for in the present case.) The explanation to section 555 further declares, that 'a Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.'

"That explanation, however, does not, in our opinion, apply to any case in which a Magistrate may have been personally concerned as a Municipal Commissioner in the matter which forms the subject of trial before him. It is rather intended to prevent an objection being raised that from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some municipal matter was involved. It is a very different matter when in the present case we find that the Magistrate is practically one of the prosecutors and the judge."—*Conviction set aside.*

By section 4, clause (p) of the Criminal Procedure Code "offence" means any act or omission made punishable by any law for the time being in force. By clause (r) of the same section "bailable offence" means an offence shewn as bailable in the second schedule or which is made bailable by any other law for the time being in force. Under the schedule referred to, all "offences against other laws" (i.e., not under the Penal Code), which are punishable with fine only, or with imprisonment for less than three years, are bailable. It follows that all offences under the present Act, with the exception of that punishable under section 366, are bailable offences within the meaning of the Criminal Procedure Code; and that the provisions of that Code referring to such offences apply to them. By the same schedule they are, with the same exception, cases in which a summons shall ordinarily issue in the first instance.

By section 1, Act V of 1867 (B.C.), the word "Magistrate" includes all persons exercising all or any of the powers of a Magistrate.

Objections have been raised to this section to the effect that it is at variance with Government orders regarding Municipal Benches. The orders in question direct that at least two Honorary Magistrates must form a Bench for the trial of municipal cases. The present section enacts that a Magistrate may try such cases. Therefore, it has been alleged, the section and the orders are contradictory. The answer to the objection is, that a Bench of Magistrates is a Magistrate within the meaning of this section and of the Criminal Procedure Code, and that



Honorary Magistrates are not usually vested with jurisdiction to try cases singly. Were they vested by Government with the necessary local jurisdiction, they could of course do so.

"*Fines under this Act.*" There is an obvious distinction between fines under this Act, and under bye-laws made under this Act. This fact is recognized by section 353, which refers to a "prosecution for an offence under this Act or any bye-law made in pursuance thereof," thus obviously implying, that the former does not include the latter. The same distinction was observed in 5 and 6 Will. 4. c. 76, s. 91, which provided that all the provisions thereafter contained relative to offences *against the Act* shall be taken to apply to all offences committed *in breach of any bye-law* or regulation made by virtue of the Act. Act III of 1864 contained a practically similar provision, which was re-enacted in the Bill of 1872, but omitted from the Act of 1876.

The omission is probably accidental, but does not appear to be of much consequence, as the general provisions of the Code of Criminal Procedure appear to apply to offences against bye-laws and are to the same effect as the section under consideration. The breach of a bye-law apparently comes under the definition of an offence in section 4, clause (p), and the general provisions of the Code therefore would seem to apply to it.

It may be noted, however, that by the common law of England penalties under bye-laws are ordinarily only recoverable by action of debt or *assumpsit*, and that an indictment does not lie with regard to them.

\*356. (367) Every notice, bill, form, summons or notice of demand under this Act may be served.

served personally on, or presented to the person to whom the same is addressed :

or be left at his usual place of abode, with some adult male member or servant of his family ;

or if it cannot be so served, presented or delivered, may be put on some conspicuous part of his place of abode, or of the land, building, or other thing in respect of which the notice, bill, form, summons or notice of demand is intended to be served.

\*357. (368) When any notice is required to be given to the owner or to the occupier of any land, such notice, addressed to the owner or occupier, as the case may require, may be served on the occupier of such land, or otherwise in the manner in the last preceding section mentioned :

Provided that when the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, they shall, if such place of abode be within the limits of their authority, cause every notice required to be given to the owner of any land to be served on such owner, or left with some adult male member or servant of his family ;

and if the place of abode of the owner be not within such limits, they shall send every such notice by post in a registered cover addressed to his place of abode, and such service shall be deemed to be good service of the notice.

When the name of the owner or occupier is not known, it shall be sufficient to designate him as "the owner" or "the occupier" of the land in respect of which the notice is served.

\*358. (369) No assessment or rating of tax on property shall be invalid for error or defect of form, and it shall be enough in any assessment, valuation or rating for the purpose of making such tax, if the property so assessed or valued is so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof.

\*359. (370) Every person to whom a license has been granted under this Act shall, at all reasonable times, while such license shall remain in force, if thereunto required by the authorities which granted the license or by any person authorized by them in that behalf, produce such license to the said authorities or to the person so authorized.

Whoever fails to produce his license when required to produce the same by any person authorized under this section to demand the production thereof, shall be liable to a fine not exceeding one hundred rupees.

360. (371) All costs, expenses, fees, tolls, or other moneys due under this Act to the Commissioners of any Municipality, may be recovered in the manner provided in sections one hundred and twenty to one hundred and twenty nine, both inclusive.

That is to say, by the presentation in the first place of a bill, to be followed, if necessary, by a notice of demand in the form marked (A) in the Fourth Schedule, and finally by distress and sale of moveable property. Section 129 affords the alternative course of bringing a suit in a Civil Court.

*Due under this Act.* If, therefore, fees could be levied under bye-laws made under section 350, such fees would not be recoverable under this section. Fees due under bye-laws could not be held to be fees due under this Act. Compare notes to section 350.

It is obvious that the Commissioners have no power to levy fees without

distinct authority to do so. The practice, therefore, said to prevail in some Municipalities of levying fees for the consecration of pipal or other sacred trees on the sides of public roads, is absolutely illegal.

361. (372) If money be due under this Act in respect of any holding from the owner thereof, Power to sell un-claimed holdings for money due. on account of any tax, expenses or charges, recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase-money.

After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the Municipal Fund and may be paid on demand to any person who establishes his right to the satisfaction of such Commissioners or in a Court of competent jurisdiction.

Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a Court of competent jurisdiction from any person beneficially interested in such property.

Under the corresponding section the surplus proceeds were repayable within three years, and if not claimed could then be credited to the Municipal Fund. Under the present section they will be credited at once to the Fund, and the ordinary law of limitation is the only restriction on their repayment. Similar alterations have been made in all the sections of the Act which deal with the matter of surplus proceeds.

362. (373) The Commissioners may make compensation for out of the Municipal Fund to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

Damage is defined by Wharton to be "a loss or injury by the fault of another, e.g., by an unlawful act or omission; any hurt or hindrance that a person receives in his estate; also the compensation to be fixed by the jury when they find a verdict for the plaintiff." The object of the section appears to be to give the Commissioners the power of compromising civil suits to recover damages which may be brought against them. The next section provides that they must always have an opportunity of so doing. It does not appear that the section empowers the Commissioners to grant compensation in cases of *damnum absque injuria* (loss without injury) where no action would lie.

**363. (374)** No suit shall be brought against the Commissioners of any Municipality, or any of their Officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners, and also (if the suit is intended to be brought against any Officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit; and unless such notice be proved, the Court shall find for the defendant.

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

If the Commissioners or their officer, or any person to whom any such notice is given, shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

To what classes of suits similarly worded provisions in other Municipal Acts apply, is a point which has given rise to a considerable amount of judicial discussion, and to some conflicting decisions. Thus, in *Poornu Chunder Roy v. Balfour*, 535, C. R., 9 W. R., Bayley, J., held, that similar provisions contained in section 87 of Act III of 1864 applied to a suit to recover possession of land. *Bhear, J.*, questioned this, but concurred in dismissing the suit on other grounds. In *Abhayanath Bose v. The Chairman of the Municipal Committee of Kishnaghur*, 92 C. R., 7 W. R., Norman, J., held, that the same section applied to a suit brought to restrain the Commissioners from interfering with a road claimed to be a private one. In *Price v. Khilat Chandra Ghose*, 5 B. L. R., App. 50, it was held that the same section did not apply to suits to recover possession of immoveable property, but only to actions for damages. In *The Municipal Committee of Moradabad v. Chatri Singh*, 1 L. R., 1 All. 269, a similar view was taken. In *Mayandi v. Mcquhae*, 1 L. R., 2 Mad., 124, it was held that a similar provision in Madras Act III of 1871 (section 68) did not apply to a suit to recover money due under a contract, a breach of a contract not being a thing done under the Act. In *Manni Kusanudhan v. Crooke*, 1 L. R., 2 All., 296, it was held that such provisions only apply to suits in which relief of a pecuniary nature is claimed for something done under the Act, and for which the persons performing them are personally liable for damages.

It may be now accepted as established law that the provisions in question only apply to suits arising out of a pecuniary claim for acts done by the Commissioners or their subordinates, in excess of their statutory powers.

The leading Bengal ruling on the subject will be found in the Full Bench decision in *Chunder Sikur Bandopadhy v. Obhoy Charan Bageki*, I. L. R., 6 Cal., 8, from which the following extracts may be quoted :—

"As the relief which has been decreed in these suits is for the specific recovery of land, irrespective of any damages for the plaintiff's dispossession, we consider that the 87th section of Bengal Act III of 1864 does not apply.

"That section, as it seems to us, is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise, or the honestly supposed exercise of their statutory powers.

"The notice in the earlier part of the section is meant to give the defendant the opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation."

In a very recent Bombay case, reported in I. L. R., 8 Bom., 421, a somewhat wider interpretation is placed on a similar provision in Bombay Act VI of 1873. It was held that "Section 86 of the Act is not confined to an action for damages, but is applicable to every claim of a pecuniary nature arising out of the acts of Municipal bodies or officers, who, in the *bonâ fide* discharge of their public duties, may have committed illegalities not justified by their powers."

Municipal Commissioners are entitled to the notice referred to in this section only when they have been acting *bonâ fide*, in the belief that they were exercising powers given to them by the Act. Where their proceedings are not *bonâ fide*, and are only done colorably under cover of the Act, they are not entitled to any notice.—279 C. R., 9 W. R.

A distinct notice of action is absolutely necessary. A notice objecting to and asking for reconsideration of the order complained against is not sufficient.—92 C. R., 7 W. R.

The following reported cases may also be referred to, with regard to the interpretation to be put on this section.—*Joshi Kulidd v. The Dakor Town Municipality*, I. L. R., 7 Bom., 399. *Joharmal v. The Municipality of Ahmednagar*, I. L. R., 6 Bom., 580. *Sorâbji Nassârvanji v. The Justices of Peace of Bombay*, 12 Bom. H. C. Rep. 250.

There is no objection to serving the notice referred to in this section by registered letter (L. R.)

364. (375) Notwithstanding anything contained in Chaukidari chakran section three of Bengal Act VI of 1870 lands.

(an Act to provide for the appointment, dismissal and maintenance of village chaukidars), the provisions of Part II of the said Act, relating to chaukidari chakran lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a Municipality, and all duties and functions which the panchayat of a village or any member thereof is required to discharge under the provisions of the said Part, shall be discharged, and all powers which the panchayat of a village or any member thereof is authorized to exercise under the said Part, shall be exercised by the Commissioners of such Municipality,

and the proceeds of the assessment on such lands made under the said Part shall be paid into the Municipal Fund, and shall be available for the purposes of such Fund.

Section 3 of Act VI of 1870 (B.C.) provides that no panchayat shall be appointed in any village to which the provisions of Act III of 1864 (B.C.), or of Act VI of 1868 (B.C.), shall have been extended. Under section 2 of Act V of 1876 (B.C.) and section 2 of the present Act, section 3 of Act VI of 1870 (B.C.) applies to all villages to which the present Act shall have been extended or in which it may be in force.

The following extract explains the object of this section :—

The Hon'ble Mr. Dampier, in moving the introduction of the corresponding section of Act V, said, that "Hon'ble Members were aware that Bengal Act VI of 1870 provided a system for securing the payment and control of chaukidars in mofussil villages. And one of the chapters of that Act was to the effect that *chakran* lands, which had been assigned to provide for the performance of police duties might be assessed at half rates and given up to the zemindar entirely, the zemindar paying revenue on such lands at half the usual rates only, instead of their being held as before by a chaukidar who, as a condition of his tenure, was bound to give a certain amount of police service and a certain amount of service to the zemindar. It was assumed that the interest of the zemindar and the public in the chaukidar's service was half and half. There was a provision in the Act that Commissioners might be appointed to value these *chakran* lands, and it enacted that the rent payable by the zemindar should be paid over to the panchayat, who should devote it to the purpose of paying chaukidars. . . . But, on looking at the law, Act VI of 1870, it was found that in section 3 there was a provision of which the effect was to prevent that being done within the limits of Municipalities. . . . The subsequent sections of the law said that the sections which dealt with *chakran* lands should not be applied in any place where there was not a panchayat. But under section 3 you might not appoint a panchayat in Municipalities, and, therefore, you could not apply the *chakran* provisions to such places. He thought it was obvious that it would be very desirable to deal with *chakran* lands within the limits of Municipalities in the same manner as they were dealt with in villages under Act VI of 1870."—P. C., March 23, 1876.

Police Officer to report offences and arrest persons refusing to give name and residence.

365. (376) All Police Officers shall give immediate information to the Commissioners of the Municipality of any offence committed against this Act.

When any person, in the presence of a Police Officer, commits, or is accused of committing, any such offence, and refuses, on demand of a Police Officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name

and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

It does not appear that this section imposes upon Police Officers the duty of reporting offences against bye-laws made under this Act, as an offence against a bye-law is not an offence against the Act. Compare note to section 355.

"In revising this section it was thought desirable to adopt the language of the Criminal Procedure Code, so that there might be no possibility of any conflict with the provisions of the Code."—*P. C. March 1, 1884*. The second para. is taken almost *verbatim* from section 57 of the Criminal Procedure Code.

366. (377) If any person employed under this Act (not being a public servant within the meaning of section twenty-one of the Indian Penal Code) shall accept or obtain, or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing, or forbearing to do any official act; or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person; or for rendering or attempting to render any service or disservice to any person with the Commissioners or with any public servant or with the Government in the discharge of his official duties, he shall be punished with imprisonment, either simple or rigorous, as provided in section fifty-three of the Indian Penal Code, for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both.

The only change in this section is a verbal one.

It being somewhat doubtful as to what classes of Municipal servants can be considered to be public servants within the meaning of section 21 of the Indian Penal Code, this section has been enacted in order to make them similarly punishable for certain offences. Such offences are punishable, when committed by public servants, under sections 161, 163, Indian Penal Code.

The only classes of Municipal servants who can be held to be public servants are those who come under clause (10) of section 21 of the Indian Penal Code. The clause in question declares the following classes of persons to be public servants:—"Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district."



It is clear that Municipal assessors, tax-collectors, and other subordinates entrusted with the collection or disbursement of money are public servants under this definition. It does not appear probable that any other classes of Municipal subordinates would be held to be public servants. Labourers or menial servants employed to work on behalf of Government have been held not to be public servants.—I. L. R., 7 Mad., 18.

- \*367. (378) Nothing in this Act contained shall be construed to
- Saving clause.
- (a) render lawful any act or omission on the part of any person, which, but for this Act, would by law be deemed to be a nuisance;
  - (b) exempt any person guilty of nuisance from a suit in respect thereof;
  - (c) affect any enactment not hereby expressly repealed.

Nuisances in law are divided into public or common nuisances, and private nuisances. The former are punishable under the criminal law. The remedy for the latter is ordinarily a civil suit.

"And nuisances are of two kinds, public or common nuisances, which affect the public and are annoyances to all the king's subjects; for which reason we must refer them to the class of public wrongs or crimes and misdemeanors. And private nuisances which are the objects of our present consideration and may be defined anything done to the hurt or annoyance of the land, tenements or hereditaments of another."—3 *Bl. Com.*, 216.

A public nuisance is defined by the Penal Code as "Any act or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right." (Section 268.)

The punishment for any public nuisance in any case not specially provided for by the Code is fine to the amount of Rs. 200. (Section 290.)

"And here I must premise that the law gives no private remedy for any thing but a private wrong. Therefore no action lies for a public or common nuisance but an indictment only: because the damage being common to all the king's subjects, no one can assign his particular proportion of it; or if he could, it would be extremely hard if every subject in the kingdom were allowed to harass the offender with separate actions. . . . Yet this rule admits of one exception, where a private person suffers some extraordinary damage, beyond the rest of the king's subjects, by a public nuisance, in which case he shall have a private satisfaction by action. As, if by means of a ditch dug across a public way, which is a common nuisance, a man or his horse suffer any injury by falling therein; there, for this particular damage, which is not common to others, the party shall have his action."—3 *Bl. Com.*, 219.

The principle here laid down has been adopted by the Indian Courts. 3 B. L. R., 295; 160 C. R., 13 W. R.; I. L. R., 2 Bom., 457.

FIRST SCHEDULE.

(See sections 8 and 17.)

*Municipalities in which the Commissioners shall be appointed by the Local Government.*

District.			Municipality.
Khoolna	...	...	Chundurea.
Ditto	...	...	Debhatta.
Darjeeling	...	...	Darjeeling.
Hazaribagh	...	...	Hazaribagh.
Singbhoom	...	...	Chyebassa.
Backergunge	...	...	Nalchiti.
Ditto	...	...	Jhalokhati.
Chittagong	...	...	Cox's Bazar.
Mozufferpore	...	...	Lallgunge.
Ditto	...	...	Sitamurbee.
Durbhunga	...	...	Rosera.
Chumparun	...	...	Bettiah.
Bhagulpore	...	...	Colgong.
Cuttack	...	...	Jajpore.
Ditto	...	...	Kendrapara.

SECOND SCHEDULE.

(See sections 8 and 23.)

*Municipalities in which the Chairman shall be appointed by the Local Government.*

District.			Municipality.
Burdwan	...	...	Dainhat.
Hooghly	...	...	Utterpara.
24-Pergunnahs	...	...	Suburbs of Calcutta.
Ditto	...	...	Barripore.
Nuddea	...	...	Santipore.
Ditto	...	...	Beernagore.
Ditto	...	...	Moheshpore.
Moorshedabad	...	...	Kandi.
Darjeeling	...	...	Darjeeling.
Hazaribagh	...	...	Hazaribagh.
Ditto	...	...	Chuttra.
Lohardugga	...	...	Ranchee.
Singbhoom	...	...	Chyebassa.
Manbhoom	...	...	Purulia.
Chittagong	...	...	Cox's Bazar.

SECOND SCHEDULE.—*Continued.*

District.				Municipality.
Patna	...	...	...	Patna.
Gya	...	...	...	Gya.
Shahabad	...	...	...	Sasseram.
Ditto	...	...	...	Bhuboah.
Mozufferpore	...	...	...	Sitamurhee.
Durbhunga	...	...	...	Durbhunga.
Ditto	...	...	...	Mudhobunnee.
Sarun	...	...	...	Sewan.
Chumparun	...	...	...	Bettiah.
Cuttack	...	...	...	Jajpore.
Ditto	...	...	...	Kendrapara.

## THIRD SCHEDULE.

FORM A.—(See section 112.)

*Notice to be published of the preparation of the List of Assessment on Persons.*

BENGAL MUNICIPAL ACT, 1884.

Section 112.

## MUNICIPALITY OF

Whereas an assessment list of the tax upon persons occupying holdings has been deposited in the Office of the Commissioners so required by section one hundred and twelve of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the Office of the said Commissioners during office hours on any day not being a close holiday, and that the several persons whose names are included in the said assessment are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax Collector or other officer authorized to receive payment, the first payment to be made on or before the first day of ( ), and every subsequent payment on or before the first day of ( ), the first day of ( ) and the first day of ( ), or in default thereof, any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter, or which may be found on the holding in respect of which such defaulter is assessed, and by such other proceedings as are allowed by law.

Dated this                      day of

A. B.,  
Chairman of Commissioners.

FORM B.—(See section 112.)

*Notice to be published of the preparation of the Valuation and Rating List of Holdings.*

BENGAL MUNICIPAL ACT, 1884.

Section 112.

MUNICIPALITY OF

Whereas a valuation and rating list of the rate on the annual value of holdings has been deposited in the Office of the Commissioners as required by section one hundred and twelve of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the Office of the said Commissioners during office hours on any day not being a close holiday; and that the several owners of the holdings included therein are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax Collector or other officer authorized to receive payment, the first payment to be made on the first day of ( ) and every subsequent payment on or before the first day of ( ), the first day of ( ) and the first day of ( ), and in default thereof, any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter, or which may be found on the holding in respect of which the valuation is made, and by such other proceedings as are allowed by law.

*Dated this                      day of*

A. B.,

*Chairman of Commissioners.*

FOURTH SCHEDULE.

FORM A.—(See section 120.)

*Notice of Demand under section 120.*

BENGAL MUNICIPAL ACT, 1884.

To

MUNICIPALITY OF

Take notice that the sum of Rs. , being the amount due from you as shown in the accompanying bill, is hereby demanded from you, and that if you do not within fifteen days pay the same to an officer authorized to receive payment, or into the Office of the Municipal Commissioners, the same with costs will

be levied by distress and sale of your goods and chattels, or otherwise as provided by law.

A. B.,

*Chairman of Commissioners.*

*[The following note will be added at the foot of the above notice in those cases only in which the notice is to be addressed to a person who has not already paid one instalment of the tax at the rate at which the demand is made.]*

*Note.*—If you have any objection to make against this demand you may, instead of paying the amount which is hereby demanded, present a petition to the Commissioners praying for a review of the amount assessed (or rated). Such petition must be presented within fifteen days of the service of this notice, otherwise it will not be received. If you present such petition, no amount will be levied from you until the Commissioners shall have passed an order on your petition; but after fifteen days from such order the amount due by you, with such costs as the Commissioners may direct, will be levied unless it has been previously paid.

B.

TABLE OF FEES PAYABLE UPON DISTRAINTS UNDER THIS ACT.

FORM B.—(See section 121.)

Sums distrained for.				Fee.	
				Rs.	A.
	Under 1	1 Rupee...	...	...	0 4
1	and under 5	Rupees	...	...	0 8
5	"	10	"	...	1 0
10	"	15	"	...	1 8
15	"	20	"	...	2 0
20	"	25	"	...	2 8
25	"	30	"	...	3 0
30	"	35	"	...	3 8
35	"	40	"	...	4 0
40	"	45	"	...	4 8
45	"	50	"	...	5 0
50	"	60	"	...	6 0
60	"	80	"	...	7 8
80	"	100	"	...	9 0
	Above	100	"	...	10 0

The above charge includes all expenses including the service of notice of demand, except when peons are kept in charge of pro-

perty distrained, in which case three annas must be paid daily for each man. If the amount demanded be paid or the warrant discharged before the sale is held so that no sale is necessary, one-fourth of the fees specified in the above table shall be remitted.

G.—(See section 122.)

*Distress Warrant.*

BENGAL MUNICIPAL ACT, 1884.

(Section 122.)

To (here insert the name of the Officer charged with the execution of the warrant).

Whereas of has not paid or shown sufficient cause for the non-payment of the sum of rupees due for taxes (or rates) mentioned in the margin, although the said sum has been duly demanded in writing from the said , and fifteen days have elapsed since the service of the notice of demand, this is to demand you to distrain the moveable property of the said wherever it may be found within the Municipality, except ploughs, plough-cattle, tools, or implements of trade or agriculture, or any other moveable property subject to the same exceptions, which may be found within the holding specified in the margin to the amount of the said sum of and the further sum of to defray the charges of taking, keeping, and selling such property; and if within ten days next after such distress the said sum of shall not be paid, to sell the said property, and having paid and deducted out of the proceeds of the sale the said sum of and the charges of taking, keeping, and selling such property, to return the surplus (if any) on demand to the person whom you shall have found in possession of the said property, and if no demand be made, to pay the same to the Commissioners. If distress cannot be made of sufficient property of the said you are to certify the same to us in returning this warrant.

A. B.,

*Chairman of*

## D.—(See section 122.)

*Form of Inventory and Notice.*

BENGAL MUNICIPAL ACT, 1884.

(Section 122.)

*(State particulars of goods seized.)*

Take notice that I have this day seized the property specified in the above inventory for the sum of \_\_\_\_\_ due for the taxes (or rates) mentioned in the margin, and that unless you pay to me or into the Office of the Commissioners of the said sum of \_\_\_\_\_ and the further costs of this distraint as specified below, within ten days from the day of the date of this notice, the property will be sold.

*(Signature of the officer executing**Date**the warrant of distress.)*

## E.—(See section 124.)

*Register of Distraints of Property and Sales held on account of arrears for the month of \_\_\_\_\_ in \_\_\_\_\_*

1. Name of defaulter.
2. Number on register and specification of the holding on account of which the arrear is due.
3. Amount of arrear due.
4. Amount of costs and penalty.
5. Total amount to be realized.
6. Inventory of property seized under distress.
7. Date of distress.
8. Date of sale.
9. Detail of articles sold.
10. Amount realized on each article.
11. Purchaser's name.
12. Total amount realized.
13. Amount paid into the Commissioners' Office on account of the arrear due, with date.
14. Amount paid into the Commissioners' Office on account of costs and penalties.
15. Surplus proceeds of sale remaining after deducting the amount of arrears, costs, penalties due.
16. How the surplus was disposed of, with date of such disposal.
17. Balance of arrear still remaining unrealized, if any.
18. On what date such remaining balance was realized or written off by authority.
19. Remarks (explaining why the property seized was released without sale if not eventually sold, &c., &c.)



## FIFTH SCHEDULE.

(See sections 86 and 131.)

## TAX ON CARRIAGES AND ANIMALS.

	Per quarter.
	Rs. A.
For every 4-wheeled carriage drawn by two horses ...	4 8
For every 4-wheeled carriage drawn by one horse or a pair of ponies under thirteen hands ...	3 0
For every 2-wheeled carriage ...	2 8
For every horse ...	2 0
For every pony under thirteen hands, and for every mule and donkey ...	0 12
For every elephant ...	6 0
For every camel ...	2 0

Carriages the wheels of which do not exceed twenty-four inches in diameter are exempted.

## SIXTH SCHEDULE.

(See section 2 and 4.)

*Act of the Governor-General in Council.*

Number and year.	Subject.	Extent of repeal.
XXI of 1857 ...	To make better provision for the order and good government of the station of Howrah.	Sections 4, 5, 6, 8, 9, 16, 17, 24, 33, 34, 35, 36, 37, 39, 46.

*Acts of the Lieutenant-Governor of Bengal in Council.*

Number and year.	Subject.	Extent of repeal.
V of 1873 ...	To provide for the levy of a lighting rate in Howrah.	The whole Act.
V of 1876 ...	To amend and consolidate the law relating to municipalities.	Ditto.
VI of 1878 ...	To provide for the cleansing and construction of latrines in first class municipalities.	Ditto.

# Appendix.

## NOTIFICATION.

The 14th August 1884.—Under section 13 of the Bengal Municipal Act, III (B.C.) of 1884, the following list, showing the number of Commissioners fixed by the Lieutenant-Governor for each Municipality constituted before the passing of the said Act, is published for general information.

DIVISION.	District.	Name of Municipality.	Number of Commissioners.
BURDWAN ...	Burdwan	Burdwan ... ..	21
		Dainhat ... ..	12
		Culna ... ..	15
		Cutwa ... ..	12
		Raneegunge ... ..	12
	Bankoora	Bankoora ... ..	12
		Bishenpore ... ..	12
	Beerbhoom	Soory ... ..	16
	Midnapore	Midnapore ... ..	18
		Tumlook ... ..	12
		Ghatal ... ..	15
		Kheerpoy ... ..	9
		Chunderkonah ... ..	12
		Ramjibunpore ... ..	9
	Hooghly	Hooghly and Chinsurah ... ..	18
		Serampore ... ..	18
		Uterparah ... ..	12
		Bansberiah ... ..	9
		Bydabatty ... ..	12
		Bhuddressur ... ..	12
		Kotrung ... ..	9
	Howrah	Howrah ... ..	80
		Bali ... ..	18

Division.	District.	Name of Municipality.	Number of Commissioners.
PRESIDENCY	24-Pergunnahs	Suburbs of Calcutta ... ..	20
		Baranaggar ... ..	21
		South Suburban ... ..	21
		Rajpore ... ..	18
		Barripore ... ..	9
		Joynugger ... ..	12
		Baraset &c. ... ..	21
		Busseerhat ... ..	15
		Taki / ... ..	9
		South Barrackpore ... ..	18
		North Barrackpore ... ..	18
		Baduria ... ..	12
		Nyebatty ... ..	21
		Goburdanga ... ..	9
		North Dum-Dum ... ..	9
		South Dum-Dum ... ..	9
	Khoolna	Satkhiria ... ..	12
		Chundureah ... ..	12
		Debhatta ... ..	12
	Nuddea	Kishnaghur ... ..	21
		Ranaghat ... ..	18
		Santipore ... ..	24
		Kooshtea ... ..	15
		Beernugger ... ..	12
		Nuddea ... ..	12
		Meherpore ... ..	9
		Comercolly ... ..	15
	Jessore	Jessore ... ..	18
		Moheshpore ... ..	15
		Kotechandpore ... ..	9
	Moorshedabad	Berhampore ... ..	25
		Kandi ... ..	10
		Lall Bagh or Moorshedabad ... ..	18
		Jungypore ... ..	24
RAJSHAHYE	Dinagepore	Dinagepore ... ..	15
	Rajshahye	Rampore Beaulah ... ..	21
		Nattore ... ..	18
	Rungpore	Rungpore ... ..	18
	Bogra	Bogra ... ..	18
		Sherepore ... ..	12
	Pubna	Pubna ... ..	18
		Serajunge ... ..	18
	Darjeeling	Darjeeling ... ..	25
		Kurseong ... ..	12

DIVISION.	District.	Name of Municipality.	Number of Commiss- ioners.
DACCA	Dacca	Dacca ... ..	21
		Naraingunge ... ..	12
	Furreedpore	Furreedpore ... ..	18
		Madaripore ... ..	21
		Goalundo ... ..	15
	Backergunge	Burrisal ... ..	15
		Jhillohatti ... ..	9
		Nutchitti ... ..	9
	Mymensingh	Nusserabad ... ..	18
		Sherepore ... ..	12
		Kishoregunge ... ..	15
		Bazitpore ... ..	9
		Jamainpore ... ..	15
		Mooktagacha ... ..	9
CHITTAGONG	Chittagong	Chittagong ... ..	18
		Cox's Bazar ... ..	12
	Tipperah	Comillah ... ..	18
		Brahmunberiah ... ..	12
	Noakholly	(Sudaram) Noakholly ... ..	12
PATNA	Patna	Patna City ... ..	30
		Behar ... ..	12
		Barh ... ..	9
	Gya	Gya ... ..	24
	Shahabad	Arrah ... ..	18
		Buxar ... ..	12
		Doomraon ... ..	9
		Sasseram ... ..	21
		Jugdishpore ... ..	9
		Bhubooah ... ..	9
	Mozufferpore	Mozufferpore ... ..	18
		Hajipore ... ..	12
		Lalgunge ... ..	10
		Seetamarhi ... ..	10
	Durbhunga	Durbhunga ... ..	21
		Rosera ... ..	14
		Madhubani ... ..	15
	Sarun	Chuprah ... ..	18
		Sewan ... ..	9
		Revilgunge ... ..	12
	Chumparan	Bettiah ... ..	12
		Motihari ... ..	12

DIVISION.	District.	Name of Municipality.	Number of Commis- sioners.
BHAGUL- PORE ...	Bhagulpore ...	Bhagulpore ... ..	21
		Coigong ... ..	11
	Monghyr ...	Monghyr ... ..	18
		Jamulpore ... ..	18
	Sonthal Pergun- nabs.	Deoghur ... ..	15
		Salabgunge ... ..	9
	Purneah ...	Purneah ... ..	18
	Maldah ...	English Bazar ... ..	18
Old Maldah ... ..		12	
ORISSA ...	Cuttack ...	Cuttack ... ..	18
		Jajpore ... ..	12
		Keudraparah ... ..	12
Balasore ...	Balasore ... ..	18	
Pooree ...	Pooree ... ..	15	
CHOTA NAG- PORE ...	Hazaribagh ...	Hazaribagh ... ..	15
		Chuttrah ... ..	15
	Lohardugga ...	Ranchi ... ..	12
	Singbhoom ...	Chyebassa ... ..	12
	Manbhoom ...	Purulia ... ..	18

COLMAN MACAULAY,  
Secretary to the Govt. of Bengal.

#### RULES FOR THE ELECTION OF MUNICIPAL COMMISSIONERS UNDER ACT III (B.C.) OF 1884.

*The 29th September 1884.*—The following rules for the election of Municipal Commissioners in all Municipalities in the Burdwan, Presidency, Rajshahye, Dacca, Chittagong, Patna, Bhaugulpore, Orissa, and Chota Nagpore Divisions (except Howrah and the

Suburbs of Calcutta), have been laid down by the Lieutenant-Governor under section 15 of Act III (B.C.) of 1884 :—

*Of the Qualification of Voters.*

1. Persons otherwise qualified to vote must be males, who have resided within the limits of the Municipality for one year previous to the date of the election.

2. Subject to the above rule, all persons who have, during the year immediately preceding the election, paid an aggregate amount of not less than Re. 1-8 in respect of any rates imposed by the Act, and who have been duly registered as hereinafter provided, shall be qualified to vote.

3. Subject to the proviso contained in Rule 1, any person who, being a member of a joint undivided family, one of the members of which has, during the year preceding such election, paid in respect of any of the rates imposed by the Act an aggregate amount of not less than Re. 1-8, is a graduate or licentiate of any University, or holds a certificate as a Pleader or Mooktear, or holds any office or employment carrying a salary of not less than Rs. 50 per mensem, shall be entitled to vote.

*Of the Registration of Voters.*

4. As soon as possible after these rules shall have been published, the Magistrate of the district shall cause to be prepared register of persons qualified to vote. Such register shall be prepared from the assessment lists, from enquiries made by persons specially deputed for the purpose, and in such other manner as may appear expedient. Such register shall, from time to time, be corrected and added to as the Magistrate may direct. It shall be the duty of the Chairman of the Municipality to furnish the Magistrate or the Subdivisional Officer with any available information required for the preparation and correction, from time to time, of the register in question.

5. At least one month before the date fixed for the elections as hereinafter provided, an extract from the register, showing the persons qualified to vote within each ward, shall be published at suitable places within that ward. A copy of the whole register shall also be published at the Municipal office.

6. The Magistrate, or such other gazetted officer as he may depute for the purpose, shall sit to hear and decide objections to, and claims for, registration of voters on some date of which at least three days' notice shall have been given, and which shall be at least ten days after the publication of the lists in question, and at least one week before the date fixed for the commencement of the elections; and such decision shall be final.

7. The ward lists as amended, after the hearing and decision of claims and objections, shall be considered as the final lists of persons entitled to vote at the elections, and no person whose name does not appear in the ward lists shall be permitted to vote.

*Of the Qualification and the Nomination of Candidates.*

8. Any person qualified to vote under these rules shall be qualified for nomination as a candidate.

9. Any rate-payer qualified to vote may nominate any other qualified person as a candidate.

10. The Magistrate shall, at least six weeks before the date fixed for the commencement of the elections, issue notices calling for nominations of candidates. Such nominations shall be delivered at the Municipal office within fourteen days from the date of publication of the notices in question. No names of candidates shall be received after the expiration of such period.

11. The preliminary list of candidates, with the names of the persons nominating them, shall be published in each ward, and at the Municipal office, at least three weeks before the date fixed for the commencement of the elections. A notification shall at the same time be published, fixing a date for the hearing of objections to candidates. Such date shall be at least one week later than the publication of the notification in question.

12. The Magistrate, or such other gazetted officer as the Magistrate may depute for the purpose, shall hear and decide all objections to candidates; and such decision shall be final. Before publishing the final list he shall ascertain that all the candidates are eligible and willing to stand for election.

13. The final list of candidates shall be published in each ward, and at the Municipal office, at least one week before the date fixed for the commencement of the elections. No candidate whose name is not contained in such list shall be eligible for election.

*Of the Manner of holding Elections.*

14. The elections for the different wards shall be held on such date as may be fixed by the Lieutenant-Governor and notified in the *Calcutta Gazette*.

15. The Magistrate shall decide at what place the election for each ward shall be held.

16. The date fixed for the election in each ward shall be duly notified by beat of drum, and by the publication of notices in such ward at least one month beforehand.



17. Each voter shall be entitled to vote for the ward in which he ordinarily resides, and for no other. He shall be entitled to vote for as many candidates as there are vacancies for such ward.

18. All persons wishing to vote must be present at the elections. No votes by proxy or in writing shall be received.

19. The Magistrate, or such other gazetted officer as the Magistrate may depute for the purpose, shall preside at the election for each ward, assisted by a Committee of not less than three and not more than five rate-payers of the ward, nominated by the Magistrate.

20. The proceedings shall commence by the presiding officer explaining the nature and objects of the meeting to the assembled voters. He shall then read out the list of candidates, and state the number of vacancies.

21. Each candidate shall then be proposed by one qualified voter, and seconded by another. Subject to the control of the presiding officer on points of order, each candidate and his proposer and seconder shall be permitted to address the assembled voters on the subject of his candidature. The names of candidates not duly proposed and seconded shall be removed from the list.

22. In the case of the number of the candidates duly proposed and seconded not being greater than the number of vacancies, the presiding officer, if he is satisfied that not less than 10 per cent. of the registered voters for the ward or wards in which the election is taking place are present, shall at once declare such candidates to be duly elected.

23. If the number of candidates duly proposed and seconded exceeds the number of vacancies, the presiding officer shall proceed to call for a show of hands in favour of each candidate. The presiding officer shall decide and state which of the candidates have received the largest number of votes by the said shows of hands. Should no poll be demanded against any one candidate, he shall declare such candidate to be duly elected.

24. Any defeated candidate, or his proposer or seconder, may demand a poll on his behalf, as against any or all of the candidates selected under the above rule.

25. When a poll is demanded, the votes shall then and there be recorded by the presiding officer with his own hand. All objections to voters shall, if possible, be summarily decided by the presiding officer, after reference to the register. No objections shall be entertained other than objections arising out of matters subsequent to registration under Rule 6.

26. The presiding officer shall then and there declare such candidates as have a clear majority of votes to be duly elected.

Provided that no candidate shall be declared to be duly elected unless at least 10 per cent. of the registered voters for the ward have appeared and recorded their votes.

27. If 10 per cent. of the registered voters for the ward are not present (Rule 22), or have not appeared and recorded their votes (Rule 26), the presiding officer shall report that the electors have failed, under section 16 of the Act, to elect Commissioners for the ward.

28. In case of an equality of votes for the same vacancy, and when the number of vacancies does not admit of all the candidates who have obtained an equality of votes being elected, the presiding officer shall postpone the election, fixing at the same time a date upon which the proceedings shall be re-commenced. When the majority for any candidate consists only of disputed votes, with reference to which further enquiry appears to be necessary, the result of such enquiry shall be notified on a subsequent date.

29. The list of duly returned candidates for the whole Municipality shall be forwarded to the Commissioner of the Division for publication in the *Calcutta Gazette*.

*Miscellaneous.*

30. No person in the employment or pay of the Municipality shall, directly or indirectly, engage in canvassing for votes, or otherwise assist in the election of any candidate, otherwise than by giving his own vote. Any breach of this rule will render him liable to dismissal.

31. All costs incurred in the preparation of the register of voters, the publication of notices, the holding of elections, or taking any other necessary action under these rules, shall be payable by the Commissioners out of the municipal fund.

COLMAN MACAULAY,

*Secretary to the Govt. of Bengal*

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