

passing of this Act to report crimes or offences occurring within his estate or tenure.

67. Nothing in this Act contained, save the provisions of sections 58, 59, 60 and 61, shall affect any lands before the passing of this Act assigned for the maintenance, in any village in which a panchayat may not be appointed, of an officer to keep watch in such village and to report crime to the police, and every such officer in such village shall be bound to perform the same duties, and shall have the same rights unto such lands, and may be removed and a successor to him appointed, as if this Act had not been passed.

69. This Act may be called the Village Chaukidari Act, 1870.

SCHEDULE C.

(Referred to in section 50.)

Form of Transferring Order.

District of

I,

Collector of

do by this order under my hand made in pursuance of Act VI of 1870, passed by the Lieutenant-Governor of Bengal in Council, transfer to

, zamindar of , the
chaukidari chakaran lands of the village of
, in the said bounded

and containing
bighas cattaahs; to hold unto the said
his heirs and assigns subject to an annual assessment
of rupees payable under the provisions
of the said Act to the chaukidari fund of the said village
and also subject to all contracts binding the said
in respect of any lands, portion of the said
situated within the said village.

The

day of

18

Sd/. J. S.
Collector of

SCHEDULE D.

(Referred to in section 54.)

Form of Notice of Arrears of Assessment on Land.
Panchayat of

To A.B., Esq., Collector

Sir,

I hereby notify to you that the sum of Rs. being
for one year's assessment payable in respect of the
chaukidari chakaran lands of this village transferred
to the zamindar of became due on the
 day of and that the same
is still unpaid, and that of is the
person liable to pay such assessment.

The day of

Sd/. E. F.

Collecting Member of Panchayat.

DUTIES OF VILLAGE HEADMEN.

District Magistrates may appoint village headmen and headmen so appointed exercise the powers and are required to perform the duties imposed on them by law. Of these the most important are contained in section 45 of the Criminal Procedure Code and the Rules made by Government under the Criminal Tribes Act.

CRIMINAL PROCEDURE CODE.

45. 1. Every village-headman, village-accountant, village-watchman, village-police officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or

the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is the nearer, any information which he may obtain respecting.

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police officer, or in which he owns or occupies land, or is agent, or collects revenue or rent ;
- (b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender ;
- (c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under sections 143, 144, 145, 147 or 148 of the Indian Penal Code ;
- (d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances ;
- (e) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 502, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 ;
- (f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

2. In this section—

(i) "village" includes village-lands; and

(ii) the expression "proclaimed offender" includes any person proclaimed as offender by any Court or authority established or continued by the Governor-General in Council in any part of India in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 447, 458, 459 and 460.

3. Subject to rules in this behalf to be made by the Local Government the District Magistrate may from time to time appoint one or more persons to be village-headmen for the purposes of the section in any village for which there is no such headman appointed under any other law.

Appointment of village-headman by District Magistrate in certain cases for purposes of this section.

Notes—So far as chaukidars are concerned the provisions of this section [with the exception of clause (e)] are embodied in section 23 of the Village Self-Government Act which increases the scope of the chaukidar's duties without exempting him from the provisions of clause (e) or any other part of this section.

2. The provisions of this section will not extend to the President or Members of a Union Board unless they are appointed, under sub-section (3), to be village headmen. See additional note A under section 26, Village Self-Government Act.

3. For the definition of "proclaimed offender" see note under section 23(ii) (c), V. S.-G. Act.

4. For the definition of "non-bailable offence" see note under section 4(11), V. S.-G. Act.

5. As regards clause (e), see additional note C under section 26 V. S.-G. Act.

DUTIES OF VILLAGE HEADMEN AND CHAUKIDARS UNDER THE CRIMINAL TRIBES ACT, (III OF 1911).

In almost every district there are to be found tribes or gangs of habitual criminals. A prosecution of a member of one of these gangs under section 145 Criminal Procedure Code has the defect that it only has force for 3 years at the most after which the criminal, probably still unreformed, is free to resort to his former mode of living. To make better provision for the reformation of such persons, keeping them under such control that the property and lives of honest people may not be endangered, the Criminal Tribes Act was passed in 1911 and rules under that Act have been made subsequently. The Local Government may order every member of a criminal tribe to be registered and after registration to report himself at fixed intervals or notify his place of residence, or any change or intended change of residence. If it is thought expedient a criminal tribe may, with the sanction of the Government of India, be "settled" i.e. confined to a specified area and within that area an industrial, agricultural or reformatory settlement or school may be established. Provision is made for the erasure from the register the name of any person who, at any time, satisfies the District Magistrate that he has reformed his character or that the retention of his name is unnecessary. Penalties are provided for members of criminal tribes who break rules made under the Act and village headmen and chaukidars are required to assist the District Magistrate and the police in giving effect to the Act and rules. The following note is published to provide members of union boards with a summary in handy form of the sections of the Act and rules which specify the duties imposed on headmen and chaukidars of villages.

2. A body of persons banded together or in association and addicted to the systematic commission of non-bailable offences (cf. note under sec. 4 (11) Village Self-Government Act) may be notified by the Local Government as a criminal tribe, and thereupon the District Magistrate may publish a notice ordering the members of that criminal tribe or of any part of the tribe to appear and be registered. A copy of the notice shall, if possible, be served on the members of the criminal tribe concerned; the notice shall also be publicly read out in a conspicuous part of the village where such persons reside and affixed to a conspicuous part of such village, copies shall also be affixed to a conspicuous part of the court-house and police-station concerned, and lastly "a copy of such notice shall be served on the headman or headmen of the village or villages in which such members reside, and thereupon such headman or headmen shall cause the contents of such notice to be proclaimed in the village by word of mouth and made known to the chaukidars and landowners of the said village and their agents." It is explained that "in the case of wandering criminal tribes having no fixed residence or place of abode, the place of residence shall be deemed to be the place where all or some members of such tribes sleep even if they remain at such place only one night" (cf. Notification No. 111 dated the 6th January, 1913.) If, after making the register of a criminal tribe, the District Magistrate proposes to add the name of any other person to the register, a notice shall be published in the same way as prescribed for the original notices. Every village head-man and village chaukidar is required to give to the officer in charge of the nearest police-station immediate information concerning any member of a criminal tribe who fails to appear as directed in the District Magistrate's notice (sections 26 and 27 Criminal Tribes Act).

3. To keep the District Magistrate and police in touch with a criminal tribe, the Local Government, may order that every registered member of a specified criminal tribe shall report himself at fixed intervals to the police-station. Such intervals will be weekly or fortnightly according to the distance of their places of residence from the thana and the days for their attendance will be fixed by the Superintendent of Police. If on the day fixed for his appearance any registered member of a criminal tribe is prevented by sickness or other infirmity from reporting himself, he shall give immediate intimation of his inability to do so to the village watchman (Rule 4(4) of notification above quoted).

4. The Local Government may also order that every registered member of a criminal tribe shall notify any change of residence and any absence or intended absence from his residence. No such person shall absent himself from his residence for one or more nights without personally giving previous intimation to the officer-in-charge of the police-station nearest to the place at which he is then residing. He must also intimate the probable dates of his arrival at and departure from each of the place to which he intends to proceed. On arrival at each of his destinations he must report himself at once to the village head-man or, where there is no head-man, the village chaukidar or to the officer-in-charge of the nearest police-station or outpost (Rules 4 (4) and 4 (5) of Notification above quoted).

5. If the Government by notification restricts the movements of a Criminal tribe to a specified area (which may or may not be a settlement established for the purpose), no registered member of such tribe shall leave such area without having obtained a pass from the officer-in-charge of the police-station or the manager

of the settlement, except that he may go outside the area to appear at the police-station or before a magistrate having jurisdiction in the matter to complain of an offence affecting himself or his family or to apply for a pass, provided that he gives notice of his intended departure to the headman or chaukidar of his village (Rule 3 Part II, Notification No. 2067 P, dated 2-3-15). A registered member of a tribe whose movements have been restricted may be granted leave of absence from the prescribed area by the officer-in-charge of the police-station or the Superintendent of Police and will be furnished with a pass. During his absence from the prescribed area he must report himself to the headman or chaukidar of every village at which he halts for a night. If he takes up his residence temporarily at any place, he must report himself to the officer-in-charge of the police-station at intervals of seven days if the police-station is within 10 miles, and intervals of 14 days if the police-station is more than 10 miles from his place of temporary residence. He must continue to do this until he returns to his home in the prescribed area; but if on any occasion he is prevented from reporting himself by any genuine cause such as serious illness, he must give immediate information to the village choudidar. So long as he is away from the prescribed area he must carry with him his pass and must show it to any village headman, police-officer, or magistrate who may demand its production. The period for which leave has been sanctioned and the other conditions subject to which it has been granted shall be specified on the pass (Rule 7, Part II, Notification No. 2067 P dated 2-3-15).

6. A village headman may be empowered by the District Magistrate, Superintendent of Police, or Subdivisional Magistrate to visit a Settlement established under the Criminal Tribes Act (Rule 13, Part I,
- Other powers with which headmen may be vested.

Notification 2067 P dated 2-3-15) and, where the movements of a Criminal Tribe have been restricted without a Settlement being established, the members of the criminal tribe shall attend before the officer-in-charge of the police station at such times and places as such officer-in-charge may direct. (Rule 8, Part 11 Notification abovesited).

7. The penalties to which a village headman or chowkidar becomes liable if he fails to carry out the duties imposed on him by the Act and the rules above quoted are stated in the following sections :—

Statutory duties
of headmen and
Chowkidars.

26 (1) Every village headman and village watchman in a village in which any person belonging to a criminal tribe resides, and every owner or occupier of land on which any such persons reside, or the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police-station any information which he may obtain of

- (a) The failure of any such person to appear and give information as directed in section 5 ; or
- (b) The departure of any registered member of a criminal tribe from such village or from such land (as the case may be).

2. Every village headman and village watchman in a village and every owner or occupier of land or the agent of such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest Police Station any information which he may obtain of the arrival at such village or on such land, (as the case may be) of any person who may reasonably be suspected of belonging to any Criminal tribe.

27. Any village headman, village watchman, owner or occupier of land of the agent of such owner or occupier, who fails to comply with the requirements of section 26, shall be deemed to have committed an offence punishable under the 1st part of Section 176 of the Indian Penal Code."

Failure to report the arrival or departure of a member of a criminal tribe may also be held to be a breach of clause (f), sub-section (1), section 45, Criminal Procedure Code; but it may be expected that for the peace and security of their own villages, the headmen and Chowkidars will not need the spur of fear of penalties to do all that lies in their power to keep criminal tribes under effective control.

28. Village headmen and Chowkidars have also been vested with special powers of arrest without warrant under the following sections of the Criminal Tribes Act, viz. ;—

Special power of headmen and Chowkidars to arrest without warrant.

" 25 (1) Whoever, being a registered member of a Criminal Tribe,—

- (a) is found in any part of British India beyond the area, if any, prescribed for his residence, without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass; or
- (b) escapes from an industrial, agricultural or reformatory settlement or school, may be arrested without warrant by any police officer, village headman, or village watchman and taken before a magistrate, who on proof of the facts, shall order him to be removed to the district in which he ought to have resided or to the Settlement or school from which he has escaped (as the case may be), there to be dealt with in accordance with this Act or any rules made thereunder."

THE BENGAL PRIMARY EDUCATION ACT, 1919

BENGAL ACT NO. IV OF 1919.

An Act to the provide for the extension of primary education in Municipalities and in certain other areas in Bengal.

WHERE as it is expedient to provide for the extension of primary education in Municipalities and incertain other areas in Bengal ;

It is hereby enacted as follows :—

PART I.

PRELIMINARY

Short title and extent. 1. (1) This Act may be called the Bengal Primary Education Act, 1919.

(2) It extends in the first instance to all Municipalities in Bengal :

Provided that the Local Government may, by a notification published in the Calcutta Gazette, extend the provisions of this Act, with such modifications, for the purposes of adaptation, as they may deem fit, to any area in a Union constituted under section 38 of the Bengal Local Self-Government Act of 1885, and may authorize the Union Committee for such area to exercise and perform all or any of the powers and duties conferred and imposed on the Commissioners by this Act, subject to such control by the Dissrict or Local Board as the Local Government may prescribe.

Notes.— This Act was passed before the Village Self-Government Act. The provision should now be extended to any area declared to be a union under section 5 of the Village Self-Government Act, and to the union board for that area.

112 THE BENGAL VILLAGE SELF-GOVERNMENT ACT.

2. Any union committee or union board may apply to the district board or district magistrate to recommend to Government to extend to that union the provisions of this Act.

3.—In extending this Act to union boards the following substitutions should be made viz:—

for the word "Municipality"	the word "union"	
" " words "Municipal Commissioners"	}	the words
or "Commissioners"		"union board"

Definitions. 2. In this Act, unless there is any thing repugnant in the subject or context.

(1) "To attend recognized primary school" means to be present for instruction at such school for so many and on such days in the year and at such time or times on each day as may be prescribed by the school Committee for such school, subject to the rules and orders of the Education Department of the Local Government ;

(2) "Commissioners" means the persons for the time being appointed or elected to conduct the affairs of a Municipality.

(3) "Guardian" includes a parent or any person who is liable to support, or has the custody of, a boy not being less than six or more than ten years of age ;

(4) "Municipality" means Calcutta, as defined in clause (7) of section 3 of the Bengal Act III of 1889, or any place in which the Bengal Municipal Act, 1884, is in force ;

(5) "Primary education" means such elementary education as may be prescribed from time to time for primary schools by the Education Department of the Local Government ;

(6) "Recognized primary school" means a school (or a department of a school) appropriated to primary education and for the time being recognized by the Education Department of the Local Government for the purposes of such education : and

(7) " School Committee " means a committee constituted under section 7.

PART II.

Voluntary Primary Education.

Statement to be
submitted by
Municipalities

3. Within one year from the commencement of this Act or within such other period as may be prescribed by the Local Government in this behalf, the Commissioners shall submit to the Local Government a detailed statement, in such form as may be prescribed by the Local Government, containing the following particulars in respect of the Municipality :—

- (a) (i) the number of children, not being less than six or more than eleven years of age, within the Municipality ;
- (ii) the number of boys, not being less than six or more than ten years of age, therein ;
- (b) the school accommodation, the staff of and the attendance at, existing primary schools ;
- (c) the school accommodation, staff and equipment required if suitable and adequate provision were to be made for the primary education of—
 - (i) all children referred to in clause (a) (i) likely to attend primary schools voluntarily ; and
 - (ii) all boys referred to in clause (a) (ii)
- (d) the manner in which and the periods within which it will be possible to provide the necessary school accommodation, staff and equipment referred to in clause (c) under the direct management and control of the Municipality ;

- (e) the existing expenditure incurred by the Municipality on primary education and the expenditure to be incurred yearly in order to provide such school accommodation, staff and equipment ;
- (f) the receipts already available, and the income including the probable receipts from any education cess that may in future be levied under section 17, which it may be estimated will be available to meet such expenditure ; and
- (g) the amount of grant or assistance from the Government which the Commissioners consider would be necessary to enable them to provide for primary education within the Municipality, or part thereof.

Notes. 1.—A union board can obtain most of the advantage, of this Act, except the power to enforce compulsory education, by exercising its powers under sec. 32 of the Village Self-Government Act.

2. As a preliminary step, every union board should ascertain for its own information

- (1) the total number of boys in the union not more than 10 years old, and the number who are regularly attending school,
- (2) the total number of boys in the union more than 10 years but not more than 11 years old, and the number who are regularly attending school.
- (3) the total number of girls in the union not more than 11 years old and the number who are regularly attending school.

3. The union board should then devise provision of school teachers, school houses and equipment so that

all in class (1) and as many as possible in classes (2) and (3) may be taught to read and write and keep simple accounts in their own language.

4. When this provision has been made for class (1) completely the union board will have achieved a great improvement. They may then appropriately apply to the Government for a grant to enable them to provide for classes (2) and (3) and to make education compulsory for boys up to 10 years of age.

5. The union board may pay from the union rate for any extension of primary schools (cf. sec. 32 Village Self-Government Act). In this way the trouble of an additional cess for education can be avoided.

4. The Local Government, after considering the statement required by section 3 and the conditions and resources of the Municipality, and after determining the amount of financial assistance from the Government which may be necessary in order to provide for primary education within the Municipality, may, if satisfied that the Municipality is able to meet the expenditure involved, direct the Commissioners to provide the necessary school accommodation staff and equipment for all children, not being less than six or more than eleven years of age, likely to attend primary schools voluntarily within the Municipality and to assume the direct management and control of all such schools.

Note.—Government will not issue a direction to a union board under this section unless satisfied that the union board, with the help of a grant from the State, is able to provide education for all children of both sexes up to 11 years of age.

PART III.

Compulsory Primary Education.

5. The provisions of this Part shall not come into operation until a notification has been issued under section 6, sub-section (2).

Operation of
Part III.

6. (1) If, after complying with the directions of the Local Government under section 4, the Commissioners are of opinion that the primary education of all boys, not being less than six or more than ten years of age, should be made compulsory within the Municipality, or any part thereof, they may apply to the Local Government, in such manner as may be prescribed by rules made by the Local Government, for permission to introduce therein compulsory primary education for such boys.

(2) The Local Government, after considering the application and after determining the financial assistance from the Government which may be necessary to provide for compulsory primary education within the Municipality, shall, if satisfied that the Municipality is able to meet the expenditure involved, grant the permission asked for, and the Commissioners shall thereupon cause a notification to be issued declaring that primary education shall be compulsory for all such boys within the Municipality, or any part thereof, as the case may be.

(3) Every notification issued under this section shall be published in the Calcutta Gazette and in the local newspapers, if any, and shall be posted up at the Municipal office and at such other places, as the Commissioners shall deem necessary, specifying the date on and from which primary education shall be compulsory within the Municipality, or any part thereof.

(4) No notification shall be issued by the Commissioners under this section except in pursuance of a resolution passed at a special general meeting convened for the purpose and at which not less than two-thirds of the total number of Commissioners are present.

Note.—Primary education can only be made compulsory for boys between 6 and 10 years of age, and then only after a union board has been directed to provide teachers, school-houses and equipment for every boy and girl in the union up to 11 years of age and only after the union board at a special meeting, attended by at least two-thirds of the members, has passed a resolution in favour of such compulsory education.

7. When a notification has been issued in any Municipality under section 6, sub-section (2) the Commissioners shall appoint a School Committee, to be constituted in such manner as may be prescribed by rules made under section 15 :

Provided that a Deputy Inspector or a Sub-Inspector of Schools, at least one Commissioner and one or more residents of the Municipality, other than a Commissioner, shall be members of the Committee.

8. (1) In every area to which the provisions of this Part apply, it shall be the duty of the guardian of every boy, not being less than six or more than ten years of age, residing within that area to cause such boy to attend a recognized primary school unless, in the opinion of the School Committee, there is a reasonable excuse for his non-attendance.

(2) Any of the following circumstances shall be deemed to be a reasonable excuse within the meaning of this section :—

(a) that there is no recognized primary school within a distance of one mile, measured by the shortest route, from the residence of the boy which he can attend, and to which the guardian has no reasonable objection to send the boy ;

(b) that the boy is prevented from attending the school by reason of sickness, infirmity, domestic necessity, the seasonal needs of

agriculture or of his being the sole bread-winner of his family ;

(c) that the boy is receiving education in some other satisfactory manner.

9. (1) If the School Committee is satisfied that a guardian who is required under section 8 to cause a boy to attend a recognized primary school, has failed to do so, it shall, after giving a warning in writing to such guardian, apply to a Magistrate for an order to compel the guardian to enforce the attendance of such boy ; and the Magistrate shall fix a day for the hearing of the application, and cause notice thereof to be given to such guardian.

Order of Magistrate to compel attendance.

(2) On the day fixed for the hearing of the application or on any subsequent day to which it may be adjourned, and after hearing the guardian or his authorized agent, if present, the Magistrate, if satisfied that the facts alleged in the application are true, may pass an order directing the guardian to cause such boy to attend a recognized primary school from a date to be specified in such order.

Notes.—1. See definition of "guardian" in section 2.

2. The powers of a magistrate under section 9 might well be extended to a union bench. It will be noted that a union bench is empowered to pass a sentence under sec. 10 (cf. item 2, schedule IV. Village Self-Government Act).

10. (1) Any guardian who fails to comply with an order passed under section 9 shall, on conviction before a Magistrate, be liable to a fine not exceeding five rupees, and also to a recurring fine not exceeding one rupee for each day after the first during which he continues so to offend.

Penalty for failure to obey order.

THE BENGAL VILLAGE SELF-GOVERNMENT ACT. 118a

(2) No Magistrate shall take cognizance of an offence under this section except on the complaint of the School Committee.

Note—See notes under section 9.

11. No person shall, without the permission of the School Committee, employ any boy, not being less than six or more than ten years of age, who is required to attend a recognized primary school under this Part :

Prohibition of employment of boys.

Provided that such permission shall not be necessary if the employment of the boy does not interfere with his attendance at such school.

12. (1) The School Committee may prosecute any person who, after due warning, contravenes the provisions of section 11.

Employer's liability.

(2) Unless such person satisfies the Magistrate that there is a reasonable excuse, within the meaning of section 8, sub-section (2), for the non-attendance of the boy, or that the time and nature of employment of the boy are such that he is not prevented from attending a recognized primary school, or that the boy was taken into employment under false representations as to age, residence and other conditions, such person, shall, on conviction before a Magistrate, be liable to a fine not exceeding twenty rupees.

Note.—A case under this section is triable by a union bench.

13. An application to a Magistrate under section 9 or a complaint to a Magistrate under section 10 or section 12, may be made on behalf of the School Committee by such person as may be authorized by the School Committee by general or special order in this behalf.

Delegation of some of the functions of the School Committee.

14. When primary education has been made compulsory in any Municipality, or any part thereof, if a guardian, who is required under provisions of this Part to cause a boy to attend a recognized primary school, satisfies the School Committee that he is unable to pay the fees or any part of the fees ordinarily charged in such school, such boy shall be admitted to such school free of charge, or at such reduced fees as the School Committee may determine, for the period during which the guardian is required to cause the boy to attend a recognized primary school.

15. The Commissioners may, with the previous sanction of the Local Government, make rules prescribing—
 Power of Commissioners to make rules.

(a) the manner in which the School Committee shall be constituted, the number of its members, its duties and its mode of transacting business ;

(b) the steps which the School Committee may take to secure the attendance of boys at school.

16. The Local Government may, by notification in the the *Calcutta Gazette*, exempt any class of persons or any community, in any area to which this Act extends, from the operation of this Part.
 Exemption from compulsory education.

PART IV.

Education Cess.

17. (1) If the existing resources of any Municipality including any grant from the Government, are not sufficient to cover the cost of primary education within the Municipality, the Commissioners may, with the previous
 Education Cess.

sanction of the Local Government, impose a tax, to be called the "education cess"; and all amounts derived therefrom shall be devoted solely to the purposes of primary education, whether voluntary or compulsory, within the Municipality.

(2) An education cess shall not be imposed unless the Commissioners by a resolution, passed at a special general meeting convened for the purpose and in favour of which two-thirds of the Commissioners have voted, determine to impose such cess.

(3) The education cess shall be levied in such manner as may be prescribed by rules made by the Local Government, and the cess so levied shall be a rate amounting to the sum required, after deducting the Government grant, the school receipts and the receipts from endowments and contributions, to meet the expenditure on primary education, together with ten *per cent.* above such sum to meet the collection charges and the probable losses due to non-realization from defaulters.

Note.—In a union under the Village Self-Government Act there is no need for a separate education cess. The cost of primary education can be met from the union rate.

PART V.

Supplemental.

18. (1) The Local Government may, after previous publication, make rules to carry out the purposes of this Act.

Power of Local Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Local Government may make rules prescribing the manner in which—

(a) applications under section 6, sub-section (1), shall be made; and

(b) the education cess shall be levied.

(3) All rules made under this section shall be published in the *Calcutta Gazette*.

19. All primary schools maintained by the Commissioners within a Municipality, or any part thereof, under the provisions of this Act, shall be open to inspection free of any charge by the inspecting officers of the Education Department of the Local Government and such other persons as the Local Government may appoint in this behalf.

20. Every person authorized by the School Committee under section 13, and every officer and servant of the School Committee, shall be deemed to be a public servant with the meaning of section 21 of the Indian Penal Code.

21. When, in the opinion of the Local Government, the Commissioners have made default in any of the requirements of Part III of this Act, the Local Government may, after considering any explanation of the Commissioners, by a notification in the *Calcutta Gazette*, stating the grounds of such order, cancel any notification which has been issued under section 6, sub-section (1).

CATTLE TRESPASS ACT.

Act No. 1 of 1871.

*An Act to consolidate and amend the law relating to
trespasses by cattle.*

WHEREAS it is expedient to consolidate and amend
the law relating to trespasses by cattle : It
is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called "The Cattle—Trespass Act, 1871" and (2) It extends to the whole of British India except the Presidency—towns and such local areas as the Local Government, by notification in the official Gazette, may from to time exclude from its operation.

Note.—The Act extends to all districts in the province of Bengal but not to the town of Calcutta.

2. The Acts mentioned in the Schedule hereto annexed are repealed.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III of 1857 (*relating to trespasses by cattle*), shall be deemed to be, respectively established, appointed, and determined under this Act.

3. In this Act :—
"Officer of Police" includes Village Watchman, and "Cattle" includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids and

"Local authority" means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

"Local fund" means any fund under the control or management of a local authority.

Notes 1.—Chaukidars and dafadars (who are head chaukidars) have the powers and duties assigned to an officer of police by this Act.

2. In this Act, the term "local authority" includes a union board a district board and also a local boards.

CHAPTER II, POUNDS AND POUND-KEEPERS.

Notes. (1)—In unions for which union committees have been constituted under section 38 of the Local Self-Government Act, the Government has transferred to the union committees all the functions of the District Magistrate under chapters II and III of this Act within the respective unions and, for all areas not included within any such union or within any municipality has transferred the said functions of the District Magistrate to the respective district boards (cf. Notification No. 3174, T. M. dated the 16th August, 1913). When union boards are constituted under Section 11 of the Village Self-Government Act, the said functions of the District Magistrate within the respective unions will be transferred to the union boards.

(2), On the transfer of the functions of the District Magistrate to the union board, the union board will manage the existing pounds and may establish new pounds and fix the charges to be made for feeding and watering impounded cattle.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

Establishment
of Pounds.

The Village by which every pound is to be used shall be determined by the Magistrate of the District.

Notes (1)—Wherever cattle trespass is frequent, there should be a pound within a reasonable distance, say, one mile or at the most two miles.

(2). It is desirable that a new pound should not be opened at any time other than the beginning of the year and that public notice of the intention to open such pound should be given. If any objections are raised, the union board should consider them before the pound is opened and should endeavour to avoid injuring the pounds of neighbouring unions, except in so far as the convenience of the residents of the union make it necessary that they should have a pound near to them. By not opening a pound except at the beginning of the year the union board will avoid having to decide difficult questions regarding compensation to lessees of neighbouring pounds.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Control of pounds
Rates of charge.
for feeding im-
pounded cattle.

120 THE BENGAL VILLAGE SELF-GOVERNMENT ACT.

Notes 1.—It is open to the local authority in charge of pounds either to manage them through its own officers or to leave them out.

The practice at present is that the leases of pounds are put up to auction by the district board or union committee and the highest bidder, if he is known to be a reliable person, is appointed pound-keeper and executes a kabuliyat agreeing to carry out the duties of pound-keeper and to pay by instalments the amount at which he bought the lease.

2. The period of the lease is usually one year, but Government has expressed an opinion that it is desirable that persons of known position and solvency residing close to the pound should be granted leases for longer periods.

3. When pounds are leased by district boards, the rent is generally made payable, by 12 monthly instalments in advance and security to the amount of one fourth of the annual rent is also taken from the lessee. These conditions are very severe and cannot be enforced in practice. It would seem more convenient that the rent should be made payable quarterly in advance and that the advance payment should be treated as security. For pounds leased by union boards or union committees a simple form of kabuliyat will suffice. The following form is suggested :—

Kabuliyat.

I son of of village in
the union of having been appointed by the
Union Board of Union pound-keeper of the
pound hereby agree to pay as rent the sum of Rs.
per annum for the right to appropriate to my own use
the pound fine and feeding charges for year (s)
from the day of to the day of : I have
to day paid to the Union Board Rs. being one
fourth of the said annual amount and I agree to pay the
remainder by quarterly instalments in advance, namely,

Rs.	by the last day	of Ashar	B. S.
R. S.	"	" Asvin	B. S.
Rs.	"	" Paush	B. S.
*			*

I further agree that so long as I am pound-keeper, I will keep the pound enclosure and shed in good repair and clean condition, that I will provide good and sufficient food and water for the impounded cattle, that I will not allow any impounded animal to escape, that I will not pay any gratification to anyone bringing cattle to the pound and that I will duly carry out all the duties of a pound-keeper under the Cattle Trespass Act. In the event of my breaking any of the covenants herein contained, the Union Board shall be at liberty to remove me from the office of pound-keeper and this lease shall thereupon determine and the Union Board shall be at liberty to resell the pound and I shall forfeit without objection all the rent paid by me in advance.

4. The pound kabuliyat is a bond, as defined in the Indian Stamp Act, (II of 1899). Under article 15, schedule I of that Act. the kabuliyat must be stamped. The value of the stamp will be where the annual rent of pound does not exceed Rs. 10 ... two annas where it exceeds Rs. 10 and does not exceed

Rs. 50	four annas		
Do.	do.	Rs. 50	do.	Rs. 100	...	eight annas
Do.		Rs. 100	do.	Rs. 200	...	one rupee
Do.		Rs. 200	do.	Rs. 300	one rupee, eight annas	
Do.		Rs. 300		Rs. 400	...	two rupees

Under section 29(a) of the Stamp Act, the stamp duty is to be paid by the pound-keeper.

5. The leases of pounds should be sold about a month before the beginning of the year. Sale notices should be published least 15 days before the sale and should contain a list of all the pounds to be maintained

in the union during the ensuing year. The date, time and place where the sale will be held should be stated and together with the notice, a copy of the form of kabuliyat which the lessee will have to execute should be published. The sale should be held by the president who should be at liberty to refuse the bid of any person whom he does not consider to be suitable for the post of Pound-keeper.

6 It is generally undesirable that a union board should have recourse to the Certificate procedure for the realisation of pound rents; but it may be noted that the certificate procedure cannot be used by a union board unless a clause is inserted in the pound kabuliyat to the effect that the lessee agrees that any arrears of rent due shall be recoverable as a public demand and unless the kabuliyat is registered (cf. article 9, schedule I of the Bengal Public Demands Recovery Act, 1913 and para. 11 of Bengal Government Circular No. 9, J, dated 24.3.84). It is suggested that registration and certificates be avoided except where a pound lease is sold for more than Rs. 200. If a sufficient number of pounds is provided, none of them is likely to be worth so much.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper :

Provided that in the Presidency of Fort St. George, the heads of villages, and in the presidency of Bombay, the Police patils, or (where there are no Police patils), the heads of villages, shall be ex-officio the keepers of village-pounds.

Ex-officio pound keepers in Madras and Bombay.

Suspension or removal of pound-keepers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be public servants.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

DUTIES OF POUND-KEEPERS.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

To register seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register.

- (a) the number and description of the animals,
- (b) the day and hour on and at which they were so brought,
- (c) the name and residence of the seizer, and
- (d) the name and residence of the owner, if known, and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

Note.—It is very much to be regretted that Pound-keepers often neglect to give impounded animals food or even water. Members of union boards should stop this form of cruelty. A Pound-keeper who does not give impounded animals sufficient food or water is liable under section 27 of this Act to a fine which may extend to Rs. 50.

CHAPTER III.

Note.—See notes at the head of Chapter II.

IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land,
Cattle damaging land.

or the vendee or mortgagee of such crop or produce, or any part thereof

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and send them or cause them to be sent within twenty-four hours to the pound established for the village in which the land is situate.

All officers of Police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such seizures.
Police to aid seizures.

Note—Chaukidars and dafadars must, if asked, assist in preventing resistance to or rescues from lawful seizure (cf. sec. 3).

11. Persons in charge of public roads, pleasure grounds, plantations, canals, drainage-works, embankments and the like, and officers of Police may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon, and shall send them or cause them to be sent within twenty-four hours to the nearest pound.
Cattle damaging public roads, canals and embankments.

THE BENGAL VILLAGE SELF-GOVERNMENT ACT. 125

Note.—During the rainy season and at any time when earth work has been done recently, cattle passing may do great injury.

The union board should give directions to the dafadars and chaukidars from time to time as to what roads, drains, tanks and other public places are to be kept free from cattle. The dafadars and chaukidars should warn the cattle-herds and, if cattle are found in such places, they should impound them.

12. For every head of cattle impounded as aforesaid the Pound-keeper shall levy a fine according to the following scale :—

Fines for cattle impounded.	Elephant two rupees.
	Camel or buffalo eight annas.
	Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	four annas.
	Calf, ass or pig two annas.
	Ram, ewe, sheep, lamb, goat or kid	one anna.

Provided that, when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

A list of the fines and of the rates of charge for feeding and watering cattle shall be struck up in a conspicuous place on or near to every pound.

List of fines and
charges for
feeding.

The Local Government may at any time, by notification in the Official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.

Note.—Pound-fees or fines under this section should be sent, not to the magistrate, but to the District Board, union board or other local authority to which the functions of the Magistrate have been transferred. But, where the lease system is in force, the fees will be retained by the Pound-keeper.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

Procedure when
owner claims
the cattle and
pays fines and
charges.

13. If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent on taking back the cattle, shall sign a receipt for them in the register kept by the Pound-keeper.

14. If the cattle be not claimed within seven days from of the date of their being impounded, the Pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating.

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded, and shall cause proclamation of the same to be made by beat of drum in the village and at the market place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose at such place and time, and subject to such conditions as the Magistrate of the Dis-

trict by general or special order from time to time directs.

Provided that if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

Note.—As many villages are at a considerable distance from the thana owners of impounded cattle, frequently do not learn in time of the notice of sale. It is for the general advantage that sales of impounded cattle should be carried out by the president of the union board at a hat or at the union board's office. This section authorises District Magistrates to pass orders that reports and sales of unclaimed cattle should be received and carried out by presidents of union boards instead of thana officers; but if this is done it will be desirable that a copy of the sale notice should be published in at least 3 places *viz* :—(1) the union board's office (2) the thana (3) the pound. Under this section proclamation of the sale must also be made by beat of drum (1) in the village where the cattle were in and (2) at the nearest hat or bazar. See also additional note under Sec. 26, Village Self-Government Act.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear, and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction, by such officer at such place and time, and subject to such conditions as are referred to in section fourteen.

The fines leviable and the expenses of feeding and watering together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of
unsold cattle
and balance
of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account, showing.

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

Disposal of fines,
expenses and surplus
proceeds of sale.

The charges for feeding and watering deducted under section sixteen shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and if no claim thereto be referred and established within that period shall, at its expiry dispose of them as herein-after provided.

Note.—The surplus unclaimed proceeds should not be sent to the district magistrate, but to the local authority to which the functions of the district magistrate have been transferred in the area in which the pound is situated.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid,—

Application of fine and unclaimed proceeds of sales.

(a) the salaries allowed to pound-keepers under the orders of the Local Government ;

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act ;

and the surplus (if any) shall be applied under order of the Local Government, to the construction and repair of roads and bridges, and to other purposes of public utility.

Notes.—1. In the Rajshahi, Dacca and Chittagong divisions, in all unions where *union committees* have been constituted, the Government has, by notification under sec. 31, directed that the surplus referred to in this section shall be placed to the credit of the respective union funds. (cf. Notification No. 1428 L. S. G. dated the 18th May 1914). When *union boards* are constituted similar orders will be passed in their favour, though possibly this concession may not be extended to union boards in the Western Bengal divisions.

2. For all areas administered by district boards, excepting in Eastern Bengal the areas administered by union committees or union boards, the surplus referred to in this section is placed to the credit of the district fund.

3. This section does not apply to fines imposed under sections 24 and 27. Such fines are credited to Government, and not to any local authority, except where a fine is imposed under section 24 by a union bench (cf. sec. 46 Village Self-Government Act).

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Officers and pound-keepers not to purchase cattle at sales under Act.

No pound-keeper shall release or deliver any inpounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

Pound-keepers when not to release impounded cattle.

Notes.—1. If a defadar, chaukidar or pound-keeper buys any unclaimed cattle which are being sold under the provision of section 14, he is liable to simple imprisonment which may extend to two years or to a fine or to both, and the cattle bought will be confiscated. The officer conducting the sale is also prohibited from purchasing such cattle and the same penalties apply to him as to a chaukidar (cf. sec. 169, Indian Penal Code.)

2. A *benami* purchase is punishable as a purchase in the buyer's own name.

CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Any person whose cattle have been seized under this Act, or having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

Power to make complaints.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

If the Magistrate on examining the complaint or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Compensation for illegal seizure or detention.

and, if the cattle have not been released, the
Release of cattle. Magistrate shall, besides awarding
such compensation, order their
release and direct that the fines and expenses leviable
under this Act shall be paid by the person who made the
seizure or detained the cattle.

23. The compensation, fines and expenses men-
tioned in section twenty-two may
Recovery of compensa- be recovered as if they were fines
tion. imposed by the Magistrate.

CHAPTER VI.

PENALTIES.

24. Whoever forcibly opposes the seizure of cattle

Penalty for forcibly
opposing the seizure of
cattle or rescuing the same.

liable to be seized under this Act and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such persons being near at hand acting under the powers conferred by this Act, shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees or with both.

Notes.—1. The imprisonment may be either rigorous or simple (cf. clause (13), section 11, General Clauses Act, (India Act. 1 of 1868)

2. A complaint under this section may be made by petition, oral or in writing, to any member of a union bench having jurisdiction in the place where the offence was committed, and on conviction the union bench may impose a fine of any amount up to Rs. 25 (cf. secs. 67 and 72, Village Self-Government Act).

25. Any fine imposed under the next following

Recovery of penalty for
mischief committed by
causing cattle to trespass.

section or for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Note.—See note under Sec. 426, Indian Penal Code,

26. Any owner or keeper of pigs who, through

Penalty for damage
caused to land or crops or
public roads by pigs.

neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allow-

THE BENGAL VILLAGE SELF-GOVERNMENT ACT. 135

ing such pigs to trespass thereon, shall, on conviction before a Magistrate be punished with fine not exceeding ten rupees.

The Local Government, by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words 'fifty rupees' were substituted for the words 'ten rupees,' or as if there were both such reference and such substitution.

The local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section.

Notes—"Public road" in this section includes a railway.—cf. sec. 125 (4) Indian Railways Act, 1890.

2. By notification published in the Calcutta Gazette, 1898, Part I, p. 890, the Government of Bengal directed that, within the municipality of Howrah, the first portion of this section shall be read as if it had reference to cattle generally, instead of to pigs only, and as if the words "fifty rupees" were substituted for the words "ten rupees". No such notification appears to have been issued with regard to any other local area in Bengal.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provision of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. All fines recovered under section twenty-five, section twenty-six, or twenty-seven may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle, from suing for compensation in any competent Court.

Saving of right to sue for compensation.

Note.—A union court is not competent to try a suit for damage by cattle trespass—cf. sec. 74, Village Self-Government Act.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate, shall be set off and deducted from any sum claimed by or awarded to him as compensation in such suit.

Set off.

CHAPTER VIII.

SUPPLEMENTAL.

31. The Local Government may from time to time, by notification in the official Gazette,—

Power for Local Government to transfer certain functions to local authority and direct credit of surplus receipts to local fund.

(a) transfer to any local authority within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority; or

(b) direct that the whole or any part of the surplus accruing in any district under section eighteen of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district.

Note.—See notes at the head of chapter II and under section 18.

SCHEDULE.

(See Section 2).

Number and year.	Title of Act.
III of 1857 ...	An Act relating to trespasses by cattle.
V of 1860 ...	An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861 ...	An Act to amend Act III of 1857 (relating to trespasses by cattle).

(As amended by Circular No. 7 T.-M., dated the 17th May, 1895).

BENGAL FERRIES ACT.

ACT NO. I OF 1885.

An Act to regulate Ferries in Bengal.

Preamble. Whereas it is expedient to regulate Ferries within the territories subject to the Lieutenant Governor of Bengal: It is enacted as follows:—

Short title. 1. This Act may be called "The Bengal Ferries Act, 1885."

Extent and commencement of Act. 2. It shall extend to all the territories subject to the Lieutenant-Governor of Bengal: And it shall come into force on such date as the Lieutenant-Governor may, by notification in the Calcutta Gazette, appoint in this behalf.

Regulation VI of 1819 and Bengal Act 1 of 1866 repealed. 3. Regulation VI of 1819 and Bengal Act 1 of 1866 are hereby repealed; but all determinations, declarations, orders and rules made, engagements entered into, and securities taken, under such Regulation and Act, shall be deemed to be respectively made, entered into, and taken under this Act.

Act not to apply to municipal ferries. 4. Nothing in this Act contained shall apply to any ferry, deemed or declared to be a municipal ferry under the provisions of the Bengal Municipal Act 1884.

Note.—A "Municipal ferry" is either a public ferry which the Government has, under section 148 of the Municipal Act, made over to the Municipal Commissioners to be administered by them until the Government shall otherwise direct, or a private ferry which the Municipal Commissioners have acquired and made public under section 149.

Interpretation. 5. In this Act, unless there be something repugnant in the subject or context,—

“Commissioner” means the Commissioner of a Division.

“Ferry” includes a bridge of boats, pontoons or rafts, a swingbridge, a flying-bridge a temporary bridge and a landingstage.

“Notification” means a notification published in the Calcutta Gazette.

“Private ferries” includes all ferries other than those declared to be public ferries, or established as such under section six of this Act.

Notes 1.—It has been held by the High Court that the word “ferry” in this Act means the exclusive right to carry passengers across the stream from one bank to another on payment of certain prescribed tolls (I. L. R. 27 Cal. 317). The method of crossing may be by a ferry boat or by any of the means mentioned in this section; but a permanent bridge is not a “ferry”.

2. A boat plying between two places on the same side of a river is not a ferry.

PART I

PUBLIC FERRIES.

Power to declare, establish, define, and discontinue public ferries.

6. It shall be lawful for the Lieutenant-Governor from time to time to—

- (a) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate.

- (b) take possession of a private ferry, and declare it to be a public ferry ;
- (c) establish new public ferries where, in his opinion, they are needed ;
- (d) define the limits of any public ferry ;
- (e) change the course of any public ferry ; and
- (f) discontinue any public ferry which he deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance, shall be made by notification :

Provided that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river on which such ferry is established, such alteration may be made, by an order in writing, by the Magistrate of the District.

Notes (1).—The powers of the Lieutenant-Governor under clauses (a), (b), (c) and (f) have been delegated, under section 36, to Commissioners of divisions (cf. Notification No. 3403 L. S. G. dated the 1st December 1904).

- (2) If the management of any public ferry has, under section 35, been made over to a district board, union board or other local authority any alterations in the course or the limits of such ferry rendered necessary by changes in the river should be made by a formal resolution at a meeting of such district board, union board or other local authority.
- (3) If a district board or union board considers that any new public ferry should be established or that any private ferry should be acquired and made public, it should record its opinion in a formal resolution and submit a representation through the District Magistrate to the Commissioner to exercise his powers under this section.

Control of public ferries vested in the Magistrate of the District.

The control of all public ferries shall be vested in the Magistrate of the District, subject to the direction of the Commissioner.

- 8. The immediate superintendence of every public ferry shall be vested in the Magistrate of the District in which such ferry is situated, or in such other officer as the

Superintendence of public ferries.

Lieutenant-Governor may, from time to time, either by name or by official designation appoint.

And such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry and for the collection of the authorized tolls leviable thereat.

Notes.—The district board, union board, or other local authority to which the management of a public ferry is given will exercise the powers vested in the Magistrate of the district under sections 6, 8, 9, 11, 13, 14, 15, 16, 18, 21, 26, 33 and 34.

9. The tolls of any public ferry may, from time to time, be leased by public auction for such terms as the Magistrate of the District in which such ferry is situated may, with the approval of the Commissioner, direct.

Ferry tolls may be leased by auction.

The Magistrate of the District or the officer authorized by him to conduct such auction may, for sufficient reason to be recorded in writing, refuse to accept the offer of the highest bidder and may accept any other bid, or may withdraw the tolls from auction.

The lessee of the tolls of every ferry which have been leased under this section shall execute a contract setting forth the conditions on which the tolls of such ferry are to be held, and shall give security for its due fulfilment.

Execution of contract by lessee.

Notes 1.—When a public ferry managed by a union board is leased, the union board may make rules regulating the payment of the rent of the lease, the number, kind and size of boats and the number of boatmen to be kept, the hours during which the ferry shall be bound to ply and other particulars. Such rules require the approval of the Commissioner and must be published in the Calcutta Gazette (cf. sec. 15). The conditions laid down in the rules made by the union board should be mentioned in the contract executed by the lessee under section 9.

2. The rent of such ferries should be payable at the office of the union board and not at the district treasury.

3. The kabulyat, or contract, executed by the lessee need not be registered (cf. sec. 12) but should be stamped. The value of the stamp will be the same as in the case of a pound kabulyat. (See. note 4 under section 5, Cattle Trespass Act).

10. When the tolls of a public ferry have been duly leased, the lessee and every servant of the lessee shall be deemed to be legally bound to conform to the rules made under this Act for the management and control of such ferry.

Lessee of the tolls of a public ferry and his servants bound to conform to rules.

Note.—See note under section 6.

11. On the requisition of the Magistrate of the District, the person in charge of a public ferry shall maintain at one or more places, in addition to the place at which the said public ferry is established, and within two miles therefrom, such number of subsidiary ferries as may seem to the Magistrate to be necessary for the public convenience: and all the provisions contained in this Act in regard to the management and control of public ferries shall be deemed applicable to any subsidiary ferry maintained under the requisition of the Magistrate.

Provision for the establishment of subsidiary ferry.

12. All arrears due by the lessee of the tolls of a public ferry on account of his lease;

Recovery of arrears from lessee.

any pecuniary forfeiture for breach of contract inserted in the deed of contract or conditions of sale by public auction; and

all sums due from the lessee on the surrender of his lease under section fourteen,

may be recovered from the lessee or his surety (if any) as a demand under Bengal Act VII of 1880, or any other Act at the time being in force for the recovery of public demands.

144 THE BENGAL VILLAGE SELF-GOVERNMENT ACT.

Note.—Union boards should insist on payment of ferry rents in advance and as soon as any instalment becomes overdue should cancel the lease and resell the ferry. It would be very troublesome for a union board to realize its demands by certificate procedure and the best results will be obtained by avoiding that procedure.

12. All arrears due by the lessee of the tolls
Recovery of arrears of a public ferry on account of his
from lessee. lease ;

any pecuniary forfeiture for breach of contract inserted in the deed of contract or conditions of sale by public auction ; and

all sums due from the lessee on the surrender of his lease under section fourteen,

may be recovered from the lessee or his surety (if any) as a demand under Bengal Act VII of 1880, or any other Act at the time being in force for the recovery of public demands.

13. The lease of the tolls of any public ferry
Power to cancel lease. shall be liable to be cancelled at once by the Magistrate of the District in which such ferry is situated, if it shall appear to such Magistrate that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from such Magistrate.

Note.—When a ferry is managed by a union board, the board should exercise the powers with which it is vested under sections 35 and 13 and should insist on the lessee promptly providing suitable ferry boats and sufficient boatmen.

14. The lessee of the tolls of a public ferry may
Surrender of lease. surrender his lease on the expiration of one month's notice in writing to the magistrate of the District in which such ferry is situated of his intention to surrender such lease, and on payment of such reasonable compensation as the

Magistrate may, with the approval of the Commissioner, in each case direct.

Note.—Where a ferry is managed by a union board, the board will exercise the powers of the magistrate under this section.

15. The Magistrate of the District, with the approval of the Commissioner, may from time to time make rules consistent with this Act,—

Power to make rules in regard to public ferries.

- .. (a) for the management of all public ferries within such district and for regulating the traffic at such ferries ;
- (b) for regulating the time and manner at and in which, the terms on which and the persons by whom, the tolls of such ferries may be leased by auction :
- (c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for, and
- (d) generally to carry out the purposes of this Act.

And when the tolls of a ferry have been leased under section nine, such Magistrate may, from time to time, with such approval as aforesaid, make additional rules consistent with this Act

- (e) for collecting the rents payable for the tolls of such ferries ;
- (f) for regulating the returns of traffic to be, from time to time, submitted by the lessee of such ferries ;
- (g) in cases in which the communication is to be established by means of a bridge of boats,

pontoons or rafts, or a swing-bridge, flying-bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained, and opened for the passage of vessels and rafts through the same, and

(h) in cases in which the traffic is conveyed in boats, for regulating

the number and kinds of such boats and their dimensions and equipment ;

the number of the crew to be kept by the lessee for each boat ;

the maintenance of such boats in good condition :

the hours during which, and the intervals within which, the lessee shall be bound to ply, and

the number of passengers, animals and vehicles, and the bulk and weight of other things that may be carried in each kind of boat at one trip.

And may, from time to time, with such approval as aforesaid, repeal or alter such rules.

Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the "Calcutta Gazette" in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law.

Notes. 1.—The power of the magistrate to make rules will be exercised by union boards in respect of ferries made over to their management under section 35.

2. The breach of any rule under this section is punishable under section 25.

16. No person shall except with the sanction of the Magistrate of the district, maintain a ferry to or from any point within a distance of two miles from the limits of a public ferry :

Private ferry not to ply within two miles of public ferry without sanction.

Provided that in the case of any specified public ferry, the Lieutenant-Governor may, by notification, reduce or increase the said distance of two miles to such extent as he thinks fit :

Provided also that nothing hereinbefore contained shall prevent persons keeping boats to ply between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or shall apply to boats which the Magistrate of the District expressly exempts from the operation of this section.

Note—See notes under section 5.

17. Claims for compensation for any loss sustained by any person in consequence of a private ferry, being taken possession of or a new public ferry, or subsidiary ferry, being established under section six or section eleven, shall be enquired into by the Magistrate of the District in which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear justly entitled thereto. Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profit.

Note.—When a district board or union board submits proposals for the acquisition of a private ferry it should furnish particulars, so far as they can be obtained, of the net income derived from the ferry by the proprietor during the preceding 5 years. An estimate should also be submitted of the probable annual income which the union board is likely to obtain from the ferry and of the annual cost of maintenance.

18. Tolls, according to such rates as may from time to time, be fixed by the Magistrate of the District with the approval of the Commissioner, shall be levied

on all persons, animals, vehicles and other things crossing any river by a public ferry, and not employed or transmitted on the public service :

Provided that the Lieutenant-Governor may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been leased under section nine, any such declaration, if made after the date of the auction, shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Magistrate of the district under this section.

Notes.—1. For all public ferries managed by them, union boards should submit proposals as to the tolls to be charged.

2. Under section 3 of the Indian Tolls (Army) act, the following persons and property are exempted from payment of tolls.—

- (a) all officers and soldiers of—
 - (i) His Majesty's Regular Forces,
 - (ii) any local corps, or
 - (iii) Imperial Service Troops, when on duty or on the march.
- (b) all members of a corps of Volunteers when on duty or when proceeding to or returning from duty.
- (c) all officers and soldiers of the Indian Reserve Forces when proceeding from their place of residence on being called out for training or service, or when proceeding back to their place of residence after such training or service,
- (d) all grass-cutters when employed in the service of—
 - (i) His Majesty's Regular Forces,
 - (ii) any local corps,
 - (iii) Imperial Service Troops, or
 - (iv) any corps, of Volunteers,
- (e) all other authorized followers of—
 - (i) His Majesty's Regular Forces,
 - (ii) any local corps,

- (iii) Imperial Service Troops, or
when they accompany any body of such Forces, Troops or Volunteers or any members of such corps on the march, or when they are otherwise moving under the orders of military authority,
- (f) all members of the families of officers, soldiers or authorized followers of—
 - (i) His Majesty's Regular Forces, or,
 - (ii) any local corps,
when accompanying any body of troops, or any officer, soldier or authorized follower thereof on duty or on the march,
- (g) all prisoners under military escort,
- (h) the horses and baggage, and the persons (if any) employed in carrying the baggage of any persons exempted under any of the foregoing clauses, when such horses, baggage or persons accompany the persons so exempted under the circumstances mentioned in those clauses respectively,
- (i) all carriages and horses belonging to His Majesty or employed in His Majesty's military service and all persons in charge of or accompanying the same, when conveying any such persons as hereinbefore in this section mentioned or when conveying baggage or stores or when returning unladen from conveying such persons, baggage or stores,
- (j) all carriages and horses when moving under the orders of military authority for the purpose of being employed in His Majesty's military service,
- (k) all animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops, and
- (l) all persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively,

19. The lessee or other person authorized to col-

Table of tolls. lect the tolls of any public ferry shall affix a table of such tolls, legibly written, or printed in the vernacular language, and also, if the Commissioner so directs, in English, in some conspicuous place near the ferry ;

and shall be bound to produce, on demand, a list of the tolls signed by the Magistrate of the District, or such other officer as he appoints in this behalf.

List of Tolls.

Notes.—If the ferry is managed by a district board or union board, the list must be signed by such officer as the board may appoint in that behalf.

20. Except as provided by section thirty-five, all tolls, rents and compensation received by or on behalf of the Government, and all fines levied under this Act, shall be appropriated in the first instance towards the payment of all charges incurred in carrying out the provisions of this Act, and the surplus, if any, shall be credited to such fund as the Lieutenant-Governor may from time to time direct.

Tolls, rents, compensation, and fines how to be appropriated.

21. It shall be lawful for the Magistrate of the District in which a public ferry is situated, with the approval of the Commissioner, from time to time to fix rates at which any person may compound for the tolls payable for the use of such ferry.

Compounding for tolls.

PART II

PRIVATE FERRIES.

22. The Commissioner may, from time to time, make rules consistent with this Act for the maintenance of order and for the safety of passengers and property at private ferries situated in his division.

Power to make rules in regard to private ferries.

Rules made under this section shall be subject to the control of the Lieutenant-Governor and shall be published in the Calcutta Gazette in such manner as the Lieutenant-Governor directs and shall thereupon have the force of law.

Notes.—Private ferries are generally kept in very bad codition. At many there is only a small boat and no boatman. Passengers are expected to pull themselves across the stream by means of ropes attached to both ends of the boat and to objects on the banks. Sometimes not even a rope is provided but only a pole. A passenger has to propel the boat by means of the pole and no other person can cross the ferry in the same direction until some one comes from the opposite direction. Meantime he may have to sit on the bank for hours waiting. For this convenience an annual toll in kind is realised from the persons who habitually use the ferry.

For most private ferries it seems impossible to compel the proprietors to make any improvement. The rules made by Commissioners, on the basis of the Model Rules framed by Government, are not enforced ; .. and even if they were, no substantial benefit would accrue.

Union boards would do good by drawing the attention of proprietors of private ferries which are mismanaged. If this has no effect the union board should move the Commissioner, through the district board, to make the ferry public under section 6'b). Before doing so the union board must provide funds to pay compensation to the proprietors.

• Many of these small ferries if properly managed by union boards would bring them a substantial income.

PART III

PENALTIES AND CRIMINAL PROCEDURE.

23. Every lessee or other person authorized to collect the tolls of a public ferry,

Penalty for breach of provisions as to table of tolls, list of tolls, and return of traffic.

who neglects to affix and keep in good order and repair the table of tolls mentioned in section nineteen,

or who wilfully removes, alters or defaces such table or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section nineteen,

and every lessee who neglects to furnish any return required under section fifteen, shall be punished with fine which may extent to fifty rupees.

24. Every such lessee or other person as aforesaid asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

Penalty for taking unauthorised toll, and for causing delay.

25. Every person breaking any rule made under section fifteen or section twenty-two shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Penalty for breach of rules made under sections 15 and 22.

26. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section twenty-five, or, having been convicted of an offence under section twenty-three or section twenty-four, is again convicted of an offence under either of those sections, the Magistrate of the District may, with the approval of the Commissioner, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were leased.

Cancelment of lease on default or breach of rules.

Note—The power of cancelling a lease of a ferry managed by a district board or union board, is vested in such board by order under section 35.

27. Every person crossing by any public ferry who refuses to pay the proper toll; and every person—
 who with intent to avoid payment of such tolls fraudulently or forcibly crosses by any such ferry without paying the toll, or
 who obstructs any toll-collector or lessee of the tolls of a public ferry or any of his assistants in any

Penalties on passengers offending.

way in the execution of their duty under this Act, or after who being warned by any such toll-collector, lessee or assistant not to do so, goes or takes any animals, vehicles or other things into any ferry-boat or upon any bridge at such a ferry which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave or remove any animals, vehicles or goods from any such ferry-boat or bridge on being requested by such toll-collector, lessee or assistant to do so, or

who moors any boat, raft, or other substance to, or in any way obstructs, any part of a public ferry,

shall be punished with fine which may extend to fifty rupees.

28. Whoever conveys for hire any passenger, animal, vehicle or other thing in contravention of the provisions of section sixteen shall be punished with fine which may extend to fifty rupees.

Penalty for plying within public ferry-course without license.

29. Where the tolls of any public ferry have been leased under the provisions herein before contained, the whole or any portion of any fine realized under section twenty-seven or section twenty-eight may, notwithstanding anything contained in section twenty, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Fines payable to lessee.

30. Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry or any of his assistants may seize and

Penalty for rash navigation and stacking of timber.

detain such vessel, raft or timber pending the enquiry and assessment hereinafter mentioned.

31. The police may arrest without warrant any person committing an offence against section twenty-seven or section thirty.

Power to arrest without warrant.

32. Every Magistrate or Bench of Magistrates trying any offence under this Act may enquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or when the offence is one under section thirty, by the sale of the vessel, raft or timber causing the damage, and of anything found in or upon such vessel or raft.

Magistrate may assess damage done by offender.

The Commissioner may, on the appeal of any person deeming himself aggrieved by any order under this section, reduce or remit the amount payable under such order.

PART IV.

MISCELLANEOUS.

33. On the cancelment or surrender of a lease, the Magistrate of the District may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for

Power to take possession of boats and other appliances on surrender or cancellation of lease.

such time as may be necessary, not exceeding three months, until he can make arrangements for such other boats and appliances as may be necessary, in which case the Magistrate of the District shall pay a fair sum to the owners for the use of the said boats and appliances.

Provided that within a week of taking such possession, the Magistrate of the District shall be bound to give notice to the said lessee of his intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

34. When any boats or their equipments, or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers troops or persons, or of any property of Her Majesty, the Magistrate of the District may take possession of and use the same (paying such compensation for the use thereof as the Lieutenant-Governor may in each case direct) until such transport is completed.

35. It shall be lawful for the Local Government to order that any public ferry shall be managed by a local authority having jurisdiction over the area or any part of the area in which such ferry is situated; and such local authority shall have all the powers vested in the Magistrate of the district under this Act except the powers specified in section 7, 17 and 32, and the local Government may further order that all or any part of the proceeds of such ferry and all or any part of the fines levied, and compensation received under this Act in

respect thereof, be paid to such local authority; and thereupon such ferry shall be managed and such proceeds, fines and compensations shall be paid accordingly.

Notes 1.—Under the Act as originally passed the management and the proceeds of any public ferry could be made over by Government to a district board. By the Village Self-Government Act this section has been so amended that the management and proceeds of any public ferry may be made over to any local authority, which expression includes a union board.

2. Under section 36, commissioners of divisions have been empowered to transfer to district boards the management and the proceeds of public ferries, (if Notification No. 217 L.S.G., dated the 12th January 1905).

36. The Lieutenant-Governor may, from time to time, delegate, under such restrictions as he thinks fit, any of the powers conferred on him by this Act to any Commissioner or Magistrate of a District, or to such other officer or authority as he thinks fit, by name or by official designation.

(1) ELECTION RULES.

Notification No. 630 T.-L.S.-G.—The 13th October 1919.—In exercise of the powers conferred by clauses (a) and (b) of sub-section (2) of section 101 of the Bengal Village Self-Government Act, 1919 (Bengal Act V of 1919), the Governor in Council is pleased to make the following rules :—

Rules under the Bengal Village Self-Government Act, 1919, for the election and appointment of Members and Presidents of Union Boards and the election of Vice-Presidents.

PRELIMINARY.

1. The first election of a union board under these rules shall take place within six months after its establishment under section 6 of the Bengal Village Self-Government Act, 1919 :

Provided that the Local Government may, at any time by an order in writing, extend such period.

2. The District Magistrate shall decide in what manner each union shall be divided into electoral wards and the number of members to be returned for each of such wards:

Provided that, if it is thought convenient, a union may consist of one electoral ward only.

REGISTRATION OF VOTERS.

3. The circle officer shall cause to be prepared for each union, ward by ward, a register of persons qualified to vote.

4. The members of a joint undivided family qualified under clause (iii) of sub-section (1) of section 7 of the Act shall nominate a male member of the family of the full age of 21 years and having a place of residence within the union, to vote on their behalf at an election. The name of the member so nominated shall be communicated to the circle officer at least three months before the date fixed for the election, and shall be entered in the register of voters.

5. At least two months before the date fixed for an election a copy of the list of persons qualified to vote in each ward of any union shall be published at a conspicuous place within such ward.

6. Any person whose name does not appear in the register and who claims the right to vote, and any person who considers that any name in the register ought to be omitted, may submit to the circle officer an application to have his name inserted in, or the name of another person omitted from, the register. All such application shall state distinctly the grounds of application and shall be made at least one month before the

date fixed for the election. They shall be enquired into by the circle officer on a date to be previously intimated to the persons concerned. The decision of the circle officer shall be final.

7. The register of voters as amended after the decision of claims and objections under rule 6 shall be considered to be the final register of persons entitled to vote at the election, and no person whose name does not appear in such register shall be permitted to vote.

CANDIDATES FOR ELECTION.

8. The circle officer shall, at least six weeks before the date fixed for the election, issue notices calling for names of candidates for each ward. Such notices shall be published at every village within the ward. Within four weeks from the date of publication of the notices, every person who is a candidate for election shall send his name to the circle officer in writing supported by the signatures of voters :

Provided that the circle officer, if specially empowered by the Local Government in this behalf, may, for reasons to be recorded by him in writing, receive nominations, whether verbally or in writing, up to the time fixed for polling.

9. The circle officer shall ascertain whether all the candidates are duly qualified under sub-section (2) of section 7 of the Act ; and his decision on this point shall be final.

THE MANNER OF HOLDING ELECTIONS.

10. If the number of candidates is not greater than the number of vacancies, the presiding officer shall at once declare such candidates to be duly elected.

11. If the number of candidates exceeds the number of vacancies, a list showing, ward by ward, the

names of candidates who are duly qualified shall be published in each ward in a conspicuous place and by beat of drum at least one week before the date fixed for the election. No candidate whose name does not appear in the list shall be eligible for election.

12. The election shall be held on such date or dates and at such place or places within the union as may be fixed by the circle officer subject to rule 1. The place or places at which and the hours between which the voters will attend for the purpose of giving their votes shall be notified within the union by the publication of notices and by beat of drum at the same time as the list of candidates is published under rule 11.

13. The elections for the different wards in the union shall be held, either in succession or simultaneously, and the circle officer and such other person or persons, not being themselves candidates, deputed by the District Magistrate for the purpose, shall preside at such elections.

14. The proceedings for the election for each ward 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 for such ward.

15. The presiding officer shall then proceed to take a poll for each candidate, recording the number of votes giving for each candidate with his own hand.

16. The votes of all duly registered voters who are present between the hours mentioned in the notice within the building or enclosure in which the election is held shall be recorded. No voter shall be admitted within the building or enclosure after the expiry of the period mentioned in the notice.

17. A voter shall be entitled to vote for the ward or wards in which he has any place of residence and for no other.

18. Each voter shall be entitled to vote for as many candidates as there are vacancies, but shall not give more than one vote for any candidate.

19. All persons wishing to vote must be present at the election. No vote by proxy or in writing shall be received.

20. No objection to a voter shall be entertained except on the ground that he is not the person under whose name as entered in the voters' register he claims to vote. Such objections shall be summarily decided by the presiding officer, whose decision shall be final.

21. The presiding officer shall then and there declare such candidates as have the largest number of votes to be duly elected. In the case of an equal number of votes being recorded in favour of two or more candidates, all of whom cannot be returned, selection shall be made from such candidates by lot, in such manner as the presiding officer may deem fit. The candidate thus selected shall be declared to be duly returned.

22. If any candidate, having been duly elected under rule 21, declines to take office, the unsuccessful candidate, if any, who received the largest number of votes shall be declared to be duly elected. If there is no unsuccessful candidate, a fresh election shall be held to fill the vacancy thus created.

23. If the number of candidates exceeds the number of vacancies, no candidate shall be declared to be duly elected unless 10 per cent. of the registered voters have appeared and recorded their votes; if not, the election shall be held to have failed.

24. If an election fails under rule 23, the presiding officer shall at once report the fact to the District Magistrate, explaining the circumstances which led to the failure. After considering all the circumstances the District Magistrate shall decide whether the vacancy

or vacancies shall be filled by appointment or there shall be another election for the purpose. If, in his opinion the failure was due to no default or neglect of the voters, he shall direct that another election shall be held and shall fix a date for such election, for which the register of voters previously prepared shall hold good.

MISCELLANEOUS.

25. Save as otherwise provided, all disputes arising under the preceding rules shall be decided by the District Magistrate or under his general or special orders by the Subdivisional Magistrate within whose jurisdiction the union lies.

26. Except as provided by rules 22 and 23, no election held under these rules shall be invalidated on any ground whatever.

27. The list of duly returned candidates shall be forwarded to the District Magistrate within a week after the election.

28. No person in the employment or pay of the district, local or union board 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.

29. 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 from the union fund. In the case of a newly-created union board, in which no union fund has been formed, the District Magistrate shall advance such sums as may be required; and such sums shall be recoverable from the union board within six months.

APPOINTMENTS OF MEMBERS.

30. As soon as possible after the receipt of the list of elected members referred to in rule 27 the District Magistrate shall appoint members, if any, under subsections (3) and (4) of section 6 of the Act.

PUBLICATION OF THE NAMES OF MEMBERS.

31. The District Magistrate shall forward a list of duly elected and appointed members to the Commissioner of the Division for publication in the *Calcutta Gazette*.

ELECTION OF PRESIDENT.

32. Within a week after the names of the members have been notified in the *Calcutta Gazette*, the District Magistrate shall send a copy of the notification to the circle officer or such other person (not being one of the members) as the said Magistrate may select, with an order directing him to convene a meeting of the members for the purpose of electing a President from among them, within one month from the date of such order.

33. At such meeting one-half of the number of members shall be necessary to form a quorum; if, however, the board consists of 7 or 9 members, 4 or 5 members, respectively, shall form the quorum. There shall be no election of a President unless a quorum is present.

34. The meeting shall be presided over by the circle officer or other person convening it under rule 32. The presiding officer shall ask the members to record their votes in writing, and each of the members voting shall hand to him a signed voting paper containing the name of the person for whom he votes. No member shall vote for more than one candidate.

35. The candidate for whom there is the largest number of votes shall be declared by the presiding

officer to be the President of the board. In the case of equality of votes, the presiding officer shall give a casting vote.

36. If the members fail to elect a President within one month of the Magistrate's order, the fact shall be reported to the District Magistrate, who shall then ask the District Board to appoint, under section 8 of the Act, one of the members to be the President.

ELECTION OF VICE-PRESIDENT.

37. After the President has thus been elected or appointed, as the case may be, the members shall, if they consider a Vice-President necessary, elect one of their own number to be the Vice-President in the same manner as that prescribed for the election of the President in rules 33 to 35, the newly elected or appointed President performing the functions of the presiding officer, and giving his usual vote, and also a casting vote if necessary.

CASUAL VACANCIES.

38. In the case of a casual vacancy occurring under section 13 of the Act on account of the removal, resignation or death of an elected member, the vacancy shall be filled by election in the manner prescribed by rules 8 to 22, and the provisions of rules 23 to 31 shall be applicable to such election. It shall not be necessary to publish the register of voters or extracts from it, provided that the register shall at all times be open to public inspection at the office of the union board, and all persons whose claims have been admitted under rule 6 shall be entitled to vote at such election. The President shall in the case of each by-election publish a notice stating the latest date upon which claims to be registered will be received.

Note.—Presumably rules 4 to 6 will also apply.

39. As soon as a vacancy occurs under section 13 of the Act on account of the removal, resignation, or

death of an appointed member, the President shall report the fact to the District Magistrate, who shall appoint another member to fill the vacancy.

40. (1) When the office of the President becomes vacant under section 17 simultaneously with his office as a member of the board, the vacancy in the office of the President shall be filled by election in the manner prescribed by rules 33 to 35, within two weeks from the date of the election or appointment of a member in his place under rule 38. When he resigns or is removed from the Presidentship but remains a member of the union board, the vacancy in the office of the President shall be similarly filled within two weeks of the resignation being accepted by the Chairman of the District Board or of the order of removal, as the case may be.

(2) The meeting shall be presided over by a member of the union board not being himself a candidate for the Presidentship.

(2) RULES REGARDING MEETING OF UNION BOARDS.

Notification No. 4267 L.S.G.—The 5th January 1920—

In exercise of the powers conferred by clause (e) of sub-section (2) of section 101 of the Bengal Village Self-Government Act, 1919 (Bengal Act V of 1919), the Governor in Council is pleased to make the following rules:—

Rules under the Village Self-Government Act, 1919, regulating the conduct of meetings of Union Boards and the method of forming a quorum.

MEETINGS.

1. Meetings shall be held at the office of the Union Board or at such other place as the President may from time to time determine.

THE BENGAL VILLAGE SELF-GOVERNMENT ACT. 165

2. Meetings shall be either ordinary or special.

3. An ordinary meeting of the Union Board shall be held once every month on a day to be selected by the members of the Board at a meeting: Provided that if for any reason it is deemed inconvenient to hold any such meeting on the day thus selected, the President may fix another day for that particular meeting.

4. A special meeting of the Union Board may be called at any time by the President.

5. The President shall call a special meeting on a requisition signed by not less than three of the members. If he fails to do so within thirty days after any such requisition has been made, the meeting may be called by the members who signed the requisition, in the manner laid down in rules 8 and 10.

6. The following subjects shall be dealt with at special meetings only :—

(a) Scale of establishment and salaries (section 36).

(b) Imposition of union rate (section 36).

(c) Applications for the revision of assessment (section 39).

∴ (d) Annual budget estimate.

(e) Removal of the President, the Vice-President or a member [sections 12 (1) (c) and 16].

(f) Salaries, appointment and dismissal of chaukidars and dafadars (sections 20 and 21).

(g) Loans.

7. All other subjects which come within the province of the Union Board may be dealt with at either ordinary or special meetings.

NOTICES OF MEETINGS.

8. At least seven days' notice of all meeting shall be given to every member : Provided that the annual budget estimate shall be circulated to all the members of the Board at least a fortnight before the date fixed for its consideration.

9. Accidental failure of service of notice on any member shall not invalidate the proceedings of any meeting.

10. The notice shall set forth clearly and fully the business to be transacted at the meeting.

QUORUM AND CONDUCT OF PROCEEDINGS

AT MEETINGS.

11. Three of the members of the Union Board shall form a quorum. If at the time appointed for the meeting or within one hour thereafter a quorum is not present, the meeting shall stand adjourned and shall be called again on a future day to be appointed by the President. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

At special meetings the quorum shall be formed by at least one-half of the number of members ; if however, the board consists of 7 or 9 members, 4 or 5 members respectively shall form the quorum.

12. The President or, in his absence, the Vice-President (if any) shall preside at every meeting, and in the absence of both the President and the Vice-President, the members shall choose some one of their number to preside :

Provided that the provisions of this rule and of rule 11 shall not apply to a meeting convened for electing a President or a Vice-President.

THE BENGAL VILLAGE SELF-GOVERNMENT ACT. 167

13. At ordinary meetings the business shall be conducted in the following order :—

(a) The minutes of the last ordinary meeting and of any special meeting held since shall be read and, if approved as correctly entered, shall be signed by the President of such meeting.

(b) Business postponed from the last ordinary meeting shall be considered.

(c) A progress report of works shall be laid before the members.

(d) Accounts and statements shall be considered and passed.

(e) Motions and amendments duly moved and seconded shall be discussed.

14. At a special meeting, only the business for which the meeting was called shall be considered.

15. Notwithstanding anything contained in rules 13 and 14, it shall be competent for the Union Board at a meeting to transact any business other than that set forth in the notice under rule 8, if the majority of the members present agree to do so.

16. Every motion and amendment duly moved must be seconded, and until seconded, no debate thereon shall take place.

17. Every motion or amendment duly made and seconded and pressed to a division shall be reduced to writing and signed by the proposer and seconder before being put to the vote. Every such resolution or amendment shall be recorded in full in the proceedings, together with the number and names of voters for and against it.

168 THE BENGAL VILLAGE SELF-GOVERNMENT ACT.

18. The President of the meeting may, for reasons to be recorded in writing and entered in the minutes of the proceedings,—

- (a) rule that a motion or amendment is illegal or out of order and,
- (b) make such alterations in a motion or amendment as shall in his opinion render it legal and in order :

and may in case (a) refuse to put the motion or amendment to the meeting and in case (b) refuse to put the motion or amendment to the meeting unless and until the proposer and seconder accept and sign the alterations made ; and the decision of the President shall be final.

19. After a motion has been moved and seconded an amendment may be moved at any stage of the debate thereon.

20. On the discussion being concluded, in the event of several amendments having been proposed, the President of the meeting shall put the last amendment to the vote first; if it is negatived he shall put the last preceding amendment ; and lastly, the first amendment ; and if all the amendments are lost the original proposition shall be put to the vote.

21. All questions which may come before the meeting shall be decided by a majority of votes. In case of equality of votes, the President of the meeting shall have a second or casting vote.

22. Voting by proxy is prohibited ; and no member shall vote upon any motion or amendment unless he be present in person at the time when it is put to the vote.

23. When any business of which notice has not been given is considered at a meeting, the deci-

sion recorded or resolution adopted at such meeting shall be of no effect unless and until it is confirmed at the next succeeding ordinary meeting, or at a special meeting called expressly for the purpose.

24. It shall be competent to any member to move the adjournment of the debate or of the meeting. When such motion is seconded it shall be put to the vote. No motion for adjournment shall be admissible which proposes an adjournment beyond the next ordinary meeting.

25. The members shall be informed of the date of an adjourned meeting by a fresh notice. Rule 8 shall not apply in this case.

26. An adjourned meeting is not competent to transact any business save that which the original meeting left unfinished.

MISCELLANEOUS.

27. Unless not less than two-thirds of the members consent by signing a requisition, no subject once finally disposed of can be reconsidered within six months.

28. The minutes of proceedings shall be recorded in the vernacular.

29. The minutes of proceedings 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 public.

• OFFENCES TRIABLE BY A UNION BENCH.

UNDER THE INDIAN PENAL CODE

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

170 THE BENGAL VILLAGE SELF-GOVERNMENT ACT.

Note.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to “commit an affray” (Sec. 159 I.P.C.) A mere exchange of words is not an affray, nor is a fight in a private place.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Notes.—As the provisions of sections 195 and 476 of the Criminal Procedure Code do not apply to any trial, suit or proceeding before a union bench or a union court an offence committed under secs. 178 or 179 of the Indian Penal Code before a union bench or a union court may be reported immediately by the presiding member of such court or bench and tried by the union bench.

2. Also see notes 3 and 4 under sec. 96 Village Self-Government Act.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question, demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Note.—See notes under sec. 178. I.P.C.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Note.—A person who is suffering or who is in contact with another who is suffering from cholera, dysentery, small-pox, influenza or other fatal disease, is bound to exercise great care to avoid doing any act likely to spread the infection. If any person goes to the public hat while suffering from small-pox or who sells the bedding used by a cholera patient may be convicted under this section.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Notes 1.—A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it (Sec. 39 I.P.C.). If anyone by bathing his cattle or fishing with baskets makes muddy the water of a tank used by the public for drinking, he commits an offence under this section.

2. Mere personal bathing or any act calculated to pollute drinking water may be prohibited in certain tanks by orders under sec. 30(4) of the V. S. G. Act. A breach of such order is punishable under sec. 30(5)
3. A flowing river or *khal* is not a public spring or reservoir within the meaning of this section.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Note.—The obstruction of public thoroughfares and waterways is very common in rural Bengal. It is done for the selfish advantage of private individuals who are indifferent to the loss, and injury which the public suffers. They can be convicted under this section on evidence proving that some person has been obstructed in using any part of a public thoroughfare or of a river, *khal*, or other public waterway.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Notes 1.—A "public nuisance" is defined in section 268, Indian Penal Code, as follows:—

"A person is guilty of a public nuisance who does any act or is guilty of an 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.

A common nuisance is not excused on the ground that it causes some convenience or advantage."

2. The most serious forms of "public nuisance" are punishable under sections 270 (malignant acts likely to spread infection) and 281 (exhibiting false lights or marks to deceive navigators). Other forms of public nuisance, in which expert evidence is necessary or in which the proceedings are likely to be complicated beyond the capacity of an ordinary union court, are punishable under sections 271-276 (adulteration, or sale of noxious, food or drugs), 278-288 (vitiating the atmosphere, rash driving or riding, rash navigation, rash or negligent conduct in connection with poison or fire or explosives or buildings), 292-3 (sale, distribution or display of obscene productions) and 294A (keeping or advertising a lottery).

Besides cases under sections 269, 277, 283, 289 and 294, a union bench may try any case of public nuisance not covered by the sections above-mentioned.

3. Examples of cases which fall under this section are the throwing of offensive matter into a public thoroughfare or the turning loose of cattle at night on a public road.
4. Imprisonment in default of payment of a fine under this section shall be simple, and not rigorous (cf. sec. 67 Indian Penal Code).

294. Whoever, to the annoyance of others,—

- (a) does any obscene act in any public place, or
- (b) sings, recites or utters any obscene song, ballad or words, on or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months or with fine, or with both.

Note 1.—"Words are said to be obscene if they convey immoral suggestions and tend to deprave the minds of those who hear them. An obscene act is one which is offensive to decency and chastity.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Notes 1.—"Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt," (sec. 321, I. P. Code.)

2. Bodily pain is the only kind of hurt with which a union bench can deal.
3. If the pain caused is so slight that no person of ordinary sense and temper would complain of the pain, there is no offence (cf. sec. 95, I. P. C.)

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Notes 1.—When a person is prevented from proceedings in any direction in which he has a right to proceed by an obstruction caused by the act of another who intended, or knew, or had reason to believe that his act would cause obstruction to that person, that other is said "wrongfully to restrain" that person. (Cf., secs. 339 and 39, I. P. C.)

174 THE BENGAL VILLAGE SELF-GOVERNMENT ACT.

2. If a road is partly obstructed, the cases does not come under this section.
3. Obstruction of a public thoroughfare come under sec. 283 (see note)

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Notes 1.—The definitions of assault and criminal force in the Penal Code are rather long. For the use of union benches, the following abbreviated explanations of these terms may be useful :—

Whoever, in order to cause injury, fear or annoyance to another or to commit an offence, does any act which has an effect on the person or sense of feeling of that other, is said to use "criminal force" and

Whoever intentionally makes such gesture or preparation as to cause another to apprehend that he is about to use "criminal forces" to that other, is said to commit an "assault." (Cf. sections 349-51, I. P. C.)

When criminal force results in causing hurt, there should be a conviction under section 323 or 334.

3. A member or clerk of a union board is a public servant; so also is a dafadar or chaukidar (cf. section 21, I. P. C.).