

sanctioned by the Local Government under section 48, and

(b) that such lamps, lamp-posts and other apparatus as the General Committee consider necessary for the lighting of such street and as ought to be provided by the Board have been so provided, and

(c) that water and other sanitary conveniences ordinarily provided in a Municipality has been duly provided in such street,

The General Committee shall make a report to the Corporation, and the Corporation shall thereupon, after informing the Board of their intention to do so, by written notice affixed in some conspicuous position in such street, declare the street to be a public street; and the street shall thereupon vest in the Corporation, and shall thenceforth be maintained, kept in repair, lighted and cleansed by the Corporation.

(2) When any open space for purposes of ventilation or recreation has been provided by the Board in executing any improvement scheme, it shall, on completion, be transferred to the Corporation by resolution of the Board, and shall thereupon vest in, and be maintained at the expense of the Corporation :

Provided that the General Committee may require the Board, before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide foot-paths therein, and, if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Board and the General Committee in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Local Government, whose decision shall be final.

66. If section 65 be extended, by notification under section 1, sub-section (3), to any Municipality in the neighbourhood of the Calcutta Municipality, it shall be construed as if the reference therein to the General Committee and the Corporation were references to the Commissioners of the former Municipality.

**Application of
section 63 to other
Municipalities,**

67. Notwithstanding anything contained in section 65 or section 66, the Board may retain any service passage which they have laid out for sanitary purposes, and may enter into an agreement with the Corporation or any other person for the supervision, repair, lighting and general management of any passage so retained.

Power of Board to retain service passages.

CHAPTER IV.

Acquisition and Disposal of Land.

Introduction—This Chapter has given rise to a good deal of discussion as to the right of the Board to acquire land for what is called "recoupment" purposes. Mookerjee and Cuming J. J. in Trustees for the Improvement of Calcutta vs Chandra Kanta Ghosh reported in I. L. R. 44 Calcutta p 219, 21 C. W. N. 8, and 24 C. L. J. 246 held "It would be wrong to infer a power of acquisition of land for purpose of recoupment." Whereas in the Full Bench Case of Moni Lall Sing vs the Trustees for the Improvement of Calcutta reported in 22 C. W. N. 1, 27 C. L. J. 1 it has been held by the majority of the judges with the exception of N. R. Chatterjee J. who delivered a dissentient judgment "that the Board have power to acquire land under section 42 (a) for the purpose of "recoupment" is strongly supported by the terms of section 78 of the Act. The view that Mookerjee and Cuming J. J. took of the section was that it applied to land, which was originally required for the execution of the scheme but was subsequently found to be unnecessary can not be supported. In such a case why should the owner pay money to the Board to get back his land."

"The present chapter consists of section 68 to 81 and deals with acquisition and disposal of lands. Section 68 provides, for the acquisition by the Board of land by agreement and section 69 provides for acquisition of land by the Board for carrying out any of the purposes of the Act. Section 70 and the following sections provide for the constitution of a Tribunal for the purpose of acquiring land. Section 78 provides for the abandonment of land the acquisition of which has been sanctioned but which is not required for the execution of the scheme." Mani Lall Sing vs Trustees 22 C. W. N. 1 (F. B.) S. C. 27 C. L. J. 1.

68. The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land which the Board are authorised to acquire, or any interest in such land.

Power to purchase or lease by agreement.

Note—Agreement has been defined to be "Every promise and every set of promises, forming the consideration for each other." An agreement not enforceable by law is said to be void and an agreement enforceable at law is a "contract." Contract Act, section 2.

69. The Board may, with the previous sanction of the Local Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

Power to acquire land under the Land Acquisition Act, 1894.

Note:—Section 68 and 69 show that the acquisition may be either by agreement between the Board and the owner of the land or by compulsory proceedings taken at the instance of the Board under the provisions of the Land Acquisition Act, which are modified in important particulars by section 71 read with schedule to the Act. As regards compulsory acquisition the fundamental point to be borne in mind is that the Board is authorised not to acquire whatever land they may choose, but only those that are necessary for carrying out any of the purposes of the Act, as has already been shown the purposes of the Act are enumerated in the Preamble. By no stretch of language can it be maintained that "recoupment" is one of the purposes of this Act. *Prima facie* the Board are not competent under section 69 to acquire land compulsorily for "recoupment." Mookerjee and Cuming, J. J. in Trustees for the Improvement of Calcutta vs Chandra Kanta Chosh 44 Cal, 219 21 C. W. N. 8 (21).

A contrary view has been taken in the Full Bench Case of Moni Lal Singh vs. Trustees for the Improvement of Calcutta 22 C. W. N. 1. 27 C. L. J. 1 in which it has been held.

"Mookerjee and Cuming J. J. were of opinion that even if the Board had power to acquire land for the purpose of "recoupment," they had no power to acquire such land compulsorily. The fact that the Board have power to acquire land for the purpose of "recoupment" does not necessarily mean that they have power to acquire it otherwise than by agreement. The powers of compulsory acquisition are set out in section 69 of the Act which provides that the Board may with the previous sanction of the Local Government acquire land under the provisions of the Land Acquisition Act, 1894. for carrying out any of the purposes of this Act."

70. A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

Tribunal to be constituted.

Modification of the Land Acquisition Act, 1894.

71. For the purpose of acquiring land under the said Act for the Board,—

- (a) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;
- (b) the said Act shall be subject to the further modifications indicated in the Schedule ;

- (c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and
- (d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final:

Note:—Clause (d) has been amended by the Calcutta Improvement (Appeals) Act XVIII of 1911, vide Appendix.

72. (1) The said Tribunal shall consist of
Constitution of Tribunal. a President and two assessors.

(2) The President of the Tribunal shall be either—

- (a) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such service, who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge ; or
- (b) a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court.

(3) The president of the Tribunal and one of the assessors shall be appointed by the Local Government, and the other assessor shall be appointed by the Corporation, or in default of the Corporation, by the Local Government :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as Trustee.

(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment at the end of that term.

(5) The Local Government may on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the Local Government or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the Local Government shall forthwith appoint a fit person to be a member in his place.

(7) All appointments made under this section shall be published by notification.

73. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Local Government may prescribe.

Remuneration of members of Tribunal.

74. (1) The President of the Tribunal shall, from time to time, prepare a statement showing—

Officers and servants of Tribunal.

- (a) the number and grades of the clerks and other officers and servants whom he considers should be maintained for carrying on the business of the Tribunal,
- (b) the amount of salary to be paid to each such officer and servant, and
- (c) the contributions payable under section 146 in respect of each such officer and servant.

(2) The President of the Tribunal shall, from time to time, make rules—

- (i) for regulating the grant of leave of absence, leave-allowances and acting-allowances to the officers and servants of the Tribunal ; and
- (ii) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any servant of the Government in respect of

whom a contribution is paid under section 146) to contribute to such fund, at such rate and subject to such conditions as may be prescribed by such rules, and, with the sanction of the Board, for supplementing such contribution out of the funds of the Board :

Provided that a Government servant employed as an officer or servant of the Tribunal shall not be entitled to leave or leave-allowances otherwise than as may be prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(3) All statements prepared under sub-section (1), and all rules made under sub-section (2), shall be subject to the previous sanction of the Local Government.

(4) Subject to any directions contained in any statement prepared under sub-section (1) and any rules made under sub-section (2), and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

75. (1) The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave-allowances and acting allowances prescribed under section 74 for officers and servants of the Tribunal, shall be paid by the Board to the President of the Tribunal for distribution,

Payments by Board on account of Tribunal.

76. (1) The President of the Tribunal may, from time to time, with the previous sanction of the Local Government, make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by the Tribunal.

Power to make rules for Tribunal.

(2) All such rules shall be published by notification.

Note.—Sections 72 to 76 deal with the constitution of a special Tribunal for trying all questions relating to valuation and apportionment under section 18 of the Land Acquisition Act 1894. The word "Court" in Land Acquisition Act means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the

functions of the Court under this Act. The principal Civil Court of original jurisdiction is ordinarily that of the District Judge. The Local Government is empowered to appoint special officers to perform the functions of the Court under the Act and in exercise of that authority the Local Government has constituted the Tribunal to perform the function of the Court in reference to all questions relating to acquisition of land by the Board for the purposes of the Act.

In Calcutta the principal Court of Civil Jurisdiction is the original side of the High Court. In *Hari Pandurang vs Secretary of State for India* in council reported in 27 Bombay 424, it was contended that the City of Bombay Improvement Act IV of 1898 was vitiated in that it created a new Court and thereby interfered with the function and jurisdiction of the High Court. Held by Jenkins C. J. (1) that the Tribunal created by the said Act was not a Court and therefore free from the control and supervision of the High Court except when an appeal was sanctioned by the President, also held (2) that the Improvement Act could not confer on the High Court jurisdiction to entertain appeals from such a Tribunal.

In Calcutta in the case of *Noresh Chunder Bose vs Hira Lal Bose* reported in 20 C. W. N. p 360, it has been held "that the special Tribunal has been constituted a Court under the Land Acquisition Act, and under section 53 of that Act, the Land Acquisition Court is governed by the provisions of the Code of Civil Procedure and has the powers of a Judge. The question again arose for consideration in the case of *Nando Lal Ganguli vs Khetra Mohan Ghose* 27 C. L. J. p 463. In this case, an application was made to the President of the Tribunal constituted under the Calcutta Improvement Act, 1911, for sanction to prosecute one Khetra Mohan Ghose for giving false evidence before the President in two apportionment cases. The president held that he had no jurisdiction to entertain the application on the ground "that the Tribunal was not a Court within the meaning of section 195, Criminal Procedure Code. Against that decision the applicant obtained the rule. The opinion of the President appears to be based upon the decision in *Hari Pandurang vs Secretary of State*, 27 Bom 474. It was no doubt on account of this decision that Act XIV of 1904 was passed by the Imperial Legislative Council. In the case of Calcutta, the Tribunal is constituted by the Calcutta Improvement Act, 1911, but the finality of its decision is regulated by that Act as modified by the Calcutta Improvement (Appeals) Act, 1911, passed by the Imperial Legislative Council. It is unnecessary for us to discuss the question whether in view of the subsequent legislation the Bombay decision is still good law, as we have no doubt whatever that the Calcutta Tribunal is a Court within the meaning of section 195 Criminal Procedure Code. By section 70 of the Calcutta Improvement Act the Tribunal is constituted for the purpose of performing the function of the Court in reference to the Acquisition of land for the Board under the Land Acquisition Act 1894. By section 71 (a) the Tribunal shall (except as to appeals which are specially provided for) be deemed to be the "Court" and the President, the Judge under the said Act. Section 71 (c) gives the President the power of a Civil Court with regard to the summoning and attendance of witnesses and production of documents. By section 77 (b) apportionment cases may be tried by the President sitting alone and his decision is then to be deemed to be the decision of the Tribunal.

We don't think that the Tribunal as the "Court" under the Land Acquisition Act, 1894, for the purposes of Improvement Trust can be regarded simply as a body of arbitrators. It is Court under that Act, and the President is the Judge. It follows that it must also be regarded as a Court for the purposes of section 195 of the Criminal Procedure Code."

**Award of Tribunal
how to be deter-
mined.**

77. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

- (a) if there is any disagreement as to the measurement of land, or the amount of compensation or cost to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;
- (b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary ; and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and
- (c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

Note:—Section 77 sub-section (2) marks an important distinction from the ordinary procedure and law. The decree of a Court of competent jurisdiction is enforceable either by itself or by a Court to which it has been sent for execution. If the Tribunal is a Court, as it has been held to be, there is no reason why it should not be able to enforce its orders, decrees and awards. It is an anomaly. The Small Cause Court decrees are personal decrees and which can not be executed by attachment and sale of immovable properties, whereas the decrees and orders of the "Tribunal" are decrees of the Principal Court of Civil Jurisdiction and can be executed by (1) warrant of arrest, (2) Seizure and Sale of both movable and immovable properties. Besides the Jurisdiction of the Tribunal is unlimited whereas the jurisdiction of the Calcutta Small Causes Court is limited to the extent of Rs. 2000 only ; and it is an elementary proposition of law that the Court can not execute a decree beyond the limits of its pecuniary jurisdiction. The matter deserves consideration by the authorities.

Abandonment of Acquisition.

78. (1) In any case in which the Local Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

Abandonment of acquisition in consideration of special payment.

(2) The Board shall admit every such application if it—

(a) reaches them before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and—

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Board decide to admit any such application, they shall forthwith inform the Collector; and the Collector thereupon stay for a period of three months all further proceedings for the acquisition of the land and the Board shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment

in perpetuity of interest at the rate of four *per cent*, per annum, and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) at any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay off the charge created thereby, with interest, at the rate of four *per cent*. per annum, up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

Note:—Mookerjee and Cumings J. J. in *Trustees for the Improvement of Calcutta vs Chandra Kanta Ghosh* I. L. B. 44 Cal 219, 22 C. W. N. 8 held that "the only other provision in the fourth chapter wherein stress has been laid by the Board is that contained in section 78. That section authorises the Board to abandon the acquisition of land in any area comprised in an improvement scheme, which is not required for execution, of the scheme in consideration of a sum of money which is to be paid by the owner

of the land three years after the date of the agreement or is to constitute an outstanding charge on the land subject to payment of interest in perpetuity. It is plain that the provisions of section 78 are applicable only when the land is not required for the execution of the scheme but is yet within the area comprised in the improvement scheme as sanctioned by the Local Government. The contingency contemplated may obviously happen when the Board, under section 50, alter the scheme after it has received the sanction of the Local Government under section 48. In such a contingency, section 78 comes into play. We have been invited, however, to hold that section 78 shows by implication that the Board are competent deliberately to include in their scheme lands which they know are not required for the execution of the scheme, solely with a view to make profit from the owner under section 78. We are however, of opinion that there is no foundation for such contention. The argument in substance is that the Board are competent to seize whatever private property they may choose and include it in their scheme deliberately, on purpose, to levy contribution from the owner under section 78; though the Board are fully aware, all the time, that the land can never be required for the execution of the scheme. If the legislature had intended to invest the Board with arbitrary and unlimited powers of interference with private property of this description the object should and would have been carried out by the insertion of a clause suitably framed in that behalf. In this view of the true scope of section 78, their Lordships held that they can not hold that the section was intended to be used as a cover for arbitrary acquisition of private properties for recoupment."

Fletcher J. in delivering the judgement in the Full Bench case of *Mani Lal Sing vs Trustees for the Improvement of Calcutta* 22 C.W.N.I 27. C.L.J. 1. held that "the meaning of the section is quite clear. Under the scheme of the Act primarily the method provided for the Board securing for the public a portion of the "unearned increment" is by means of recoupment. The legislature did not however absolutely shut out the principle of "betterment," but provided by section 78 that where land is about to be taken for recoupment, then on the application of the owner, he and the Board may, if they agree as to the amount, deal with such owner's land on the principle of "betterment" instead. Section 78, I think, says that in as clear terms as possible."

"Betterment" has been best defined by the report in 1894 of a select Committee of the House of Lords on Town Improvement. (Betterment). They reported, "The principle of betterment, in other words the principle that persons whose property has clearly been increased in market value by an Improvement effected by local authorities, should specially contribute to the cost of the improvement is not in itself unjust and such person equitably be required to do so. "Recoupment" has been defined by the said Committee of the House of Lords to mean "Power given to a Municipal or other public body to take land beyond what is necessary for the actual execution of the work, so that some part at least of the improved value may be secured by the improving public body in ease of the burden on the rate payers."

N. B. It will be noticed that there has been a confusion in the language of sub-section (2) and sub-section (3) of section 78. Sub-section (2) leaves no option to the Board to admit the application in case the requirements (a) and

(b) are fulfilled. The language is "the Board shall admit," every such application. If so, there is no discretion left to the Board to "decide" as has been put in sub-section (3) to admit the application. It will also be noticed that the decision of the Board under the section, as it is, in fixing the amount, in consideration of the payment of which, exemption from acquisition is claimed, is final, and no appeal or reference against the same lies either to the Local Government or to the Tribunal.

79. When an agreement has been executed by any person in pursuance of section 78, sub-section (4), in respect of any land, and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Board (together with interest, up to the date of realization, at the rate of four *per cent per annum*), from the said person or his successor in interest in such land, in the manner provided by the Calcutta Municipal Act, 1899, for the recovery of the consolidated rate ;

and, if not so recovered, the Chairman, may after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor, in such land by public auction, and may deduct the money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Note:—The meaning of the section is not quite clear, besides it is defective in as much as it does not provide for the realisation of the balance (if any) due to the Board after realisation of their dues in the manner specified in the last part of the section. The above summary procedure is laid down to facilitate speedy realisation. Under the provision of section 215 of the Calcutta Municipal Act, 1899 the Corporation has the power to realise the money by "sale or distress of movable property of the defaulter."

Therefore the means provided in this section are

- (1) by distress and sale of movable property,
- (2) by auction sale of the land by the Board so far as practicable.

80. If any land in respect of which an agreement has been executed, or a payment has been accepted in pursuance of section 78, sub-section (4), be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

Agreement or payment under Section 78 not to bar acquisition under a fresh declaration.

Disposal of Land.

81. (1) The Board may retain, or may let on hire, lease sell, exchange or otherwise dispose of, any land vested in or acquired by them under this Act.

Power to dispose of land.

(2) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they—

(a) shall give notice by advertisement in local newspapers, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board consider that such a right can be given without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to exercise a right offered under clause (b) to take on lease or to purchase any land, the right shall be exerciseable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.

Note:—"Reference has been made to section 81, which authorises the Board to dispose of land vested in or acquired by them under this Act. This does not imply, however, a power in the Board, to acquire land compulsorily except for carrying out one of the purposes of the Act, as provided in section 69; for there may obviously be occasion for the Board to dispose of what may be called *surplus land* that is, land not required for the execution of the scheme, under various conceivable circumstances where it is thus possible to imagine cases of application of section 81, it would be wrong to infer therefrom a power of acquisition of land for purpose of "recoupment."—*Trustees for the Improvement of Calcutta vs Chandra Kanta Ghosh*, 44 Calcutta, 292, 21. C. W. N. 8, 24 C. L. J. 246.

The words "by the execution of the scheme" in section 42 (a) simply mean "through or owing to the execution of the scheme." If that be so for what purpose can the Board acquire land which is not required for the execution of the scheme under the provision of section 42 (a)? The purpose is given in section 81, which authorises the Board to retain or let on hire, lease, sell or exchange any land vested in or acquired by them under the Act." *Mani Lall Sing vs Trustees for the Improvement of Calcutta* 22 C. W. N. 1. 27 C. L. J. 1.

CHAPTER V.

Taxation.

Duty on Transfer of Property.

The fifth Chapter deals with taxation under three heads, namely, (1) a duty on transfer of property situated within the limits of the Calcutta Municipality (2) a terminal tax on passengers by Railways and Inland steam-vessels. (3) a Customs duty on jute exported by sea from the Port of Calcutta. The fact remains at any rate, that only three taxes are imposed by the provisions of the fifth Chapter.

82. (1) The duty imposed by the Indian Stamp Act, 1899, on instruments of sale, gift and usufructuary mortgage, respectively, of **Duty on certain transfers of immovable property.** immovable property shall, in the case of instruments affecting immovable property situated in the Calcutta Municipality and executed on or after the commencement of this Act, be increased by two *per centum* on the value of the property so situated, or (in the case of an usufructury mortgage) on the amount secured by the instrument, as set forth in the instrument.

(2) For the purposes of this section, section 27 of the Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of—

(a) property situated in the Calcutta Municipality, and

(b) property situated outside the Calcutta Municipality,

(3) For the purposes of this section, section 64 of the said Indian Stamp Act, 1899, shall be read as if it referred to the Board as well as the Government.

(4) All collections resulting from the said increase shall, after deducting incidental expenses (if any), be paid to the Board at such time as may be prescribed by rule made under section 86.

Note:—"Sale" includes both voluntary and involuntary sales, and instruments affecting immovable property relating to involuntary sales are "sale certificates" issued by the Courts.

Terminal Tax on Passengers.

83. (1) Every passenger brought to or taken from any station in the Calcutta Municipality or the Howrah Municipality by railway, and every passenger brought to or taken from any landing place in the Port of Calcutta, within five miles from Government House, by inland steam-vessel, shall pay a tax of half-an-anna in respect of each journey made by him ;

Terminal tax on passengers by railway or inland steam-vessels.

provided as follows :—

- (a) The said tax shall not be payable by any passenger brought from, or taken to, any place situated within a radius of thirty miles from Government House ;
- (b) the Local Government may, by notification either—
 - (i) with the previous sanction of the Government of India, reduce the said radius to any distance less than thirty miles, in its application either to passengers generally or to passengers of any specified class, or
 - (ii) with the previous sanction of the Government of India cancel proviso (a), or
 - (iii) reduce the said tax to any lower rate, either in respect of passengers generally or in respect of passengers making frequent journeys ;
- (c) the said tax may, in the case of passengers taking suburban season tickets, be calculated at the rate of six annas per mensem for each such ticket, or at such lower rate as the Local Government may prescribe by notification.

(2) The said tax shall be collected by means of a surcharge on fares, by the administration of the railway, or owner of the vessel, by which the passengers are carried, and shall be paid to the Board at such time as may be prescribed by rule made under section 88, after making such deduction as the Local Government may approve to meet any expenses incurred in connection with the collection of the tax.

(3) The owner of every inland steam-vessel referred to in sub-section (1) shall prepare and deliver, or cause to be prepared and delivered, to the Chairman, each quarter, a return, in the form prescribed by rule made under section 86, of all passengers, carried by such vessel, by whom the tax imposed by that sub-section is payable ; and shall subscribe, at the foot of such return, a declaration of the truth thereof.

(4) Every such return shall be delivered to the Chairman or posted to his address within fifteen working days or at most within thirty days, after the end of the quarter to which it relates.

Explanation:— The expression “ working day ” as used in this sub-section means every day except a public holiday as defined in section 25 of the Negotiable Instruments Act, 1881.

(5) If this Act is directed to come into force during a quarter, the first of the said returns shall be made for the un-expired portion of that quarter.

(6) The expression “ administration ” and the expressions “ owner ” and “ inland steam-vessel ” as used in this section, have the same meanings as in the Indian Railways Act, 1890, and the Inland Steam-Vessels Act, 1884 respectively.

Note:—The Indian Railways Act, is Act IX of 1890 of the India Council and in the said Act “ railway administration ” or “ administration ” is defined in the following manner by section 3 sub-section 6.

“ Railway Administration ” ; or “ Administration ” in the case of a Railway administered by Government or a Native State, means the Manager of the railways and includes the Government or the Native State and in the case of a Railway administered by a Railway Company means the Railway Company.

The Inland Steam-Vessels Act, is Act VI of 1884 (India Council) and “ Inland steam-vessels ” has been defined by section 5 (4) to mean “ a steam-vessel which ordinarily plies on inland water. ”

Customs Duty on Jute.

84. (1) A customs duty shall be levied and collected on all jute exported by sea from the Port of Calcutta to any other port, whether beyond or within India, at such rate, not exceeding—

Customs duty on exports of jute from Calcutta by sea.

(a) in the case of raw jute (including jute cuttings and rejections), two annas per bale of four hundred pounds, and

(b) in the case of manufactured jute, twelve annas per ton of two thousand two hundred and forty pounds,

as the Local Government may prescribe by notification :

Provided that the said duty shall not be levied or collected in respect of jute, whether raw or manufactured, exported under any contract which was made before the fifteenth day of August, 1911, and the existence of which was established to the satisfaction of the Customs Collector before the fifteenth day of September, 1911.

(2) At the close of each quarter, or as soon thereafter as may be convenient, the duty collected under sub-section (1) shall, after deducting the expenses of collection (if any), be paid by the Customs-Collector to the Board.

85. Section 5 of the Indian Tariff Act, 1894, shall not apply to jute (whether raw or manufactured) passing by land out of Calcutta.

Section 5 of the Indian Tariff Act, 1894 not to apply to Jute.

Note:—The Indian Tariff Act is Act VIII of 1894, India Council and section 5 is as follows :—“All duties of Customs shall be levied at the rates respectively prescribed in the second third, and the fourth schedules on goods passing by land out of, and in the fifth schedule on goods passing by land into,

(a) Foreign European Settlements in India ;

(b) any territory, declared, under the power hereinafter in this section conferred, to be foreign territory.

Power to Local Government to make rules.

86. (1) The Local Government may make rules for carrying out the purposes of this chapter.

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

- (a) for regulating the collection of taxes imposed by this chapter, and the payment thereof to the Board ;
- (b) for prescribing the form of the return required by section 83, sub-section (3), and the particulars to be contained therein, and the manner in which the same is to be verified.

Punishment for offences. **87.** The offences mentioned in column 1 of the following table shall be punishable to the extent mentioned in column 2 thereof with reference to such offences, respectively :—

1	2
(1) Omitting to make any return required by Section 83, sub-section (3), or refusing to sign or complete the same.	Fine not exceeding one thousand rupees.
(2) Making and delivering any such return containing any statement not true to the best of the information and belief of the person making the same.	The penalty provided in the Indian Penal Code, section 199 for making a false statement in a declaration.
(3) Otherwise contravening any rule made under section 86.	Fine not exceeding five hundred rupees.

Note:—Under the provision of section 151, the offences mentioned in section 87 are cognizable by the Court of the Presidency Magistrate.

CHAPTER VI.

Finance.

Chapter VI deals with finance. Section 88 provides for Municipal Contribution and section 89 gives power to the Board to borrow money. Sections 122 and 123 deal with the crediting of money to capital account and with the application of moneys credited to the capital account. *Mani Lall Sing vs The Trustees* I. L. R. 45 Cal 343 22 C. W. N. 1. 27 C. L. J. 1.

"The Sixth chapter is devoted to finance. Section 88 imposes an obligation upon the Calcutta Municipal Corporation to make a quarterly contribution to the funds of the Board subject to a minimum annual payment of seven and a half lakhs of rupees. Section 89 and the following sections authorize the Board to raise money by loans and to make consequential provisions for payment of interest thereon, for the institution of a sinking fund, and other like matters. The remaining sections of the chapter deal with the enforcement of liabilities, Budget-estimates, banking and investments and accounts. Reliance, however, has been placed upon cls (c) and (d) of section 122 and cl (a) of section 123 as implying an authority in the Board to obtain funds for purposes of recoupment by acquisition and resale of land. In our opinion, the sections mentioned throw no light whatever, on the question in controversy; they merely contain provisions as to the mode in which accounts are to be kept." *Trustees vs Chandra Kanta* 21 C. W. N. 8 (22). The chapter has been framed mainly on the line of the Calcutta Municipal Act, 1899 Chapters VIII, IX, X.

Municipal Contribution.

88. (1) The Chairman of the Corporation shall pay from the Municipal Funds to the Board on the first day of each quarter, so long as the Board continue to exist, a sum equivalent to one-half per cent, per quarter on the annual rateable valuation determined under Chapter XII of the Calcutta Municipal Act, 1899, as it stood on the first day of the last preceeding quarter :

Contributions from the Municipal funds.

Provided as follows :—

(a) in the case of property vested in the Commissioners for the Port of Calcutta, the said percentage shall be calculated upon nine-tenths of the annual rateable valuation of such property, and

(b) if this Act is directed to come into force during a quarter, the amount of the first of such payments shall bear such proportion to the sum payable hereunder as the unexpired portion of that bears to the whole quarter,

(2) If in any financial year the sums due to the Board under section 82 and sub-section (1) of this section aggregate less than seven and-a-half lakhs of rupees, the Chairman of the Corporation shall pay to the Board, from the Municipal Funds, such further sum as may be required to make up the said sum of seven and-a-half lakhs of rupees.

(3) The payments prescribed by sub-sections (1) and (2) shall be made in priority to the other payments due from the Corporation, except those referred to in section 140 of the said Calcutta Municipal Act, 1899.

(4) If any payment prescribed by sub-section (1) or sub-section (2) cannot be made without increasing the *maximum* authorised by clause (a) of section 147 of the said Calcutta Municipal Act, 1899, then that maximum may be increased to such extent as may be necessary to secure the due making of such payment.

Note:—The contribution by the Corporation to the fund of the Board is to be made after the payments due by the Corporation for interest on and repayment of loans under section 140 of the Calcutta Municipal Act.

Loans.

89. The Board may from time to time borrow, at such rate of interest, and for such period, and upon such terms, as to the time and method of repayment and otherwise, as the Government of India may approve, any sum necessary for the purpose of—

Power of Board to borrow money.

(a) meeting expenditure debitable to the capital account under section 123, or

(b) repaying any loan previously taken under this Act.

90. Whenever the borrowing of any sum has been approved under section 89, the Local Government shall, with the previous sanction of the Government of India, direct and appoint the manner in which and the time at which such sum shall be borrowed.

Manner and time of borrowing money.

91. Whenever the borrowing of any sum has been approved under section 89, the Board may, instead of borrowing such sum or any part thereof from the public, but subject to any direction given by the Local Government under section 90, take credit from any Bank, on a cash account to be kept in the name of the Board, to the extent of such sum or part ;

Loan from Banks.

and, with the previous sanction of the Local Government may grant mortgages of all or any property vested in the Board, by way of securing the payment of the amount of such credit, or of the sums from time to time advanced on such cash account, with interest.

92. When any sum of money has been borrowed under section 89 or section 91 for the purpose of meeting particular expenditure or repaying a particular loan, no portion thereof shall be applied to any other purpose without the previous sanction of the Local Government.

Diversion of borrowed money to purposes other than those first approved,

93. (1) Whenever money is borrowed by the Board on debentures, the debentures shall be in such form as the Board, with the previous sanction of the Government of India, may from time to time determine.

Form, signature, exchange, transfer and effect of debentures.

(2) All debentures shall be signed by the Chairman and one other Trustee.

(3) The holder of any debenture in any form prescribed under sub-section (1) may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a debenture in any other form so prescribed.

(4) Every debenture issued by the Board shall be transferable by endorsement, unless some other mode of transfer be prescribed therein.

(5) The right to sue in respect of moneys secured by debentures issued by the Board shall vest in the respective holders of the debentures for the time being, without any preference by reason of some of such debentures being prior in date to others.

94. All coupons attached to debentures issued under this Act shall bear the signature of the Chairman and such signature may be engraved lithographed or impressed by any mechanical process.

Signature of coupons attached to debentures.

95. When any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, then, notwithstanding anything in section 45 of the Indian Contract Act, 1872, the debenture or security shall be payable to the survivor or survivors of such persons. :

Provided that nothing in this section shall affect any claim by the representative of a deceased person against such survivor or survivors.

96. Where two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Board by any other of such persons.

97. All payments due from the Board for interest on, or the repayment of, loans, shall be made in priority to all other payments due from the Board.

98. Every loan taken by the Board under section 89 shall be repaid within the period approved by the Government of India under that section, and subject to the provisions of section 125, sub-section (2), by such of the following methods as may be so approved, namely :—

- (a) from a sinking fund established under section 99 in respect of the loan, or
- (b) by paying equal yearly or half-yearly instalments of principal, or of principal and interest, throughout the said period, or
- (c) if the Board have, before borrowing money on debentures, reserved, by public notice, a power to pay off the loan by periodical instalments and to select by lot the particular debentures to be discharged at particular periods, then by paying such instalments at such periods, or

(d) from money borrowed for the purpose under section 89, clause (b), of

(e) partly from the sinking fund established under section 99 in respect of the loan, and partly from money borrowed for the purpose under section 89, clause (d).

99. (1) Whenever the Government of India have approved the repayment of a loan from a sinking fund, the Board shall establish such a fund and shall pay into it in every year, until the loan is repaid, a sum so calculated that, if regularly paid throughout the period approved by the Government of India under section 89, it would, with accumulations in the way of compound interest, be sufficient, after payment of all expenses, to pay off the loan at the end of that period.

(2) The rate of interest on the basis of which the sum referred to in sub-section (1) shall be calculated shall be such as may be prescribed by the Government of India.

100. Notwithstanding anything contained in section 99, if at any time the sum standing at credit of the sinking fund established for the repayment of any loan, is of such amount that, if allowed to accumulate at the rate of interest prescribed under sub-section (2) of that section, it will be sufficient to repay the loan at the end of the period approved by the Government of India under section 89, then, with the permission of the Local Government, further annual payments into such fund may be discontinued.

101. (1) All money paid into any sinking fund shall as soon as possible be invested, under the orders of the Board, in—

(a) Government securities, or

(b) securities guaranteed by the Government, or

(c) Calcutta Municipal debentures, or

- (d) debentures issued by the Commissioners for the Port of Calcutta, or
- (e) debentures issued by the Board,

in the joint names of the Secretary to the Government of Bengal in the Financial Department and the Accountant-General of Bengal, to be held by them as Trustees for the purpose of repaying from time to time the debentures issued by the Board.

(2) All dividends and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the appropriate sinking fund and invested in the manner prescribed by sub-section (1).

(3) Any investment made under this section may from time to time, subject to the provisions of sub-section (1), be varied or transposed.

102. The aforesaid trustees may from time to time apply any sinking fund, or any part thereof, in or towards the discharge of the loan or any part of the loan for which such fund was established; and until such loan is wholly discharged shall not apply the same for any other purpose.

Application of sinking funds.

Annual statements by Trustees.

103. (1) The aforesaid trustees shall, at end of every financial year, transmit to the Chairman a statement showing—

- (a) the amount which has been invested during the year under section 101,
- (b) the date of the last investment made previous to the transmission of the statement,
- (c) the aggregate amount of the securities held by them,
- (d) the aggregate amount which has, up to the date of the statement, been applied under section 102 in or towards repaying loans, and
- (e) the aggregate amount already paid into each sinking fund.

(2) Every such statement shall be laid before the Board and published by notification.

104. (1) The said sinking funds shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the current value of the securities at credit of such funds are actually equal to the amount which would have accumulated had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom.

(2) The Board shall forthwith pay into any sinking fund any amount which the Accountant-General may certify to be deficient, unless the Government of India specially sanction a gradual readjustment.

105. (1) if the Board fail—

Procedure if Board fail to make any payment or investment in respect of loans.

(a) to pay any interest due in respect of any loan taken in pursuance of section 89, or

(b) to make any payment prescribed by section 98, section 99 or sub-section

(2) of section 104, or

(c) to make any investment prescribed by section 101,

the Accountant-General of Bengal shall make such payment, or set aside and invest such sum as ought to have been invested under the said section 101, as the case may be :

and the Chairman of the Corporation shall forthwith pay from the Municipal Funds to the said Accountant-General a sum equivalent to the sum so paid or invested by him :

and the Local Government may attach the rents and other income of the Board ; and thereupon the provisions of sub-section (2) of section 141 of the Calcutta Municipal Act, 1899, shall, with all necessary modifications, be deemed to apply.

(2) Whenever the Chairman of the Corporation has made any payment to the Accountant-General under sub-section (1), the Local Government shall reimburse the Corporation out of the rents and income attached under that sub-section, and if such rents and income prove insufficient for that purpose the Corporation may, with the previous sanction of the Local Government, increase the maximum authorized by clause (a) of section 147 of the Calcutta Municipal Act, 1899, to such extent as may be necessary for the purpose of making up the deficiency :

Provided that no such increase shall be made, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections :

Procedure if Chairman of Corporation fails to make any payment due to Board or Accountant-General.

106. If the Chairman of the Corporation fails to make any payment as required by section 88 or section 105, the Local Government may attach the Municipal Funds or any of them ;

and thereupon the provisions of sub-section (2) of section 141 of the Calcutta Municipal Act, 1899, shall with all necessary modifications, be deemed to apply, and the Local Government may further require the Corporation to increase the maximum authorized by clause (a) of section 147 of that Act, to such extent as may be necessary for the purpose of making such payment :

Provided that no such increase shall be made, in consequence of any failure of the Chairman of the Corporation to make any payment as required by section 105, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

107. All moneys paid by the Chairman of the Corporation under sub-section (1) of section 105 and not reimbursed by the Local Government, under sub-section (2) of that section, and all moneys payable under section (1) of section 105 and levied under section 106, shall constitute a charge upon the property of the Board.

Payments under section 105 to be a charge on the property of the Board.

Budget Estimates.

108. (1) The Chairman shall, at a special meeting to be held in the month of February in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year.

Estimates of income and expenditure to be laid annually before the Board,

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of this Act.

(3) Every such estimate shall differentiate capital and revenue funds, and shall be prepared in such form, and shall contain such details, as the Local Government or the Board may from time to time direct,

(4) Every such estimate shall be completed and printed, and a copy thereof sent, by post or otherwise, to each Trustee, at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

109. The Board shall consider every estimate so laid before them, and shall sanction the same, either without alteration or with such alterations as they may think fit.

Sanction of Board to estimates.

110. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the Local Government, who may, at any time within two months after receipt of the same,—

Approval of Local Government to estimates.

(a) approve the estimate, or

(b) disallow the estimate or any portion thereof, and return the estimate to the Board for amendment,

(2) If any estimate is so returned to the Board, they shall forthwith proceed to amend it, and shall re-submit the estimate, as amended, to the Local Government, who may then approve it.

Transmission of copy of estimate to Chairman of Corporation.

111. A copy of every such estimate shall, when approved by the Local Government, be sent by the Board to the Chairman of the Corporation.

112. (1) A special meeting of the Board shall be held as soon as may be expedient after the day appointed under section 17, sub-section (1), and the Chairman shall at such special meeting lay before the Board an estimate of the income and expenditure of the Board for the portion of the financial year which on the said day had not expired.

Special provisions as to the first estimate after the constitution of the Board.

(2) The provisions of section 108, sub-sections (2) to (4), and sections 109 to 111 shall apply to the said estimate.

113. (1) The Board may, at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting.

Supplementary estimates.

(2) The provisions of section 108, sub-sections (3) and (4), and sections 109 to 111 shall apply to every supplementary estimate.

114. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget-grant or can be met by re-appropriation or by drawing on the closing balance.

Adherence to estimate, and maintenance of closing balance.

(2) The closing balance shall not be reduced below one lakh of rupees without the previous sanction of the Local Government.

(3) The following items shall be excepted from the provisions of sub-sections (1) and (2), namely,—

- (a) re-payments of moneys belonging to contractors or other persons and held in deposit, and of moneys collected by, or credited to, the Board by mistake ;
- (b) payments due under a decree or order of a Court passed against the Board or against the Chairman *ex-officio*, or under an award of the Tribunal ;
- (c) sums payable under a compromise of any suit or other legal proceeding or claim effected under section 154 ;

- (d) sums payable under this Act by way of compensation ; and
- (e) payments required to meet some pressing emergency.

(4) Whenever any sum exceeding five thousand rupees is expended under clause (e) of sub-section (3), the Chairman shall forthwith report the circumstances to the Local Government, and shall at the same time explain how the Board propose to cover the expenditure.

Banking and Investments.

115. All moneys payable to the Board shall be received by the Chairman, and shall forthwith be paid into the Bank of Bengal to the credit of an account which shall be styled "The Account of the Trustees for Improvement of Calcutta"

Receipt of moneys
and deposit in Bank
of Bengal.

Investment of sur-
plus money.

116. (1) Surplus moneys at the credit of the said account may from time to time be—

- (a) deposited at interest in the Bank of Bengal or in any other Bank in Calcutta approved by the Local Government in this behalf, or
- (b) invested in any of the securities or debentures mentioned in section 101, sub-section (1), of this Act or in section 20 of the Indian Trusts Act, 1882.

(2) All such deposits and investments shall be made by the Chairman on behalf of, and with the sanction of, the Board ; and, with the like sanction, the Chairman may at any time withdraw any deposit so made, or dispose of any securities, and re-deposit or re-invest the money so withdrawn or the proceeds of the disposal of such securities.

117. (1) No payment shall be made by the Bank of Bengal out of the account referred to in section 115, except upon a cheque.

Payments by che-
que.

(2) Payment of any sum due by the Board exceeding one hundred rupees in amount shall be made by means of a cheque, and not in any other way.

Signature of orders under section 116, and cheque.

118. All orders for making any deposit, investment, withdrawal or disposal under section 116, and all cheques referred to in section 117, must be signed—

(a) by the Chairman and the secretary to the Board, or

(b) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman, as the case may be, and by a Trustee other than the Chairman.

119. Before the Chairman or any other Trustee or the Secretary to the Board signs a cheque under section 118, he must satisfy himself that the sum for which such cheque is drawn either is required for a purpose or work specifically sanctioned by the Board or is an item of one of the excepted descriptions specified in section 114, sub-section (3)

Duty of Chairman and others before signing cheque.

Accounts.

Definition of "cost of management."

120. (1) The expression "cost of management," as used in the following sections in this Chapter means—

(a) the salary and house-rent and conveyance allowance (if any) of the Chairman or Acting Chairman, and the allowances and contributions referred to in section 11, sub-section (2) ;

(b) all fees paid under section 22, for attendance at meetings ;

(c) the salaries, fees and allowances of, and the contributions paid under section 146 in respect of, officers and servants of the Board who are included in statements prepared under section 3 ;

- (d) the remuneration of other employes of the Board, except employes who are paid by the day or whose pay is charged to temporary work ;
- (e) all payments made under section 75 and section 146 on account of the Tribunal ; and
- (f) all office expenses incurred by the Board or the the Tribunal.

(2) The expression "office expenses," in clause (f) means expenses incurred for carrying on office work, and includes the rent of offices, the provision of furniture thereof, and charges for printing and stationery.

Keeping of capital account and revenue account.

121. (1) The Board shall keep a capital account and a revenue account.

(2) The capital account shall show separately all expenditure incurred by the Board on each improvement scheme and and each re-housing scheme.

Credits to capital account.

122. There shall be credited to the capital account—

- (a) all sums (except interest) received in pursuance of section 78 or section 79 ;
- (b) all moneys received on account of loans taken by the Board in pursuance of section 89 or section 91 ;
- (c) the proceeds of the sale of any land vested in the Board which was purchased out of any loan taken in pursuance of section 89 or section 91 ;
- (d) where land was purchased out of an advance from the revenue account, the portion of the proceeds of the sale of such land which remains after crediting to the revenue account the amount of such advance,

- (e) the proceeds of the sale of any movable property (including securities for money invested from the capital account) belonging to the Board ;
- (f) all lump sums received from the Government in aid of the capital account ;
- (g) all *premia* received by the Board in connection with leases for any term exceeding forty years ;
- (h) all sums (if any) which the Local Government directs under section 125, sub-section (2), to be credited to the capital account ; and
- (i) all moneys resulting from the sale of securities by direction of the Local Government under section 126.

**Application of
capital account.**

123. The moneys credited to the capital account shall be held by the Board in trust, and shall be applied to—

- (a) meeting all costs of framing and executing improvement schemes and re-housing schemes ;
- (b) meeting the cost of acquiring land for carrying out any of the purposes of this Act ;
- (c) meeting the cost of constructing buildings ; required for carrying out any of the purposes of this Act ;
- (d) the repayment of loans from money borrowed in pursuance of section 89, clause (b) ;
- (e) making payments in pursuance of section 149, otherwise than for interest or for expenses of maintenance or working ;
- (f) making, or contributing towards the cost of making surveys, in pursuance of section 167 ;
- (g) meeting such proportion of the cost of management as the Board may, with the sanction of the Local Government, prescribe in this behalf ; and

- (h) temporarily making good the deficit (if any) in the revenue account at the end of any financial year.

Credits to revenue
account.

124. There shall be credited to the revenue account—

- (a) all interest received in pursuance of section 78 or section 79 ;
- (b) all proceeds received by the Board of taxes imposed by Chapter V ;
- (c) all sums contributed from Municipal Funds which are received by the Board under section 88 ;
- (d) all fines, damages and proceeds of confiscations received by the Board under section 175 ;
- (e) all annually recurring sums received from the Government in aid of the funds of the Board ;
- (f) all *premia* received by the Board in connection with leases for any term not exceeding forty years ;
- (g) all rents of land vested in the Board ; and
- (h) all other receipts by the Board which are not required by section 122 to be credited to the capital accounts.

Application of re-
venue account.

125. (1) The moneys credited to the revenue account shall be held by the Board in trust, and shall be applied to—

- (a) meeting all charges for interest and sinking fund due on account of any loan taken in pursuance of section 89, clause (a), or section 91, and all other charges incurred in connection with such loan ;
- (b) paying all sums due from the Board in respect of rates and taxes imposed under the Calcutta Municipal Act, 1899, upon land vested in the Board ;

- (c) paying the cost (if any) of maintaining a separate establishment for the collection of the rents and other proceeds of land vested in the Board ;
- (d) paying all sums which the Local Government may direct to be paid to any auditor under section 132 ;
- (e) making payments in pursuance of section 149, for interest or for expenses of maintenance or working ;
- (f) paying the cost of management, excluding such proportion thereof as may be debited to the capital account under clause (g) of section 123 ; and
- (g) paying all other sums due from the Board, other than those which are required by section 123 to be disbursed from the capital account.

(2) The surplus (if any) remaining after making the payments referred to in sub-section (1) shall,

subject to the maintenance of a closing balance of one lakh of rupees, and

except as provided in section 127, and

unless the Local Government otherwise directs,

be invested, in the manner prescribed in section 101, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act.

126. If, at any time after any surplus referred to in section 125, sub-section (2), has been invested, the Local Government is satisfied that the investment is not needed for the service of any loan referred to in that sub-section, it may direct the sale of the securities held under the investment.

Power to direct sale of securities in which any surplus of the revenue account is invested.

127. (1) Notwithstanding anything contained in section 125, the Board may advance any sum standing at the credit of the revenue account for the purpose of meeting capital expenditure.

Advances from revenue account to capital account.

(2) Every such advance shall be refunded to the revenue account as soon as may be practicable.

128. (1) Any defect in the revenue account at the end of any financial year, may be made good by an advance from the capital account.

Advances from capital account to revenue account.

(2) Every such advance shall be refunded to the capital account in the following financial year.

129. (1) The Board shall submit to the Local Government, at the end of each half of every financial year, an abstract of the accounts of their receipts and expenditure.

Submission of abstracts of accounts to Local Government.

130. The accounts of the Board shall, once in every financial year, be examined and audited by such auditor as the Local Government may appoint in this behalf,

Annual audit of accounts.

Powers of auditor.

131. The auditor so appointed may,—

- (a) by written summons, require the production before him of any document which he may consider necessary for the proper conduct of the audit ;
- (b) by written summons, require any person having the custody or control of or being accountable for, any such document to appear in person before him ; and
- (c) require any person so appearing before him to make and sign a declaration with respect to any such document, to answer any question, or to prepare and submit any statement.

Remuneration of auditor.

132. The Board shall pay to the said auditor such remuneration as the Local Government may direct.

Reports and information to be furnished by auditor to the Board.

133. The said auditor shall—

- (a) report to the Board any material impropriety or irregularity which he may observe in the expenditure, or in the recovery of moneys due to the Board, or in the accounts and report the same to the Local Government,
- (b) furnish to the Board such information as they may from time to time require concerning the progress of his audit, and
- (c) within fourteen days after the completion of his audit, forward his report upon the accounts to the Chairman.

134. It shall be the duty of the Board forthwith to remedy any defects or irregularities that may be pointed out by the auditor.

Board to remedy defects pointed out by auditor.

135. The Chairman shall cause the report mentioned in section 133, clause (c), to be printed, and shall forward a printed copy thereof to each Trustee, and shall bring such report before the Board for consideration at their next meeting.

Auditor's report to be sent to each Trustee and considered by Board.

136. As soon as practicable after the receipt of the said report, the Board shall prepare an abstract of the accounts to which it relates, and shall publish such abstract by notification, and shall send a copy of the abstract to the Chairman of the Corporation and to the Local Government.

Publication and transmission of an abstract of the accounts.

CHAPTER VII.

Rules.

Introduction —The power to make rules, bye-laws and regulations, subject to certain conditions is common to all corporate bodies. The powers conferred by this Chapter upon the Board to make rules are almost at a par with those conferred by the Calcutta Municipal Act upon the General Committee by part VIII Chapter XLIII of the Calcutta Municipal Act.

Further powers to Local Government for making rules.

137. In addition to the power conferred by section 86, the Local Government may make rules—

(1) for regulating elections under sub-sections (1), (2) and (3) of section 7 ;

(2) for prescribing the maximum sum which may be paid to any person by way of fees under section 22 ;

(3) for fixing the charge to be made for a copy of, or extracts from, the Municipal assessment-book furnished to the Chairman under section 46 ; and

(4) for prescribing the form of the abstracts of accounts referred to in sections 129 and 136.

138. (1) In addition to the power conferred by section 31, the Board may from time to time make rules (not inconsistent with any rules made by the Local Government or the President of the Tribunal under this Act) for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Board may make rules—

(a) for associating members with the Board under section 19 ;

- (b) for appointing persons (other than Trustees and persons associated with the Board under section 19) to be members of Committees under section 20 ;
- (c) for regulating the delegation of powers or duties of the Board to Committees under section 20 ;
- (d) for the guidance of persons employed by them under this Act :
- (e) for prescribing the fees payable for copies of documents delivered under section 43, sub-section (3), " or clause (iv) of sub-section (2) of section 63 "
- (f) for facilitating the taking of a census and securing accurate returns thereof ;
- (g) for the maintenance and management of dwellings and shops constructed under re-housing schemes.

(3) In making any rule under sub-section (1) or sub-section (2), the Board may provide that a breach of it shall be punishable—

- (i) with fine which may extend to five hundred rupees, or
- (ii) in case of a continuing breach, with fine which may extend to fifty rupees for every day during which the breach continues after receipt of written notice from the Chairman to discontinue the breach.

139. The power to make rules under section 86, section 137 or section 138 is subject to the condition of the rules being made after previous publication, and to the following further conditions, namely;—

Conditions precedent to the making of rules under section 86, 137 or 138.

- (a) a draft of the rules shall be published by notification and in local newspapers ;

- (b) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication or such larger period as the Local Government (or in the case of rules made under section 138) the Board may appoint ;
- (c) for one month at least during such period, a printed copy of such draft shall be kept at the Board's Office for public inspection, and every person shall be permitted at any reasonable time to peruse the same, free of charge ;
- (d) printed copies of such draft shall be delivered to any person requiring the same, on payment of a fee of two annas for each copy.

140. No rule made under section 138, shall have any validity unless and until it is sanctioned, with or without modification by the Local Government.

Sanction of Local Government required to rules made under section 138.

141. When any rule has been made under section 138 or section 137, and when any rule has been made under section 138, and duly sanctioned it shall be published by the Local Government by notification, and such publication shall be conclusive proof that the rule has been duly made.

Publication of rules.

142. (1) The Chairman shall cause all rules made under section 86, section 137 or section 138 and for the time being in force to be printed, and shall cause printed copies thereof to be delivered to any applicant on payment of a fee of two annas for each copy.

Printing and sale of copies of rules.

(2) Notice of the fact of copies of rules being obtainable at the said price, and of the place where and the person from whom the same are obtainable, shall be given by the Chairman by advertisement in local newspapers.

143. Copies, in English and Bengali of all rules made under section 137 or section 138 shall be hung or affixed in some conspicuous part of the Board's office and in such places of public resort affected by the rules as the Chairman may think fit.

Power of Local Government to cancel rules made under section 138.

144. The Local Government may at any time, by notification, cancel any rule made by the Board under section 138.

CHAPTER VIII.

Supplemental Provisions.

Status of Trustees, Etc.

145. Every Trustee, and every officer and servant of the Board, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Trustees, etc., deemed public servants.

Contributions towards leave allowance and pensions of Government Servants.

146. The Board shall be liable to pay such contributions for the leave allowances and pension of any Government servant employed as Chairman or as an officer or servant of the Board, or as a member or officer or servant of the Tribunal, as may be prescribed in any general or special orders of the government for regulating the transfer of Government servants to foreign service.

Contributions by Board towards leave allowances and pensions of Government servants employed under this Act.

Extension of Acts to areas in the neighbourhood of the Calcutta Municipality.

147. (1) When any provision of this Act has been extended to any area under section 1, sub-section (3), the Local Government may, by notification published in the Calcutta Gazette and in such other manner (if any) as it may consider necessary, extend to such area the Calcutta Municipal Act, 1899, or any portion thereof, subject to such restrictions and modifications (if any), as may be specified in such notification.

Power to extend the Calcutta Municipal Act, 1899, to areas, near Calcutta, to which provisions of the present Act have been extended.

(2) When the said Calcutta Municipal Act, 1899, or any portion thereof, is extended under sub-section (1) to any area, then—

- (a) the Bengal Municipal Act, 1884, or the Bengal Local Self-Government Act of 1885, as the case may be, or the corresponding portion of such Act, as the case may be, if in force in such area, shall be deemed to be repealed therein, and,
- (b) except as the Local Government may otherwise, by notification, direct, all rules, by-laws, regulations, orders, directions and powers made, issued or conferred under the portions of the said Calcutta Municipal Act, 1899, which have been so extended and in force at the date of such extension, shall apply to the said area, in supercession of all corresponding rules, by-laws, regulations, orders, directions and powers (if any) made, issued or conferred under the said Bengal Municipal Act, 1884, or the said Bengal Local Self-Government Act of 1885, as the case may be.

Note.—This section is intended to bring areas of the suburban Municipalities within the Calcutta Municipality by extending the provisions of the Act and those of the Calcutta Municipal Act to the said areas by the Local Government and thus absorbing the said Municipalities in the Calcutta Municipality.

But it is doubtful whether by the extension of the provisions of the Act and those of the Calcutta Municipal Act to the suburban Municipal areas in the manner provided in the section, they become included in the Calcutta Municipality in the sense that under section 23 (2) of the Land Acquisition Act, no statutory allowance of 15 per cent. on the market-value is payable for the same.

148. (1) Before finally publishing any notification under section 1, sub-section (3), or section 147, sub-section (1), the Local Government shall publish a draft of the same in the Calcutta Gazette,
Publication of notifications under sections 1 (3) and 147 (1) in draft, for criticism.

(2) Any ratepayer or inhabitant of the area affected by such draft may, if he objects to the draft, submit his objection in writing to the Local Government within six weeks from its publication, and the Local Government shall take such objection into consideration.

Facilities for movement of the population.

149. With a view to facilitating the movement of the population in and around the Calcutta Municipality, the Board may from time to time,—
Powers of the Board for facilitating movement of the population.

(1) subject to any conditions they may think fit to impose,—

- (a) guarantee the payment, from the funds at their disposal, of such sums as they may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion, or
- (b) make such payments as they may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain and work means of locomotion ; or

(2) either singly or in combination with any other person, construct, maintain and work any means of locomotion under the provisions of any law applicable thereto, or

(3) construct, or widen, strengthen or otherwise improve bridges ;

Provided that no guarantee or subsidy shall be made under clause (1), and no means of locomotion shall be constructed, maintained or worked under clause (2), without the sanction of the Local Government.

Saving of Telegraph and Railways Act ; **150.** Nothing in this Act shall be deemed to affect the provisions of the Indian Telegraph Act, 1885, or the Indian Railways Act 1890.

Legal Proceedings.

Note :—It is nowhere laid down in this Act as to how the proceedings under this Act will be governed.

Cognizance of offences.

151. Notwithstanding anything contained in the Code of Criminal Procedure 1898, all offences against this Act or any rule made hereunder shall, wherever committed, be cognisable by a Presidency Magistrate ;

and no such Magistrate shall be deemed to be incapable of taking cognisance of any such offence by reason only of being liable to pay any tax imposed by this Act or of his being benefitted by the funds to the credit of which any fine imposed by him will be payable.

Note :—This section is practically the same as section 629 of the Calcutta Municipal Act.

152. No person shall be liable to punishment for any offence against this Act or any rule made hereunder unless complaint of such offence is made before a Presidency Magistrate within three months next after the commission of such offence.

Note :—Vide section 631 of the Calcutta Municipal Act III of 1899.

153. If any person, who has been summoned to appear before a Presidency Magistrate to answer a charge of an offence against this Act or any rule made hereunder which is punishable with fine only, fails to appear at the time and place mentioned in the summons, the Magistrate may, if service of the summons is proved to his satisfaction, and if no sufficient cause is shown for the non-appearance of such person, hear and determine the case in his absence.

Note:—This section corresponds to sec. 630 of the Calcutta Municipal Act III of 1899.

Powers of Chairman as to institution, etc, of legal proceedings and obtaining legal advice.

154. The Chairman may, subject to the control of the Board,—

- (a) institute, defend or withdraw from, legal proceedings under this Act or any rule made hereunder ;
- (b) compound any offence against this Act or any rule made hereunder which, under any law for the time being in force, may lawfully be compounded.
- (c) admit, compromise or withdraw any claim made under this Act or any rule made hereunder ; and ;
- (d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Board to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Board or any officer or servant of the Board.

Note:—The above section corresponds to section 633 of the Calcutta Municipal Act III of 1899.

155. No suit shall be maintainable against the Board or any Trustee, or any officer or servant of the Board or any person acting under the direction of the Board or of the Chairman or of any officer

Indemnity to Board, etc.

or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule made hereunder.

156. No suit shall be instituted against the Board, or **Notice of suit** any Trustee, or any officer or servant of the **against Board, etc.** Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under this Act or any rule made hereunder,

until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims ;

and the plaint must contain a statement that such notice has been so delivered or left.

Note:—Section 155 lays down that no suit lies against the Board or any Trustee or any officer or servant of the Board or any person acting under the direction of the Board or of the Chairman or any officer or servant of the Board in respect of any thing (1) lawfully (2) in good faith (3) and with due care and attention done under this Act or any rule made hereunder, and section 156 lays down that no suit is maintainable against the persons mentioned above unless after the expiration of one clear month from the date of the service of notice containing full description and address of the person aggrieved, his cause of action and the relief claimed. The object of the section is to give the Board or the Trustee or any officer or servant of the Board or any person acting under the direction of the Board or Chairman or any officer or servant of the Board, an opportunity to make reparation of the wrong he has committed if he likes, without litigation. *Secretary of State vs Perumal*, I. L. R. 24 Madras 279. *Shahebzadee vs Fergusson* I. L. R. 7 Cal 499.

The next question is, 'Is the suit maintainable against the Board or a Trustee or the Chairman or any Servant or officer of the Board or any person acting under the direction of the Board, or Chairman or any officer or servant of the Board in respect of an act purporting to be done under the act though not lawfully or in good faith or with due care and attention, and has the Civil Court any jurisdiction to maintain the Suit' ?

Section 155 lays down that no suit lies if any act is done lawfully in good faith and with due care and attention. Hence the absence of any of the elements, namely—(1) legality (2) good faith, (3) due care and attention, gives rise to a cause of action and gives jurisdiction to Civil Court to grant relief in respect thereof,

There are similar provisions in the Bengal Municipal Act III of 1884. Section 114 lays down that "Every application presented under the last preceding section shall be heard and determined by not less than three Commissioners so appointed in that behalf by the Commissioners at a meeting. The Commissioners so appointed after taking such evidence and making such enquiries as they may deem necessary may pass such orders as they shall think fit in respect of such application."

The decision of such Commissioners shall be final. Section 111 lays down, "No objection shall be taken to any assessment or rating in any other manner than in this act provided."

And it has been held in *The Chairman of the Rajpur Municipality vs Nagendra Nath Bagchi*, 23 C. W. N. 475 (479), that "There is no doubt that if the question relates to assessment of the Holding according to the circumstances and the property within the Municipality, then the decision of the Commissioners is final under section 114 and the Civil Court has no power to re-open the question of assessment of the Holding which has been heard and decided by the Municipal Commissioners. Here, however, it is found that the assessment was made not only with respect to the holding the defendant had within the Municipality but also in respect of circumstances and property outside jurisdiction of the Municipality. That being so, the assessment was *ultra-vires* and this distinguishes the cases relied on by the learned pleader for the petitioner viz :—*Manessur Dass*, Collector of Chapra, I. L. R. 1 Cal 409, and *Chairman Municipal Board Chapra vs. Basudeb Narain Sing*, I. L. R. 37 Calcutta 374. It has been held in a number of cases that section 116 of the Bengal Municipal Act does not take away the jurisdiction of Civil Court in a case in which it is alleged and established that the assessment, the propriety of which is in controversy is open to objection on the ground that it is *ultra-vires*, in other words, it is only when the action of the Municipality has been exercised in conformity with the powers conferred upon it by the Act that the Civil Court has no authority to interfere. [See *Chairman of the Giridih Municipality vs Srish Chunder Mozumdar* I. L. R. 35 Calcutta 859, 12 C. W. N. 709]. It may be pointed out that in the case of *Dev Narain Dutt vs Chairman of the Baruipur Municipality* I. L. R. 39 Cal 141, I. L. R. 41 Calcutta 168, a portion of the property was situated within the Municipality, the annual value of which was Rs. 800 out of the total amount of Rs. 6000 upon which the plaintiff in that case had been assessed and that the plaintiff took proceedings under section 114. In the case of *Kameswar Pershad vs Chairman, Bhabua Municipality*, I. L. R. Cal 27 Cal 849 also the plaintiff took proceedings under section 114.

If the assessment was not in conformity with statutory provisions and was *ultra-vires*, it is open to the assessee to raise the question by way of defence to an action for recovery of tax. [See the case of *Chairman, Giridih Municipality vs Siris Chunder Mozumdar* I. L. R. 35 Cal, 859].

The corresponding sections in the Calcutta Municipal Act are sections 634 and 635.

Nature of suits :—Promoters who have not complied with the provisions authorising entry on lands against the will of the owner, and who have neglected to purchase by agreement the interest of the owner

are liable as trespassers. An action for the recovery of such lands can be maintained against the promoters and an injunction will be granted to restrain them from interfering with the possession of an owner who has been successful in such action. *Stretton vs Great Western and Brentford Rail Co* (1870) L. R. 5 Ch 751, 40 L. J. Ch 50. *Great Western Railway Co vs Swindon Rail Co.* (1884) 9 App. Cas 787; 53 L. J. Ch 1075.

Remedy:—The remedy where a company are proceeding to take lands over which their powers do not extend is by injunction. In *Galloway vs Mayor and Commonalty of London* L. R. 1. H. L. 34, 43; 35 L. J. Ch 477, Lord Cranworth L. C. says: "It has become a well-settled head of equity that any company authorised by the legislature to take compulsorily the land of another for a definite object, will if attempting to take it for any other object, be restrained by injunction of the Court of Chancery from so doing".

"A Consent to permit the promoters to enter on any land can not be revoked when once given, so as to place the promoters in the position of trespassers. The effect of such consent is to bring the promoters under the protection of their statutory powers, and the only remedy of the owner is to take necessary steps to compel the assessment and payment of compensation. *Knapp vs London Chatham and Dover Ry Co* (1863) 2 H. and C. 12. 32, L. J. Ex 236. *Doe Hudson vs Leeds and Bredford Rail Co.* (1851) 10 H. B. 796; 20 L. J. R. B. 486. If no consent has been given, and the promoters have not complied with the statutory conditions as to entry on lands, they can be proceeded against as trespassers by any owner who has an interest in the lands. *Ramsden vs Manchester Rail Co* (1848) 1. Ex. 723; 12 Jur 293; *Armstrong vs Waterford and Limerick Rail Co.* (1846) 10. 2 Eq. Re 60; *University Life Assurance Society vs Metropolitan Rail Co* (1866) W. N. 167. The principle is that all statutory conditions which have been imposed as conditions precedent to an entry on lands must be fulfilled. *Parkdale Corporation v. West* (1887) 12 App Case 602; 56 L. J. P. C. 66; *North Shore Ry Co vs Pion* (1889). 14 App Cas 612; 6. L. J. 525. In such cases, however, an injunction to restrain promoters from continuing in possession will not be granted in the first instance, if the promoters have entered on lands through an unintentional error and undertake to comply with conditions which will give the owner all the security to which he is entitled. *Alston vs Eastern Counties Rail Co* (1851) 3. W. R. 559. *Willing vs South Eastern Rail Co.* (1849) 1. Mean & Co 58.

Lastly in regard to sections 155 and 156 of this Act, in the case of the Trustees for the Improvement of Calcutta vs Chandra Kanta Ghosh, Mookerjee and Cuming J. J. in delivering judgment said "The fifth contention of the appellants raises the question of the competence of the Civil Court to entertain this suit and to grant relief by way of injunction. Reliance has been placed upon section 49 (2) which provides that the publication of a notification under sub-section (1) that the Local Government has sanctioned a scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. The argument in substance is that this section deprives the Civil Court of Jurisdiction to determine whether the action of the Board is or is not *ultra-vires*. In our opinion, this contention is entirely groundless. Section 49 (2) merely provides that after the

publication of notification of sanction, the scheme can not be impeached on the ground that it has not been framed and sanctioned duly or in conformity with the procedure prescribed by the Act; but there is nothing in the section which takes away the jurisdiction of the Civil Court to investigate whether the action taken by the Trustees has or has not been in excess or violation of the statutory authority. This follows from a plain reading of section 49 and is confirmed by sections 155 and 156, which would be entirely superfluous if section 49 (2) completely barred suits of all description in the Civil Court. This contention, consequently must be overruled."

We may add that an objection was taken in the trial that the suit was barred as no notice had been given under section 156. This was overruled by the principle explained by Woodroffe J. in *Ganoda vs Nalini* (I.L.R. 36 Calcutta 28), namely, that a section which bars a suit for an act done, does not prohibit a suit for an injunction to restrain the commission of an act not done but threatened to be done. The correctness of this view has not been questioned in this Court and the point, indeed, was not even so much as mentioned in the course of argument. *Trustees for the Improvement of Calcutta vs Chandra Kanta Ghosh*. 21 C. W. N. 8.

Police.

157. (1) The Commissioner of Police and his subordinates shall be bound to co-operate with the Chairman for carrying into effect and enforcing the provisions of this Act.

(2) It shall be the duty of every police-officer who is subordinate to the Commissioner of Police—

- (i) to communicate without delay to the proper officer or servant of the Board any information which he receives of a design to commit or of the commission of any offence against this Act or any rule made hereunder, and
- (ii) to assist the Chairman or any officer or servant of the Board reasonably demanding his aid for the lawful exercise of any power vesting in the Chairman or in such officer or servant under this Act or any such rule.

158. (1) Every police-officer shall arrest any person who commits, in his view, any offence against this Act or any rule made hereunder, if the name and address of such person be unknown to him, and if such

Arrest of offenders.

person, on demand, declines to give his name and address, or gives a name or address which such officer has reason to believe to be false.

(2) No person so arrested shall be detained in custody after his true name and address are ascertained, or without the order of a Magistrate, for any longer time, not exceeding at the most twenty-four hours from the arrest, than is necessary for bringing him before a Magistrate.

(3) On the written application of the Chairman, any police-officer above the rank of constable shall arrest any person who obstructs any officer or servant of the Board in the exercise of any of the powers conferred by this Act or any rule made hereunder.

Evidence.

159. Whenever, under this Act or any rule made hereunder, the doing or the omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of—

Proof of consent, etc., of Board or Chairman or officer or servant of Board.

(a) the Board or the Chairman, or

(b) any officer or servant of the Board,

a written document, signed in case (a) by the Chairman and in case (b) by the said officer or servant, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion or satisfaction, shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion or satisfaction.

Validation.

160. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

Validation of acts and proceedings.

- (a) the existence of any vacancy in, or any defect in the constitution of, the Board or any Committee ; or
- (b) any person having ceased to be a Trustee ; or
- (c) any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, having voted or taken any other part in any proceeding in contravention of section 23 ; or
- (d) the failure to serve a notice under section 45 on any person, where no substantial injustice has resulted from such failure ; or.
- (e) any omission, defect or irregularity not affecting the merits or the case.

(2) Every meeting of the Board, the minutes of the proceedings of which have been duly signed as prescribed in section 18, clause (h), shall be taken to have been duly convened and to be free from all defect and irregularity.

Note:—This section corresponds to section 102 of the Calcutta Municipal Act, 1899. In cases under the L. A. Act I of 1894 the proceedings are required to be conducted and the powers and privileges conferred are required to be exercised, not by any private or even public body of persons, but by a responsible officer of Government of the rank of a Collector, and the chances of neglect to observe rules from interested motives are reduced to the narrowest limits. A distinction is observed by the English Courts as will appear from the observation of P.C. Wood in the case of North London Railway Company vs Metropolitan Board of Works (1859) 23 L. J. Ch. 909 and the observations of Lord Cranworth in the case of Galloway V Mayor of London (1866) 1 H. L. 34 and reference may also be made in this connection to Maxwell on the Interpretation of Statutes p 421, 422, and Crisp on the Law of Compensation p 21 ; I. L. R. 30 Cal 579.

Compensation.

161. In any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested by this Act or any rule made or scheme.

General power of Board to pay compensation.

sanctioned hereunder, in the Board or the Chairman or any officer or servant of the Board.

162. (1) If, on account of any act or omission, any person has been convicted of an offence against this Act or any rule made hereunder, and, by reason of the same act or omission of the said person, damage has occurred to any property of the Board, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor.

Public Notices and Advertisements.

163. Every public notice given under this Act or any rule made hereunder shall be in writing over the signature of the Chairman, and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.

164. Whenever it is provided by this Act or any rule made hereunder that notice shall be given by advertisement in local newspapers, or that a notification or any information shall be published in local newspapers, such notice, notification or information shall be inserted, if practicable, in at least two English newspapers and two vernacular newspapers,

Signature and service of notices or bills.

165. Every notice or bill, which is required by this Act or by any rule made hereunder to bear the signature of the Chairman or of any other Trustee or of any officer or servant of the Board, shall be deemed to be properly signed if it bears a *facsimile* of the signature of the Chairman or of such other Trustee or of such officer or servant, as the case may be, stamped thereupon.

Stamping signature on notice or bills.

Note:—This Section corresponds to Section 580 of the Calcutta Municipal Act, 1899.

166. When any notice, bill or other document is required by this Act or any rule made hereunder to be served upon or issued or presented to any person, such service, issue or presentation shall be effected—

Service how to be effected.

- (a) by giving or tendering such document to such person ; or
- (b) if such person is not found, by leaving such document at his last known place of abode in Calcutta, or by giving or tendering the same to some adult male member or servant of his family ; or
- (c) if such person does not reside in Calcutta, and his address elsewhere is known to the Chairman, by forwarding such document to him by registered post under cover bearing the said address ; or
- (d) if none of the means aforesaid be available, by causing a copy of such document to be affixed on some conspicuous part of the land (if any) to which the document relates.

Note:—This Section corresponds to Section 592 of the Calcutta Municipal Act 1899. Their Lordships of the Judicial Committee in delivering judgment in *Harihar Bannerjee Vs. Ramsashi Roy* reported in 29 C. L. J. 117, S. C. 23 C. W. N. p. 77 held that “If a letter properly directed containing a notice to quit is proved to have been put into the Post Office, it is presumed that the letter reached its destination at the proper time, according to the regular course of business of the Post Office and was received by the person to whom it was addressed. That presumption would apply with greater force to Registered letters”.

Service of notice or delivery to an agent would be good service or delivery to the principal though in fact the notice was destroyed by the agent and never was seen or heard by the principal. It is an entire mistake to suppose that the addressee must sign the receipt for a registered letter himself or that he cannot do so by the hand of another person or that if another does sign it on the addressee's behalf, the presumption is that it never was delivered to the addressee himself mediately or immediately" and their Lordships Fletcher and S. Huda J. J. in *Girish Chunder Ghosh Vs. Kishori Mohan Das*, 23 C.W.N. 319 in which a notice to quit was given by registered post, but the letter containing the notice was returned by the Post Office the addressee having refused to accept it, held that "under Sec. 114 of the Evidence Act the Court was entitled to presume that the letter containing the notice reached the defendant and the fact that the letter was returned by the Post Office as not accepted by the addressee did not destroy the presumption."

Surveys.

167. The Board may—

Power to make surveys, or contribute towards their cost.

- (a) cause a survey of any land to be made, whenever they consider that a survey is necessary or expedient for carrying out any of the purposes of this Act, or
- (b) contribute towards the cost of any such survey made by any other local authority.

Powers of Entry.

168. (1) The Chairman may, with or without assistants or workmen, enter into or upon any land, in order—

Power of entry.

- (a) to make any inspection, survey, measurement, valuation or inquiry,
- (b) to take levels,
- (c) to dig or bore into the subsoil,
- (d) to set out boundaries and intended lines of work,
- (e) to mark such levels, boundaries and lines by placing marks and cutting trenches, or
- (f) to do any other thing,

whenever it is necessary to do so for any of the purposes

of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Board intend to frame hereunder ;

Provided as follows :—

- (a) no such entry shall be made between sunset and sunrise ;
- (b) no dwelling-house, and no public building or hut which is used as a dwelling-place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry ;
- (c) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed.
- (d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(2) Whenever the Chairman enters into or upon any land in pursuance of sub-section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid ; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Board, whose decision shall be final.

Note:—Sections 84-91 of Land Clauses Act, 1845, contain the provisions which apply with respect to the entry on lands by promoters of the undertaking. Such entry, on lands which are required or permanently used by the promoters is rendered expressly unlawful (vide *Birmingham and District Land Co. Vs. London and North Western Railway* (1888) 40 Ch. D. 268) except by consent of owner and occupier or until after the promoters shall either have paid to every party having any interest in such lands or deposited in the bank (*Bygrave Vs. Metropolitan Board* (1886) 32 Ch. D. 147) the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests. There are, however, two exceptions to the general enactment.

(1) Promoters may, under Sec. 84, without previous consent enter on lands for the purpose merely of surveying and taking levels of such lands, and of probing and boring to ascertain the nature of the soil and of setting out the line of works, after giving not less than three, nor more than fourteen days notice to the owners or occupiers. Where a Company had entered without giving the notice required under Section 84, but stating that they did not intend to proceed any further, without giving the required notice, the Court refused an injunction, making no order on the motion and reserving the costs. *Fookes Vs. Wills & Co Rail Co.* (1846) 5 Hare 199, 4 Rail Cas. 210.

(2) The second exception is that where lands are required for permanent uses, the promoters may enter after complying with all the requisitions contained in Sections 85-88.

Penalties.

169. If any Trustee, or any officer or servant of the Board, knowingly, acquires directly or indirectly, by himself or by any partner, employer or employee, otherwise than as such Trustee, officer or servant, any share or interest in any contract or employment with, by or on behalf of, the Board,

Punishment for acquiring share or interest in contract, etc., with the Board.

not being a share or interest such as, under sub-section (2) of section 9, it is permissible for a Trustee to have without being thereby disqualified for being appointed a Trustee,

he shall be deemed to have committed the offence made punishable by section 168 of the Indian Penal Code.

170. If any person, without lawful authority,—

Penalty for removing fence, etc., in street.

(a) removes any fence or shoring-timber, or removes or extinguishes any light, set up under section 59, or

(b) infringes any order given, or removes any bar, chain or post fixed, under section 60, sub-section (2),

he shall be punishable with fine which may extend to fifty rupees.

Penalty for building within street alignment or building line fixed by the Board.

171. If any person, without the permission of the Chairman required by section 63, sub-section (8), erects, re-erects, or adds to any wall (exceeding ten feet in height) a building which falls within the street alignment or building line

of a projected public street shown in any plan sanctioned by the Local Government under the said section", he shall be punishable—

(a) with fine which may extend, in case of a masonry building or a wall, to five hundred rupees, and, in the case of a hut, to fifty rupees and

(b) with further fine which may extend, in the case of a masonry building or a wall, to one hundred rupees, and, in the case of a hut, to ten rupees, for each day after the first during which the projection continues.

Note:—By Section 5 of the Calcutta Improvement Amendment Act III of 1915 the original Section 171 of Act V of 1911 has been amended by substitution of the first paragraph in the place of the following as it originally stood :—

"If any person, without the permission of the Board, erects, re-erects, adds to or alters any building or wall so as to make the same fall within the street alignment or building line shown in any plan finally adopted by the Board under Section 63."

171 A. If the owner for the time being of any wall or building in respect of which an agreement has been executed as provided in section 63, sub-section (9), fails—

Penalty for failure to remove wall or building in respect of which agreement has been executed.

(a) to remove such wall or building, or any specified portion thereof, when so required by notice issued under that sub-section, or,

(b) within fifteen days from the receipt of such notice, to authorize the Chairman, by permission in writing, to remove the said wall, building or portion,

he shall be punishable—

(i) with fine which may extend, in the case of masonry wall or building, to one hundred rupees, and, in the case of a hut, to twenty rupees ; and

- (ii) with further fine which may extend, in the case of a masonry wall or building, to ten rupees, and, in the case of a hut, to five rupees, for each day after the first during which the failure continues.

Note:—The above section has been inserted by section 6 of Act III of 1915.

172. If any person fails to set back any building, wall or part thereof, when so required by notice issued under section 63 sub-section (6), he shall be punishable—

Penalty for failure to set back building or wall on requisition.

- (a) with fine which may extend to one hundred rupees, or
- (b) in case of a continuing failure, with fine which may extend to twenty rupees for each day after the first during which the failure continues.

Note:—The above section 172 has been repealed by section 7 of Act III of 1915. Vide Appendix post.

173. If any person fails to comply with any requisition made under section 131, he shall be punishable—

Penalty for failure to comply with requisition made by auditor.

- (a) with fine which may extend to one hundred rupees : or
- (b) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first during which the failure continues.

174. If any person—

Penalty for obstructing contractor or removing flag.

(a) obstructs or molests any person with whom the Chairman has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue or in consequence of this Act or any rule made hereunder, or

- (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised by this Act or any rule made or scheme sanctioned hereunder,

he shall be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months.

Note:—This section corresponds to section 585 of the Calcutta Municipal Act, III of 1899.

Recovery of Expenses.

174 A. When a written notice, issued under section 63, sub-section (9), for the removal of a wall or building and recovery of expense. or building, or any portion thereof is not complied with by the owner thereof for the time being as provided by section 171 A, the Chairman may proceed to remove such wall, building or portion, and the expenses incurred in effecting such removal shall be recoverable by sale of the materials or other things removed.

Note:—The above new section has been inserted by section 8 of the Calcutta Improvement (Amendment) Act, III of 1915.

Disposal of Fines and Damages.

175. All fines and damages realized, and the proceeds of all confiscation, in cases in which prosecutions are instituted under this Act or any rule made hereunder, shall be paid to the Board.

Note:—The question is, whether in the absence of any provision in this Act, the fines are to be realized under the provisions of section 386 of the Criminal Procedure Code by distress warrant and seizure and sale of moveable and immoveable property.

In *Basanta Kumari Devi vs. The Corporation of Calcutta* 15 C. W. N. 906, it has been laid down that "the alternative sentence of simple imprisonment, in default of payment of fine, at any rate, for such offence to which a daily penalty is assigned in addition to the substantive fine is not justified by law.

176. (1) When the Local Government considers that any duty or tax imposed by Chapter V, or any payment required by section 88, or any portion of any such duty, tax or payment, as the case may be, is not required for the purposes of this Act, it may, by notification, with the previous sanction of the Government of India,—

Suspension or abolition, and re-imposition, of taxation or Municipal contributions.

(a) suspend, for any specified period, the levy of such duty or tax or any specified portion thereof or the making of such payment or any specified portion thereof, or

(b) abolish such duty, tax or payment, or any specified portion thereof, from a date to be specified in the notification.

(2) If at any time the Local Government considers that any duty, tax or payment, or any portion thereof, which has been suspended or abolished under sub-section (1) is required for the purposes of this Act, it may, by notification, with the previous sanction of the Government of India, cancel such suspension or abolition, wholly or in part, as it may think fit, from a date to be specified in the notification.

Dissolution of Board.

177. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continued existence of the Board, in the opinion of the Local Government, unnecessary, the Local Government may, by notification, with the previous sanction of the Government of India, declare that the Board shall be dissolved from such date as may be specified in this behalf in such notification; and the Board shall be deemed to be dissolved accordingly.

Ultimate dissolution of Board, and transfer of their assets and liabilities to the Corporation.

(2) From the said date,—

(a) all properties, funds and dues which are vested in or realizable by the Board and the Chairman,

respectively, shall vest in and be realizable by the Corporation and the Chairman of the Corporation, respectively ; and

- (b) all liabilities which are enforceable against the Board shall be enforceable only against the Corporation ; and
- (c) for the purpose of completing the execution of any scheme, sanctioned under this Act which has not been fully executed by the Board and of realizing properties, funds and dues referred to in clause (a), the function of the Board and the Chairman under this Act shall be discharged by the Corporation and the Chairman of the Corporation, respectively ; and
- (d) the Corporation shall keep separate accounts of all moneys respectively received and expended by them under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met.