

172c79

THE
BENGAL MUNICIPAL ACT

BEING

ACT III OF 1884 (P. C.)

as amended by

ACTS III OF 1886, IV & VI OF 1894, II OF 1896
& ACT II OF 1910 (B. C.).

WITH

NOTES AND APPENDICES

BY

BHAIRAB CHANDRA DUTT, B. L.,

Pleader.

and

Author of the Annotated Land Acquisition Act.

THIRD EDITION:

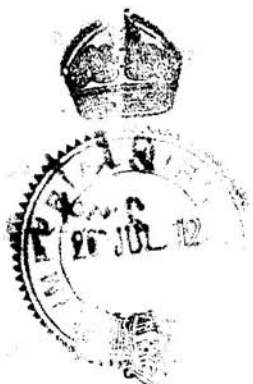
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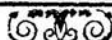
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PREFACE OF THE THIRD EDITION.

The second edition having been completely exhausted, the present one has become necessary.

In this edition some of the notes have been entirely re-written and the rulings of the Calcutta High Court have been brought up to date. The rulings of the High Courts or the Chief Courts, of the other provinces, based upon the sister Acts, have also found place in the book, wherever the sections are same or similar. Relevant extracts from the Circulars and General Orders of the Local Government, as also from the opinions of its law officers, have been inserted in their proper places.

In the appendix a large body of new matter has been inserted to meet the requirements of Municipal Administration.

My hearty thanks are due to the profession and the public for the very kindly reception accorded to two successive editions of the book; and I hope that the present edition will be similarly received.

HGWRAH,
March, 1911.

}

B. C. D.

ADDENDA.

— 172279
(1)

*Insert the following after rule 65 of the Account Rules
(page 164a):—*

Rule 65A.—“If after the service of the bills the amounts are not paid into the Municipal office, a notice of demand, together with a copy of the bill, from which the caution as regards payments referred to in rule 62 should be omitted, should be served upon the assessee by the first day of the second month of the quarter. This demand must be served by a person authorised to accept payment of the bill. If the amount is still not paid within 15 days after delivery of such notice, a distress warrant should be issued as laid down in rule 57. Proper security should be taken from the officer thus entrusted with the collection of demands, and he should be provided with a collection register, Form I.”

(2)

*Opinion of the Advocate-General (re: powers of the
Vice-Chairman under the Account Rules):—*

I. The account rules purport to be issued under section 32 of the Bengal Municipal Act III of 1884 which empowers the Local Government to prescribe the registers which are to be kept, the forms which are to be used, and the returns which are to be submitted, and also to direct the manner of auditing Municipal accounts.

In so far as the account rules are limited to these purposes they are valid and have the force of law.

Rule 19 provides for the periodical examination and initialling by the Vice-Chairman or Secretary of the cash book which is required by rule 14 to be kept by the cashier.

It seems to me that in effect this rule prescribes that one of the returns to be submitted shall be this cash book verified by the initials of the Vice-Chairman or Secretary in token of his having made the required weekly examination. In my opinion this is not *ultra vires* the provisions of section 82.

2. I am of opinion that powers or duties which are properly imposed upon the Vice-Chairman by the account rules issued under section 82 of the Act, can legally be exercised by the Vice-Chairman though there has been no delegation of powers to him under section 45. It is to be observed that section 45 merely enables the Chairman by written orders to delegate any of his duties or powers as defined by the Act and under section 44 the powers vested by the Act in the Commissioners are to be exercised by the Chairman.

If my view be correct the Chairman is obliged (under section 82 taken in conjunction with rule 19 of the Account Rules) to submit among the returns the cashier's cash book verified by the initials of the Vice-Chairman or Secretary as required by the rule made by the Local Government.

* * * *

(Sd.) G. H. B. KENRICK.

10th December 1910.

No. 818T.-M.—*The 13th September 1910.*—In exercise of the powers conferred by clauses (i) and (ii) of sub-section (1) of section 69 of the Bengal Municipal Act, 1884 (Bengal Act III of 1884), and by clauses (e) and (m) of section 138 of the Bengal Local Self-Government Act of 1885 (Bengal Act III of 1885), the Lieutenant-Governor is pleased to direct that the following rules for the preparation, submission and execution of projects for water-supply, sewerage or drainage by local authorities shall be substituted for the like rules published with Government Notification No. 1712M., dated the 7th July 1906, at pages 111 to 113, Part IB of the *Calcutta Gazette* of the 11th idem, namely:—

**Rules for the preparation, submission and execution
of projects of water-supply, sewerage or
drainage by local authorities.**

1. (1) Whenever a local authority desires to undertake a project for water-supply or sewerage or a comprehensive scheme of surface drainage, it shall first cause to be drawn up a sketch of the project roughly showing its scope and approximate cost.

(2) Such sketch may be drawn up either by the Sanitary Engineer at the special request of the local authority and with the approval of the Sanitary Board and on payment of the fees prescribed in Rule 8, or by any firm or person approved by the Sanitary Engineer.

(3) The Sanitary Engineer shall, in all cases, act as adviser of the local authority.

2. When the sketch of the project has been drawn up under Rule 1, and it is estimated to cost Rs. 10,000 or more, or in the case of an estimate of less than Rs. 10,000 if the financial assistance of Government is desired, the local authority shall submit it to the Sanitary Engineer who

shall make such recommendations as he may think fit. After the approval of the Sanitary Engineer has been obtained, the sketch project shall be submitted by the local authority to the Municipal Department of Government, together with a statement wherein shall be shown the amount of the funds available to meet the cost of the project, either from current revenue or by way of loan or from any other source.

In the case of schemes the total estimated cost of which is less than Rs.10,000, not being part of a larger scheme and for which financial assistance from Government is not required, the sanction of Government need not be obtained, but if the local authorities so desire the scheme will be examined by the Sanitary Engineer.

3. In order to obtain administrative approval to the execution of the project the local authority shall satisfy Government—

(1) that the cost of maintenance of the projected work can be met by the local authority from revenue;

(2) that any loan required to meet the cost of the work can be repaid, together with the interest thereon, within the period that may be prescribed by the Government; and

(3) that the work can be done effectually in the manner and for the cost proposed.

4. When the administrative approval of Government has been obtained, and in no case before, the local authority

may arrange for the preparation of detailed plans and estimates, and for this purpose may—

- (a) cause the plans and estimates to be prepared by its own officers or by an officer specially appointed for the purpose and apply to the Sanitary Engineer for assistance in the selection and engagement of surveyors to carry out the work; or
- (b) apply to the Sanitary Board for the services of the Sanitary Engineer; or
- (c) apply to Government in the Public Works Department for the services of their officers; or
- (d) apply to the District Board for the services of the District Engineer; or
- (e) with the previous sanction of the Sanitary Board, entrust the work to a private firm of established reputation.

In cases of (a), (c), (d) and (e), the plans and estimates while in course of preparation shall be subject to the examination and control of the Sanitary Engineer.

5. The plans and estimates shall, on completion, be forwarded in duplicate to the Sanitary Board, together with a full report on the financial aspect of the scheme and the state of public feeling in regard to it, and, if a loan is required, with an application in the prescribed form. In the case of drainage schemes the estimates must be submitted in Sanitary Board's Forms Nos. 21 and 22, copies of which may be obtained from the office of the Sanitary Engineer, and when the scheme has not been prepared in

the Board's Office they shall be accompanied by full details of the calculations of the sizes and strength of the various works, and complete information as to the prices on which the estimates have been framed.

The Sanitary Board, after examining the plans, estimates, report and application, shall submit them to the Municipal Department of Government with an expression of their opinion on the merits of the scheme as finally drawn up.

Construction.

6. Where the cost of the projected work is estimated to amount to Rs. 10,000 or more, an adequate provision for detailed engineering supervision shall be a condition precedent to the grant of sanction by the Government.

In the absence of special sanction to the contrary, the local authority shall agree to such one of the following conditions as may be considered suitable in each case :—

- (a) that the work shall be carried out by the Public Works Department if that Department can undertake it: in such cases an extra charge of 15 per cent. on the sanctioned estimates shall be made for supervision, unless the case is one of extraordinary difficulty, under which circumstances a higher charge may be imposed under the orders of Government; or
- (b) that arrangements shall be made with the District Board for the carrying out of the work under the supervision of the District Engineer and his staff; or

(c) that the work shall be carried out under the supervision of an Engineer qualified for appointment as a District Engineer according to the rules under the Local Self-Government Act of 1885 (Beng. Act III of 1885) specially employed for the purpose ; or

(d) that the work shall be carried out by a private engineering firm of established reputation :

Provided that the local authority shall not advertise for tenders or enter into any contract or agreement for the execution of any works in connection with schemes or parts of schemes which have been sanctioned by Government under conditions (b), (c) or (d), until the specification and form of tender for such contract have been examined and approved by the Sanitary Engineer. No tender or contract for any such work shall be accepted until it has been submitted to the Sanitary Board and they have approved the acceptance thereof ;

and further provided that when the work is carried out under condition (d), it shall be supervised by an officer appointed for the purpose by the local authority with the approval of the Sanitary Board, and shall, while in progress, be periodically inspected by the Sanitary Engineer.

7. Where the estimated cost of works amounts to less than Rs. 10,000, the local authority shall report, for the information of the Commissioner of the Division, the agency by which it is proposed to have the works carried out, and shall follow the instructions issued by him in the matter.

Fees.

8. The following fees shall be leviable by the Sanitary Board from local authorities for the work specified against each :—

- (a) a fee of two per cent. on the estimated cost (excluding cost of surveys) of all projects and schemes for which detailed estimates and drawings have been prepared by the Sanitary Engineer ;
- (b) a fee of one-half per cent. on the first Rs. 20,000, and one-quarter per cent. on the balance of the estimated cost of schemes and projects, the detailed plans and estimates of which are examined by the Sanitary Engineer ;
- (c) a fee of one-half per cent. on the first Rs. 20,000, and one-quarter per cent. on the balance (approximate) of the estimated cost of all rough schemes and projects, whether drawn up or, at the request of Government, examined, by the Sanitary Engineer.

9. The following rates, payable in advance, may be charged by the Sanitary Board for the loan of sets of surveying instruments to Municipalities :—

	Rs.
For a level and two staves	... 7 per mensem.
For a prismatic compass	... 3 „

LIST OF ABBREVIATIONS.

App. Cas.	... Appeal Cases.
A. W. N.	... Allahabad Weekly Notes.
Beng.	... Bengal.
B. G. M.	... Bengal Govt. Municipal Circular.
Bur. L. R.	... Burma Law Reporter.
Cal. Gaz.	... Calcutta Gazette.
C. L. J.	... Calcutta Law Journal.
C. L. R.	... Calcutta Law Reports.
Cox, C. C.	... Cox's Reports, Chancery.
Crl. Rev.	... Criminal Revision.
C. W. N.	... Calcutta Weekly Notes.
East	... East's Reports, King's Bench.
E. & B.	... Ellis and Blackburn's Reports, Queen's Bench.
F. B.	... Full Bench.
Govt. Cir.	... Government Circulars (Second Edition, 1906).
" Lett.	... Government Letter.
H. L.	... House of Lords Cases.
I. L. R. Cal.	... Indian Law Reports, Calcutta Series.
" All.	... " " " Allahabad "
" Mad.	... " " " Madras "
" Bom.	... " " " Bombay "
Leg. Rememr.	... Legal Remembrancer.
L. B. R.	... Lower Burma Rulings.
L. J. Ch.	... Law Journal, Chancery.
L. R. H. L.	... Law Reports, House of Lords.
L. R. Q. B.	... Law Reports, Queen's Bench.
Macq. H. L. Cas.	... Macqueen's Scotch Appeal Cases.
M. L. T.	... Madras Law Times.
My. & Cr.	... Mylne and Craig's Reports, Chancery.
O. C.	... Oudh Cases.
P. R.	... Punjab Record.
P. L. R.	... Punjab Law Reporter.
Pt.	... Part.
Q. B.	... Queen's Bench Reports.
Reg.	... Regulation.
R. S. C.	... Reports of the Select Committee.
Sindh L. R.	... Sindh Law Reporter.
W. R.	... Weekly Reporter.
W. R.	... " " (Eng.)

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 - xi. " Licensed Ware-house and Fire-brigade Act.
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THE
BENGAL MUNICIPAL ACT
BEING

• ACT NO. III OF 1884.

PASSED BY THE LIEUTENANT-GOVERNOR OF
BENGAL IN COUNCIL.

*(Received the assent of the Lieutenant-Governor on
the 4th April 1884 and of the Governor-General
on the 15th April 1884.)*

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

*As amended by Bengal Acts III of 1886, IV and
VI of 1894, II of 1896 and II of 1910.**

WHEREAS it is expedient to consolidate and
amend the law relating to muni-
cipalities within the territories sub-

Preamble.

* Act II of 1910 is a short Act. It was published in the *Calcutta Gazette*, Part III, of the 23rd March, 1910, and is as follows:—

An Act to declare the meaning of certain words in clause (b) of
section 66 of the Bengal Municipal Act, 1884.

Whereas certain officers were directed by the Lieutenant-Governor of
Bengal, by orders issued under clause (b) of section 66 of the Bengal
Municipal Act, 1884, to exercise and perform the powers and duties of
the Commissioners of certain Municipalities who had been superseded
by orders issued under section 65 of that Act;

ject to the government of the Lieutenant-Governor of Bengal: It is enacted as follows:—

PRELIMINARY.

1. This Act may be called the "Bengal Municipal Act, 1884:"

Short title and commencement.

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

And whereas the said officers, in exercise of the power conferred by section 9 of the said Act on Commissioners at a meeting, recommended alterations in the numbers of the Commissioners of the said Municipalities;

And whereas the Lieutenant-Governor of Bengal thereupon, by notifications issued under sections 9 and 9A of the said Act, altered the numbers of the Commissioners of the said Municipalities, with effect from the expiration of the period for which the former Commissioners were superseded;

And whereas doubts have been raised as to whether clause (b) of the said section 66 confers upon the persons appointed thereunder any of the powers of the Commissioners which are expressed by the said Act to be exercisable at a meeting of the Commissioners;

And whereas it is expedient to remove such doubts, by declaring that the said clause (b) refers to powers exercisable at a meeting of the Commissioners;

And whereas it is also expedient to give retrospective effect to such declaration, in order to validate all action taken by bodies of Municipal Commissioners constituted in pursuance of orders issued under said section 9 on the recommendation of the officers aforesaid;

And whereas, in the case of one of the Municipalities hereinbefore referred to, namely, the Santipur Municipality, the number of the

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

This Act has been declared in force in the Santhal Parganas by Reg. III of 1872, Sec. 5, as amended by Reg. III of 1886, Sec. 2.

This act was amended successively by Bengal Acts III of 1886, I of 1888, IV and VI of 1894, II of 1896 and II of 1910, which are to be read with and taken as part of this Act. The provisions of all these Acts have been duly incorporated in their proper places.

Act III of 1884 was published in the *Calcutta Gazette* on the 7th May, 1884 and came into force on the 1st August 1884 (*vide Cal. Gaz.*, 7th May 1884, Part I., p. 587.)

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

Enactments repealed;

Commissioners was altered by a Notification, No. 1726, dated the 2nd September, 1904, issued under section 9 of the said Act, instead of by notifications issued under both section 9 and section 9A ;

And whereas it is expedient to validate the said notification ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Municipal (Amendment and Validation) Act, 1910.

2. *Inserted under section 66 post.*

3. The Notification No. 1726, dated the 2nd September, 1904, which was framed under section 9 of the said Act and published at page 202 of Part IB of the *Calcutta Gazette* of the 7th day of September, 1904, shall be deemed to be as valid as if it had been rightly framed and followed in due course by a notification framed under section 9A of that Act ; and the number of the Commissioners of the Santipur Municipality, in the District of Nadia, shall accordingly be deemed to have been lawfully fixed at nine, with effect from the 2nd day of September, 1904, and shall remain at nine unless and until the number be altered hereafter by notifications published under sections 9 and 9A of the said Act.

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

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

In every enactment passed before this Act comes into force in which reference is made to Bengal Act III of 1864, *(the District Municipal Improvement Act)*, or to any enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Act or to its corresponding part or section.

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

The expression "notifications" as used in this section shall be deemed to include, and to have always included, all directions, declarations and orders

"Notifications"
defined,

given, or made, and published under any enactment referred to in this section :

Provided that nothing in this definition shall be deemed to affect any decision or order of a competent Court made before the date on which this Act shall come into force,

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

Changes.

Paragraph 4 has been substituted by section 2 sub-section (2) of Beng. Act IV of 1894 for "And all references to any such enactment shall (so far as may be practicable) be deemed to be made to this Act."

Paragraphs 6 and 7 have been added by section 2 sub-section (1) of Beng. Act IV of 1894.

Notes.

Prescribed—means *duly* or *lawfully* prescribed. A Bye-law framed under sec. 313 of Beng. Act V of 1876, which is obviously *ultra vires*, can not be valid under this sec.,—*Benimadhab Nag v. Moti Lal Das*, I. L. R. 21 Cal. 837, followed in *Hira Lal Dutt v. Howrah Municipality*, Crl. Rev. No. 80 of 1909 (unreported). Rules and bye-laws, made under Beng. Act V of 1876 and not being inconsistent with the provisions of this Act, have thus been saved by this section. Cf. also *Narain v. Corporation of Calcutta*, 10 C. L. J. 623.

"Notifications."—"The ruling of the High Court in what is known as the Kushtea Case (*Mahim Chandra Pal and another v. The Municipality of Kushtea*) made it necessary to define the meaning of the word "notification" so as to include declarations and orders made by Government. That decision has been set aside by a ruling of a Full Bench of the High Court, but it has been thought advisable to retain the definition for the sake of additional clearness." R. S. C., Cal. Gaz. Pt. IV. p. 13 (Feby. 21, 1894).

The word "notifications" in this section includes an order under section 234 of Beng. Act V of 1876, which shall be deemed to have been made under this Act., (*Bikunta Nath Dass v. Lolit Mohun Sirkar*, I. L. B. 20 Cal., 999 F. B., overruling the unreported judgment of *Norris, J.* in the *Kushtea Case*).

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

Existing municipalities.

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

All property of late Commissioners vested in Commissioners under this Act.

5. Notwithstanding anything contained in section 3, this Act shall not take effect in any cantonment without the consent of the Governor-General in Council previously obtained, nor

Act not to be extended to cantonments without consent of Governor-General.

shall the Local Government extend this Act, or any part thereof, to any cantonment without such consent.

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

Definitions.

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

"Carriage."

Wheeled vehicle with springs.—*Of. Wilson v. Madras Municipality* (I. L. R. 19 Mad. 83) where a bicycle has been held to come under this class. As, however, a carriage under this Act must be drawn by animals, a bicycle cannot be a carriage. Does the use of the word "ordinarily" make any difference ?

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

"Cart."

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

"Holding."

Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling-house, manufactory, warehouse, or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act other than those mentioned in clause (a) of section 85.

Explanation.—Holdings separated by a road or

other means of communication shall be deemed adjoining within the meaning of this proviso :

Notes.

This definition covers arable land.—*Mohadeb Aon v. Chairman Howrah Municipality*, 11 C. L. J. 524 (5) ; 14 C. W. N. 85.

Several houses within one compound.—If such houses are distinct and form separate dwellings intended or suited for different occupants, there is no legal objection to their being treated as different holdings, provided the owner divides the compound into parts by metes and bounds and assigns to each house a separate compound which will thus be a separate set of boundaries.—*Opinion of Leg. Rememer. No. 22-7 Apl. 04*—(Govt. Cir., 2nd Edn. Vol. III p. 996).

Section 85 clause (a) empowers the Commissioners to impose an alternative "tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality :

"Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum." Adjoining holdings under the proviso of this clause shall not therefore be deemed to be one holding for the purpose of imposing the alternative tax upon persons.

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

"House."

Notes.

Hut.—From the Administration Report of the Howrah Municipality for 1882-83, it appears that there was a suit instituted by one *Akhil Chandra Dhang* against the *Chairman* in the Munsif's Court for a perpetual injunction restraining the Commissioners from carrying out improvements under Section 245 "on the ground that the structure ordered to be removed was not a hut because it had *kutchha-pacca* walls. The case was decreed in favour of the plaintiff." In appeal the judgment of the Munsif was confirmed. "Hut" does not, therefore, include a structure made of *kutchha-pacca* walls. The meaning of the word in Webster's Dictionary is "a small house, hovel or cabin ; a mean lodge or

dwellings; a cottage. It is particularly applied to log-houses erected for troops in winter."

Building—The meaning of the word "building" in Webster's Dictionary is "a fabric or edifice constructed; a thing built." It includes a structure of any kind. "In law, anything erected by art, and fixed upon or in the soil, composed of different pieces connected together, and designed for permanent use in the position in which it is so fixed, is a building. Thus, a pole fixed in the earth is not a building, but a fence or a wall is,"—*Century Dictionary*. Compare, however, *Corporation of Calcutta v. Jogeswar Laha* (8 C. W. N. 487), where it has been held that a detached wall built of masonry is not a masonry building as defined by sec. 3 cl. (25) of the Calcutta Municipal Act (III of 1899 B.C.) It is submitted that the principle of this decision will apply here; as it seems that the term 'building' has been used in this definition in a sense *ejusdem generis* with hut, shop and warehouse.

See *Kamta Nath v. The Municipal Board of Allahabad*, I. L. R. 28 All. 199 (203).

See also *Susarmoyee v. The Corporation* (7 C. L. J. 243) where a corrugated iron shed has been held to be a building within the definition given in the Calcutta Municipal Act.

(5) "Immoveable property" and "land" include (besides land) benefits arising out of land, houses, things attached to the earth, or permanently fastened to anything attached to the earth :

"Immoveable property" and "land," pro-

Notes.

"Immoveable property" is defined in Act X of 1897 (The General Clauses Act) to include "land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth."

Land.—*Cf. The Rangoon Electric Tramway v. The Rangoon Municipal Committee* (14 Bur. L. R. 23, 4 L. B. R. 220) in which it has been held that the tram-lines in a certain street, meaning thereby the land of the street, in or on which the Tramway Company's sleepers and rails are laid, is *land* and the Company are the occupiers of such land.

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

"Moveable property" is defined in the General Clauses Act to mean property of every description, except immoveable property.

See notes to section 121.

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

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

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

For the names of municipalities in Bengal see *App. p. 238a*.

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

(11) "Owner" includes—

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

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

(c) an agent for any such person ;

(d) a trustee for any such person :

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

A Receiver—Appointed by the High Court is not the owner of the property of which he has been appointed receiver. He receives rent as an officer of the Court and as manager of the property on its behalf. Nor can he be made a party to any suit or proceeding without the leave of the Court appointing him, *W. R. Fink v. The Corporation of Calcutta*, I. L. R. 30 Cal. 721. See, however, *Corporation of Calcutta v. Administrator-General of Bengal* (I. L. R. 30 Cal. 927), where it was held that the sanction of the Government was not necessary for the institution of a prosecution under the Calcutta Municipal Act, section 197 of the Criminal Procedure Code not being applicable to a case of that nature, and the Administrator-General of Bengal being in charge of the premises, in respect of which the offence charged was said to have been committed, not by virtue of his office, but by virtue of his appointment by the Court as administrator to the state and in the latter capacity.

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

(13) "Road" means any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of way.

Road and Highway.

For all practical purposes, this definition would appear to fit in exactly what is known as *highway* in English law. For although some English

authorities have doubted whether anything but a *thoroughfare* could be a highway, such doubt has since been laid at rest; and a *passage*, whether a *thoroughfare* or not, which is open to all the king's subjects is now accepted as a *highway* (1).

How a Highway is Created.

A *road* under the Municipal Act being the same as a *highway* in English law, it is interesting to know how a *highway* is created in England.

On this subject the commentator of *Smith's Leading Cases* says;—

"Except where this is done by express enactment of the Legislature, it (a highway) derives its existence from a dedication to the public by the owner of the land over which the highway extends" (p. 165).

Mr. Hampton Copnall at page 18 of his book referred to above says:—

"The highways now in use in this country have been created either—

- | | |
|----------------------------|--------------------------|
| 1. By prescription | } common law methods; or |
| 2. By dedication | |
| 3. By Acts of Parliament." | |

Of these, "prescription", observes Mr. Copnall, "is now of historical rather than of practical importance, for the Prescription Act, 1832, did not apply to highways, and so left it necessary to prove the existence of a highway from the beginning of legal memory, *i. e.*, since A. D. 1189.

"This inconvenience was evaded by raising from user a presumption of dedication by the owner of the soil (*vide* judgment by Lord Blackburn in *Mann v. Brodie*, 1885, 10 App. Cas. 378)."

It will thus be seen that, for all practical purposes, dedication remains to be the only test of a highway in England. And it is submitted that in India also the trend of authorities is in the same direction, as the following considerations will show.

Rights of Way.

Mr. Justice Wilson, in the course of his judgment in the Full Bench case of *Chuni Lal v Ram Kishen Sahu* (I. L. R. 15 Cal. 460), was pleased to lay down as follows;—

"By the common law of England there are three distinct classes of rights of way and other similar rights. First, there are private rights in

(1) "*A Practical Guide to the Administration of Highway Law*" by H. Hampton Copnall p. 19 and notes to *Dovaston v. Payne*, *Smith's Leading Cases*, 9th Edn. p. 159.

the strict sense of the term vested in particular individuals or the owners of particular tenements, and such rights commonly have their origin in grant or prescription. Secondly, there are rights belonging to certain classes of persons, certain portions of the public, such as the freemen of a city, the tenants of a manor, or the inhabitants of a parish or village. Such rights commonly have their origin in custom. Thirdly, there are public rights in the full sense of the term which exist for the benefit of all the Queen's subjects; and the source of these is *ordinarily dedication*.

"It is unnecessary to enquire whether the mode of acquiring each of these rights is necessarily the same in all cases in England and in India. But it is, I think, important to remember that these three classes of rights exist in the one country as well as in the other" (pp. 464-5).

Public Right of way.

From the dictum of the Full Bench, quoted above, it will appear that the origin of a public right of way is "*ordinarily dedication*"; and it is not suggested anywhere in the judgment that the law on this subject is in any way different in India from that of England.

The dictum of Mr. Justice Woodroffe is to the same effect; for his Lordship in the course of his judgment in the case of *Akhoy Kumar Ghosh v. Commissioners of the Port of Calcutta* (I. L. R. 33 Cal. 1243) was pleased to lay down the law in this country as follows;—

"A public right of way may be created either by Act of the Legislature or by dedication, express or presumed, by the owner of the land of a right of passage over it to the public at large" (p. 1251).

The judgment of Mr. Justice Mukerji in the case of the *Chairman, Howrah Municipality v. Kheta Krishna Mitra* (I. L. R. 33 Cal. 1290), although not directly on the public right of way, accepts the same principle as applicable to this country.

Dedication—may either be (1) *express*, or (2) *implied* (i. e. presumed from facts proved in evidence).

(1) *Express dedication* is made by deed. *Per* Mukerji J.—"where the owner sets apart land for the use of the public and formally declares that such is his intention, or where he conveys land to a municipality or trustees to hold for the purposes of the public the dedication is an express one."—*Chairman Howrah Municipality v. Kheta Krishna Mitra*, (pp. 1296-7).

Section 31 of this Act provides for this.

In as much as express dedication is a matter of agreement, the terms of such dedication will naturally depend upon the construction of the agreement itself, giving rise to no further complications.

(2) *Implied dedication*, on the other hand, being a matter of presumption from evidence, requires a closer examination.

It is well settled that to constitute valid dedication in law there must be *animus dedicandi* (the intention to dedicate) on the part of the owner and acceptance on the part of the persons in whose favour the dedication is made. As, however, in the case of an implied dedication of land for the purposes of a public road, the expression of *animus dedicandi* on the one hand and acceptance on the other cannot, in the nature of things, be made in express terms, the whole thing will be a matter of inference from the conduct of the parties concerned. "An implied dedication," observed Mr. Justice Mukerji in the case of *Khetra Krishna Mitra* referred to above, "arises by operation of law from the acts of the owner and is really founded upon the principle of estoppel; it proceeds not upon the principle that a grant has actually been made, but rather on the principle that the owner having allowed the public to enjoy the user for any particular purpose is estopped from denying the right of the public to the enjoyment of such user. It is quite clear that continuous and notorious user by the public with the owner's knowledge and acquiescence for the prescriptive period will raise the presumption of a grant or dedication to the public."

Mr. Justice Woodroffe in the case of *Akhoy Kumar Ghosh*, at page 1252, has laid down that user by the public is evidence of *animus dedicandi*. Says Mr. Hampton Copnall at page 19 of his book,—“Where there is no direct evidence as to the intention of the owner, the presumption of dedication may be inferred from facts proved in evidence to the satisfaction of the jury. Presumption of dedication may be by reason of—(1) Long uninterrupted user of a way by the public at large; (2) repair by the parish.”

“An open user as of right by the public raises a presumptive inference of dedication requiring to be rebutted; and when such user is proved, the onus lies upon the person who seeks to deny the inference resulting from it to show negatively that the state of the title is such that no one could make a valid dedication” (*R. v. Petrie*, 4 E. & B. 737, *Smith's Leading Cases*, vol. II p. 165).

Length of user.

The time necessary to perfect a public right of way is the next question of importance. "No particular time is necessary for evidence of dedication. If the act of dedication be unequivocal, it may take place immediately. For instance, if a man build a double row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is *instantly* a highway."

"Eight and even six years have been held time enough wherein to presume dedication from user. Four years have been held too short a time. But all depends upon the special circumstances of each case; and the duration of the public *user*, which limits the rights of the owner of the soil, is not so important in this respect as the nature of the acts done by the owner of the soil, and of the adverse acts acquiesced in by him, as well as the intention indicated by those acts (*Smith's Leading Cases*, vol II, p. 165).

"A presumption of dedication has been held to be justified by eight years' user in the case of *Rugby Charity Trustees v. Merryweather* (11 East, 375 (n) 1760), and four or five years' user in *Jarvis v. Dean* (1826, 12 Q. B. 515; 3 Cox C. C. 262). But it is not only the duration of user that will weigh with the jury; they will consider the accompanying circumstances of the particular case" (*Copnall's Highways*, p. 19).

See also *Anderson v. Jagadamba Debi*, 6 C. L. R. 232 and *Imambundes Begum v. Sheo Dyal Ram*, 14 W. R. 199.

Whether a thoroughfare or not.

In the face of this expression it is not necessary to discuss the constitution of a highway in India. A *cul-de-sac* may obviously be a road if the public have a right of way over it.

And it has been held in the case of *Young v. Cuthbertson* (1854, 1 Macq. H. L. Cas. 455) that there may be a *highway* through private property, if it has a public terminus at each end. Such terminus need not be an exit in the ordinary sense; it may be a *cul-de-sac*. Cf. *Municipal Board of Bulandshahr v. Dakkhan Lal*, I. L. R. 30 All. 70.

The case of *the Municipal Commissioner of Bombay v. Mathurabasi* (I. L. R. 30 Bom. 558) decided with reference to the definition of "street" in the City of Bombay Municipal Act, may be studied with advantage in connection with this subject.

Once a highway always a highway,—is the accepted principle of the law of England. This principle, although always accepted in India also, appears to have been considerably modified by the enactment Art. 146A. in the Second Schedule of the Indian Limitation Act, whereby the limitation of 30 years has been made applicable to dispossession or discontinuance of possession of a road.

On the question as to whether and how the right of highway is affected by the operation of the law of limitation and prescription see *Sundaram Aiyar v. The Madura Municipal Council*, I. L. R. 25 Mad. 635. See section 30 and notes thereunder.

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

All sewage, rubbish and offensive matter collected by the Commissioners from roads and other places become their property (*sec. 196*.)

(14A) "Sanitary Board" means the persons for the time being appointed, either by name or by official designation, by the Local Government by notification in the *Calcutta Gazette* to constitute a Sanitary Board for Bengal:

This definition has been added by Sec. 3 of Act IV of 1894.

The insertion of this definition was necessitated by the new sections 37A to 37M which provide for schemes of water-supply and drainage.

(15) "schedule" means a schedule annexed to this Act:

(16) "section" means a section of this Act:

(17) "sewage" means night-soil and other contents of privies, drains, and cess-pools:

The contents of cess-pools have hitherto been removed under the provisions of Part V (Of Sewage, offensive matter, &c). but by sec. 86 of Act IV of 1894 they have been incorporated in Part IX.

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

The Chairman of the Commissioners has the power of acting and transacting business under all those sections where simply the word "Commissioners" is used, except under Secs. 37A to 37L in which the word has been used in the sense of "Commissioners at a meeting." But in every case the Chairman's actions are supposed to be subject to the approval of the Commissioners at a meeting (*see* sections 44 and 37M.)

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

PART I.

OF THE CREATION OF MUNICIPALITIES.

7. In every place which, in accordance with the provisions of section 3, becomes a municipality under this Act, every person who has been appointed or elected to be a Commissioner for such place under the Bengal Municipal Act, 1876, and who is holding office as such Commissioner at the commencement of this Act, shall be deemed to be a Commissioner duly appointed for such

Existing Commissioners and existing rates and taxes temporarily continued.

municipality, until such time as the election or appointment of Commissioners in respect of such municipality shall take effect under the provisions of this Act.

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

Beng. Act V of 1876 and VI 1878 were repealed by sec. 2 of this Act.

8. Except as is hereinafter otherwise expressly provided, this Act may be extended by the Local Government by notification published in the *Calcutta Gazette*, and in the manner prescribed by section 354, to any town or village not being within the limits of the ordinary original jurisdiction of the High Court at Fort William in Bengal, from such date as may be specified in such notification; and save as is hereinafter otherwise provided, this Act shall take effect in such town or village on the date so specified, and the said town or village, within

Local Government
may extend Act.

the limits mentioned in such notification, shall be deemed to be created a municipality for the purposes of this Act :

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

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

Every notification declaring a town or village to be a municipality shall specify whether the name of such municipality shall, or shall not, be inserted in the first or second schedule of this Act, and shall further specify, subject to the provisions of section 13, the number of the Commissioners of such municipality.

Local Government shall mean the Lieutenant-Governor of Bengal (sec. 3, cl. 24, *Bengal General Clauses Act, I of 1899*).

Sec 354 prescribes the manner in which the notification shall be published i.e. it shall be written in or translated into the vernacular of the district, and deposited in the office of the Commissioners and a copy shall be posted up in a conspicuous place and a public proclamation shall be made throughout the municipality by beat of drum.

The First Schedule contains the names of the municipalities in which the Commissioners are appointed by the Local Government and the Second Schedule of those in which the Chairman is appointed by the Local Government.

The Local Government may also include in one or both of these schedules the name of a municipality which is newly created, or of a municipality under sec. 66 which has been superseded by sec. 65, and under sec. 23 sub-sec. (4) it may remove any name from the Second Schedule.

9. The Local Government may, on the recommendation of the Commissioners at a meeting, by notification published in the *Calcutta Gazette*, and in such other manner as it may determine, declare its intention—

Notification of intention to alter limits of municipality.

(a) to withdraw any municipality from the operation of this Act; or

(b) to exclude from a municipality any local area comprised therein and defined in the notification; or

(c) to include within a municipality any local area contiguous to the same and defined in the notification; or

(d) to sub-divide any municipality into two or more municipalities; or

(e) to alter the number of the Commissioners of a municipality :

Commissioners at a meeting.—Doubts having arisen whether an officer, appointed under section 66 cl. (b) during the supersession of a municipality, could exercise the powers under this clause, section 2 of Bengal Act II of 1910, was enacted to give such powers,—see notes to sec. 66 cl. (b).

And the Local Government may, on the recommendation of the Commissioners at a meeting of both or all the municipalities concerned, by notification similarly published, declare its intention to unite two

or more municipalities so as to form one municipality :

Provided that no local area shall be included within a municipality unless the Local Government shall have been satisfied that three-fourths of the adult male population of such local area are chiefly employed in pursuits other than agriculture :

This proviso does not exclude agriculturists altogether, *Mohadeb Aon v. Chairman, Howrah Municipality*, 11 C. L. J. 524 (6).

Provided also that whenever it shall appear, either from a general census or from special enquiries undertaken in this behalf, that any municipality does not comply with the conditions laid down in section 10, the Local Government may, of its own motion, declare its intention to withdraw such municipality from the provisions of this Act or to deal with it in the manner stated in this section :

Provided also that where the local area to be excluded or included is a cantonment or part of a cantonment, no notification affecting it shall be published under this section without the previous consent of the Governor-General in Council.

This and the following secs. 9A and 9B have been substituted by sec. 4 of Act IV of 1894 for sec. 9 of Beng. Act III of 1884.

The Hon'ble Mr. Bourdillon in presenting the Report of the Select Committee said "sections 4 and 5 of the Bill which deal with a question of considerable administrative value, viz. the conditions under which the boundaries of a local area which enjoys municipal privileges under the Act can be varied, or a municipality be entirely removed from the operation of the Act. As the law now stands, a municipality once constituted cannot be abolished, nor can its limits be varied except upon the recommendation of the Commissioners at a meeting. * * * Moreover, municipalities wax and wane, and several instances have been reported to Government of places which no longer fulfil the conditions which once entitled them

to the benefit of municipal institutions. To meet such cases as these, it was at one time proposed to empower the Lieutenant-Governor of his own motion to withdraw any place from the operation of the Act. The suggestion was stoutly opposed, and eventually the Lieutenant-Governor, in a speech delivered in this Chamber on 7th January 1893 announced his readiness to abandon the proposal as it then stood. The provisions of the Bill as now drafted have been designed to lay down a middle course. It is proposed to leave the power of the initiative as at present to the Municipal Commissioners themselves, whether for the exclusion of a municipality from the Act, or for its sub-division or expansion. but a clause has been added empowering Government to abolish a municipality or vary its boundaries only when it clearly appears that it no longer fulfils the conditions laid down by the Act; but before any action is taken in this direction, whether by Government of its own motion or upon the recommendation of the Commissioners, due notice of the intention will be given, and ample opportunity afforded for the expression of local opinion" (*Cal. Gaz. Feb. 14th 1894, Sup. p. 236.*) The conditions referred to in the above are those laid down in sec. 10.

The Hon'ble Mr. Ghose moved to substitute the words "on the recommendation of the Commissioners at a meeting, or on an application by a majority of the registered ratepayers" for the words "of its own motion" in second proviso; but the majority were opposed to this motion, which was therefore lost. (*Cal. Gaz. April 4th, 1894, Sup. pp. 479-88.*)

In opposing the motion of the Hon'ble Mr. Ghose the Hon'ble Mr. Bourdillon quoted the case of the Municipality of Jajpur in Cuttack the rate-payers of which petitioned the Government to relieve them from municipal taxation as they derived no benefit from it and the Government could do nothing, as the proposal did not come on the recommendation of the Commissioners at a meeting. (*Ibid. p. 482; See also Govt. Lett. App. p. 5a.*)

9A. (1) Any rate-payer of a municipality, inhabitant of a local area or, when the union of two or more municipalities has been recommended, the Commissioners of any one or more of such municipalities in respect of which a notification has been published under the last preceding section may, should he or they object to the alteration proposed, submit his or their objection in writing, through the District Magistrate to the Local Government within six weeks from the publication of the notification in the *Calcutta Gazette*, and Local Government shall take such objection into consideration.

Objection to proposed alteration may be submitted to Local Government.

(2) When six weeks from the publication of the notification have expired and the Local Government has considered the objections (if any) which have been submitted under sub-section (1) of this section, the Local Government may, by notification, give effect to the proposed alteration or not, as the case may be.

9B. Whenever two or more municipalities are united or a municipality sub-divided, under the two last preceding sections, the Municipal Funds or Fund, and all property vested in the Commissioners of the municipalities or municipality concerned, shall be consolidated, or apportioned in such manner as the Local Government may direct.

Municipal Fund—what shall constitute the, see sec. 67.

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

11, 12. *[Uniting of places with municipality. Repealed by Bengal Act IV of 1894, section 5.]*

PART II.

OF THE MUNICIPAL AUTHORITIES.

Of the Constitution of the Municipality.

13. The number of Commissioners of a municipality constituted before the passing of this Act shall be such number as may be specified in a notification of the Local Government, to be issued immediately after this Act comes into force, and to be published in the *Calcutta Gazette*, or in any subsequent notification under section 9.

Number of Commissioners.

The number of Commissioners of each municipality created under the provisions of section 8 of this Act shall be such number as is specified in the notification of the creation of such municipality, or in any subsequent notification under section 9 :

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

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

For the number of the Commissioners of the existing municipalities
See App. pp. 233a—241a.

The second proviso of this section saves the acts of the Commissioners from being illegal by reason of their number specified in the notification being diminished by death, resignation, absence or otherwise.

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

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

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

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

whole number, which is evenly divisible by three or by four, as the number to be divided.

Change.

The words "either by name or by official designation" have been added by of Beng. Act IV of 1894.

Notes.

"The object of this change" said the Hon'ble Mr. Bourdillon, "is to bring about the better despatch of business. It has been found inconvenient when officers are frequently changed in a district to gazette them by name to be Municipal Commissioners." The change was intended to secure "facility of business and administrative convenience."

This change enables the Local Government to appoint a Commissioner *ex-officio*.

Official designation.—On a question being raised as to the interpretation of this expression, the opinion of the Legal Remembrancer was sought, which was as follows:—"The words are not restricted to officers appointed or paid by Government. Nor do they extend to the holder of any office such as that of Manager of a Mill. In Wharton's *Law Lexicon* the word, 'official' is defined as meaning 'pertaining to a public charge.' In the *Century Dictionary* the word 'official' as an adjective is no doubt defined to mean 'pertaining to office,' but as a noun it is interpreted to mean 'one who is invested with an office of a public nature; one holding a civil appointment; as a government official, a railway official.'" "A person holding public office," "whether a Government servant or not" is eligible for appointment "by his official designation" under this section. "If an official, though not a Government servant, is clearly a public servant within the meaning of section 21 of the Indian Penal Code, there need be no doubt that his office is of a public nature. In this view of the question a railway officer is an official, since by sec. 137 of the Railway Act (IX of 1890) every railway servant is declared to be a public servant for the purposes of Chap. IX of the Indian Penal Code. In case of doubt as to whether a particular office is of a public nature or not, the appointment should be made by name."—*Beng. Gov. Munl. Cir. No. 147 T.—M., 24th April 1902*
Govt. Cir. Vol. III p. 1038.

The Civil Surgeon.—It is most desirable that the Civil Surgeon of the district should be a member of the municipal committee at headquarters, and, if possible of all municipalities in the interior of the district. He cannot refuse to undertake the duties.—*Beng. Govt. Munl. No. M. $\frac{6-A}{1}$ 2, 13 Apl. 89.*

Resident.—A doubt was entertained as to whether under the powers vested in the Local Government by sec. 15 to frame rules for the purposes of elections, it has power to define the meaning of "resident," but, both the Advocate-General and the Legal Remembrancer being of opinion that it has such power, no amendment was made.

In Election Rule No. 1 cl. (d) published under Government Notification, dated the 21st November 1896, the meaning of the word "resident" has been thus defined:—

"A person shall be deemed to be resident within the limits of a municipality if he—

- (1) ordinarily lives within those limits; or
- (2) has his family dwelling-house within those limits, and occasionally visits it; or
- (3) maintains within those limits a dwelling-house ready for occupation in the charge of servants, and occasionally occupies it.

A person may be resident within the limits of more than one municipality at the same time."

If he be a qualified voter he shall be entitled to vote for the ward in which he ordinarily resides and for no other, but he shall be qualified for nomination as a candidate for any ward or wards in the municipality (*See App. p. 35a.*)

The appointed Commissioners need not be residents within the limits of a municipality.

15. For the purposes of the aforesaid election of Commissioners, the Local Government, with respect to each municipality, shall lay down such rules, not inconsistent with the provisions of this Act, as it shall think fit, in respect of the division, where

Rules to be laid down
for election.

necessary, of each municipality into wards, and the number of Commissioners to be elected for each of such wards, the qualifications required to entitle any person to vote for a candidate for election, and in respect of the mode of election, and the authority who shall decide disputes thereunder. And the Local Government may at any time cancel any rule made by it under this section :

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

(i) has, during the year immediately preceding such election, paid in respect of any rates an aggregate amount of not less than three rupees, or

(ii) has, during the year aforesaid, paid or been assessed to the tax imposed by Act II of 1886 (*An Act for imposing a tax on income derived from sources other than agriculture*), or

(iii) being a graduate or licentiate of any University, or having passed the First Arts Examination of the Calcutta University or the corresponding standard of any other University, or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorising him to practise as a pleader or as a mukhtar or as a revenue-agent—occupies a holding, or part of a holding, in respect of which

there has been paid, during the year aforesaid, in respect of any rates, an aggregate amount of not less than three rupees,

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

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

Provided that nothing contained in this section nor in any rules made under the authority of this Act shall be deemed to affect the jurisdiction of the Civil Courts.

"Rates" defined.

The term 'rates' in this section means—

(a) the tax upon persons and the rate upon the annual value of holdings levied under section 85 ;

(b) the tax on carriages and horses levied under Part IV ;

(c) the water-rate on the annual value of holdings levied under Part VII ;

(d) the lighting rate on the annual value of holdings levied under Part VIII ;

(e) the fee for the cleansing of privies and cess-pools levied under Part IX ;

Explanation.—Rules made under this section may reduce, but not raise any of the sums mentioned in the first proviso thereto, and may declare that

any persons who are not referred to in that proviso shall be entitled to vote.

Changes.

The words 'and the authority who shall decide disputes thereunder' after the word 'election' in the first paragraph, the cl. (3) of the first proviso, the second proviso and the definition of the term 'rates' have been added by section 7 of Beng. Act IV of 1894. By sec. 3 (1) of Beng. Act II of 1896 clauses (i), (ii) and (iii) were substituted for clauses (1), (2) and (3) as they originally stood. In the definition of rates the word "means" was substituted for "shall be deemed to include" by sub-sec. (2) of the same sec., and by sub-sec. (3) the "Explanation" was added.

Notes.

Election Rules.—See *App. pp.* 31a to 39a.

Resident.—For the meaning of the word see notes to sec. 14, and the Election Rule 1, cl. (d) *App. pp.* 32a.

Year.—For the meaning of the word "year" in cl. (i) of the first proviso see sec. 6 cl. (19). The payment of the qualifying minimum tax, within the official year in which the election is held, does not qualify a person to vote, but the period of residence for twelve months need only be completed immediately before the election.

Three Rupees.—This limit has been reduced in the case of most of the municipalities (see election rule 2, p. 32a).

Occupiers.—Occupation may be either as an owner or as a tenant (see Election Rule 2, cl. iv., *App. p.* 33a). It must, however, be legal and not merely physical, as that of a servant.

Holding.—See sec. 6 cl. (3) and notes.

Jurisdiction of the Civil Courts.—A suit for the declaration of a person's right to vote and stand as a candidate at an election as also for declaration that he was duly elected is a suit of a civil nature; and such a suit lies in the Civil Court under sec. 11 of the Civil Procedure Code. Such a suit also lies in view of sec. 42 of the Specific Relief Act, the words "legal character" in that section being wide enough to include right of franchise and also the right of being elected as a Municipal Commissioner. The Magistrate is not a necessary party in such a suit, *Sabhapat Singh v. Abdul Gaffur*, I. L. R. 24 Cal. 107.

A like suit, based on the ground that the persons, who constituted the authority for revising the list of voters and candidates, had wrongfully struck off the list the name of the plaintiff, if maintainable at all, was held to lie not against the municipal corporation, but against the revising authority personally.—*Abdur Rahim v. The Municipal Board of Koil*, I. L. R. 22 All. 143. Cf. *the Surat City Municipality v. Chunilal* (I. L. R. 30 Bom. 409) in which *Jenkins*, C. J., has been pleased to hold that neither a suit for declaration nor for injunction at the instance of a rejected candidate lies against the municipality for the acts of the election officer over whom the municipality has no control; and *Chunilal v. Kripa Shankar* (I. L. R. 31 Bom. 37) in which his Lordship has held that in the absence of malice, no suit lies against the election officer for any mistake made in good faith in determining questions that arise for his decision.

The case of *Bholaram v. The Corporation of Calcutta* (I. L. R. 36 Cal. 671, 13 C. W. N. 740, 6 M. L. T. 251, 3 Ind. Cas. 341) decided under the Calcutta Municipal Act, although on a different subject, may be studied here with advantage, as laying down the principle that the corporation is not liable for any action of the authorities constituted by the statute and, as such, not subject to their control. It will be observed that the *election-officer* is the creature of the rules framed by the Local Government and is not appointed by the municipality.

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

First election of
Commissioners.

If the persons entitled to elect Commissioners for any municipality fail within the time appointed for the first election under this Act, or for every subsequent election within the time prescribed by the rules mentioned in the last preceding section, to elect the whole number of Commissioners allotted

On failure of election
Commissioners to be
appointed by Govern-
ment.

for election to such municipality, the Local Government may appoint one or more Commissioners to complete the number so allotted as aforesaid.

17. Every municipality mentioned in the first schedule of this Act shall be excluded from the operation of the three last preceding sections, and in any municipality so excluded, the whole number of the Commissioners shall be appointed by the Local Government either by name or by official designation; subject, however, to the proviso contained in the third clause of section 14.

Certain municipalities excluded from elective system.

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

Change.

The words "either by name or by official designation" have been added by sec. 3 of Beng. Act IV of 1894.

Notes.

The first schedule contains the names of the municipalities in which the Commissioners are declared to be appointed by the Government under sec. 8. The Local Government may also under sec. 66 include the name of a municipality, of this schedule, which has been superseded under sec. 65.

For the meaning of the expression "official designation," see notes to sec. 14.

18. [*Resignation of Commissioners.*] Repealed by sec. 9 of Beng. Act IV of 1894.

This section has been incorporated in sec. 27A which provides for the resignation of the Chairman, Vice-Chairman and Commissioners.

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

Removal of Commissioner by Local Government.

Notes.

In the Madras District Municipalities Act IV of 1884, there is a provision in sec. 19 that the Governor in Council may remove a Commissioner if his continuance in office is dangerous to public peace or order, or likely to bring the administration into contempt. See also *Chelva Perumal v. The Secretary of State*, 7 M. L. T. 245.

The principle of the ruling in *Queen v. Smith*, 5 Q. B. 623, that an incumbent, having in the contemplation of law a free-hold in his office, could not be legally removed without some sort of inquiry and proof, was held to be applicable to the case of the removal of a Commissioner, and a suit for damages was held to be maintainable if removed without sufficient cause as contemplated by law.—*Vijaya Ragava v. The Secretary of State*, I. L. R. 7 Mad. 466.

As to the ineligibility for re-election of such a Commissioner see sec. 22.

This section, in the opinion of the Local Government, was not intended to enable the Municipal Commissioners to get rid of an unpopular colleague, but to allow the Lieutenant-Governor to remove the scandal which would be caused by the continuance on a Municipal Board of a member known to have been guilty of misconduct in the performance of his duty or of disgraceful conduct of other kind. (See Municipal Department, Letter No. 418, dated the 26th January 1886 to the address of the Commissioner of the Burdwan Division in re the removal of a member of the Howrah Municipality).

Removal of Commissioner by Commissioner of the Division.

20. (1) The Commissioner of the Division may remove any Commissioner—

- (a) if he refuses to act or becomes incapable of acting, or is declared insolvent, or is convicted of any non-bailable offence; or
- (b) if he has been declared by notification to be disqualified for employment in the public service; or
- (c) if he absents himself from six consecutive meetings of the Commissioners without having obtained permission from the Commissioners at a meeting; or
- (d) if, in the judgment of the Commissioner of the Division to be recorded in writing, he has become disqualified to continue in office under section 57 :

Provided that any Commissioner so removed may appeal to the Local Government.

(2) All acts and proceedings of any Commissioner so removed shall, if done previously to such removal, be valid and effectual to all intents and purposes.

This section has been substituted by sec. 10 of Beng. Act. IV of 1894.

Notes.

The report of the Select Committee on this section was not unanimous. It has been re-modelled on the lines of section 18 of Bengal Act III of 1885 (*The Local Self-Government Act*), but in that Act the power of removing a member of the District or Local Board has been vested in the Local Government. Objection was taken to the delegation of the power under this section to the Divisional Commissioner. It was said in answer that secs. 20 and 57 of Act III of 1884 only prescribed the disqualifications which would *ipso facto*

render a Commissioner to forfeit his office, but there were varying opinions as to the authority that would make a declaration to that effect. The Hon'ble Mr. Bourdillon said "in the opinion of the framers of this Bill, it is desirable that this doubt should be set at rest, and they have therefore redrafted the provisions of the section, and, as some person must make the declaratory order, they have nominated for that purpose the Commissioner of the Division, who, knowing all the facts of the case and being upon the spot, is the person who should make the necessary declaration." The Hon'ble Sir Charles Paul said "I must say that this section provides for a disqualification *ipso facto*. From the time that it is known that a Commissioner or Member of a Ward Committee is directly or indirectly interested in a contract, from that moment he ceases to be a Commissioner and is disqualified. What is now proposed is, to make provision for notifying such disqualification. If you do not do so you will have to bring a suit for an injunction or a prosecution from time to time, and fine such Municipal Commissioner for every time he votes as a Commissioner. That is what is done in England, and in as much as there is no provision for removal here, it is necessary to have a provision, and I think the provision now proposed is a proper one. The distinction between the Local Government and the Commissioner of the Division seems to be a very fine distinction. When the Local Government is called upon to look at these things, it does not look upon them through its own spectacles; it sees through the eyes of its District Officers. The object of the section is merely to make provision for what there is no provision now."

The provision of the cl. (a), "refuses to act or becomes incapable of acting" has been taken from the Punjab Municipal Act. It was considered to be superfluous in as much as such a Commissioner shall be disqualified under cl. (c) by efflux of time, but this objection was overruled.

Cl. (b) was added with a view, the Hon'ble Mr. Bourdillon said "to make the position of a Municipal Commissioner one of dignity, and one which shall carry with it privileges and duties of a high character."

Cl. (c).—By this clause leave may be granted to a Commissioner, but it does not fix the period for which such leave may be granted as in the

case of leave to a Chairman or a Vice-Chairman under sec. 26B. This omission may be supplied by a rule being framed under sec. 351A.

An adjourned meeting convened merely to consider the undisposed of items of business of a previous meeting cannot be considered as a separate substantive meeting but a continuation of the previous one, and as such, the two together form one meeting (*Gooroo Prosad Sen v. C. J. S. Faulder and another*, suit No. 92 of 1889 in the Court of the Third Sub-Judge at Bankipore 11th April 1890, see *The Behar Herald and the Indian Chronicle*, 19th April 1890.)

Cl. (d).—Sec. 57 disqualifies a Commissioner from continuing in office by reason of his having an interest in any contract with the municipality of which he is a member or holding any office of profit under it.

Sub-sec. (2) has been taken from the *English Public Health Act* 1875, sec. 70.

A Commissioner removed under cls. (c) and (d) may be elected or re-elected, but one removed under cls. (a) and (b) may not, without the sanction of the Local Government (sec. 22).

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

Tenure of office of Commissioner.

Three years.—The period of “three years” includes any period which may intervene between the expiration of the three years and the date of the first meeting of the new Board (sec. 26).

22. No Commissioner, who has been removed from his office by the Local Government under section 19, or by the Commissioner of the Division under clauses (a) and (b) of sub-section (1) of section 20, may be elected or re-elected a Commissioner without the consent of the Local Government.

Certain Commissioners not to be elected or re-elected without consent of Local Government.

This section has been substituted by sec. 11 of Beng. Act IV of 1894.

It provides for election or re-election in those cases only in which Commissioners are removed for disqualifications of a graver nature. No such provision was perhaps thought necessary for those cases in which they retire by resignation or are removed under cls. (c) and (d) of sec. 20.

23. (1) The Local Government shall appoint, ^{Appointment of Chair-} either by name or by official designation, the Chairman of every ^{man.} municipality mentioned in the second schedule of this Act.

(2) The Commissioners of every municipality, the name of which is not included in the said schedule, shall, at a meeting, elect one of their number to be Chairman, or may, whenever a vacancy occurs, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman, and such Chairman shall be appointed by name.

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

(4) The Local Government may at any time remove the name of any municipality from the said schedule.

(5) Whenever the name of any municipality is removed from the said schedule, the office of Chairman shall thereupon become vacant.

Changes.

This section has been substituted by sec. 12 of Beng. Act IV of 1894.

The words "either by name or by official designation" in sub-sec. (1) and "and such Chairman shall be appointed by name" in sub-sec. (2) are new, as well as sub-sec. (5).

Notes.

The second schedule contains the names of those municipalities in which the Chairman is appointed by the Local Government.

By the words added in sub-sec. (1) an *ex-officio* Chairman may be appointed. The election of a Chairman under sub-sec. (2) shall be subject to the approval of the Local Government [sec. 59 cl. (a)]. The Commissioners by requesting the Local Government to appoint a Chairman do not permanently surrender their right of election (*see App. p. 6a, Govt. Lett. para. 9*). By sub-sec. (3) an appointed Chairman may be removed by the Local Government; but an elected Chairman only by a resolution of the Commissioners passed at a special meeting at which not less than two-thirds of the whole number of Commissioners have given their votes (sec. 24 para. 3). Sub-sec. (4) gives power to the Local Government to remove the name of a municipality from the second schedule and the Chairman of such municipality may be elected, but except under sec. 66 no name can be entered therein.

Official designation.—see notes to sec. 14.

24. Notwithstanding anything in section 13 contained, every Chairman appointed under the last preceding section, if not already a Commissioner of the municipality of which he shall have been appointed Chairman, shall, from the date of his appointment, during the term of his office enjoy all the rights and privileges of a Commissioner of the municipality to which such appointment relates, but shall not be reckoned in calculating the proportions of one-third and one-fourth under the provisions of section 14.

Status and tenure of
office of Chairman.

Except as is otherwise provided in this Act, every Chairman, whether appointed or elected, shall hold office for three years from the date of his appoint-

ment or election, and shall be eligible for re-appointment or re-election.

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

Change.

The words 'except as is otherwise provided in this Act' have been added by sec. 13 of Beng. Act IV of 1894.

Notes.

For an interpretation of the term "three years" in this section see secs. 26 and 26A.

A resolution under paragraph 3 requires confirmation by the Local Government under sec. 59 cl. (b).

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

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

Notes.

Three years.—The period of "three years" includes any period

which may intervene between the expiration of the three years and the date of the first meeting of the new Board (*secs. 26 and 26A.*)

In the Draft Bill it was proposed to make the election of the Vice-Chairman subject to the approval of the Local Government, but the proposal was finally abandoned.

25A. If a Chairman or a Commissioner is appointed by official designation, the person for the time being holding the office shall be a Chairman or a Commissioner, as the case may be.

Ex-officio appointment,

This section has been added by sec. 14 of Beng. Act IV of 1894.

Official designation.—See notes to sec. 14.

26. The term of three years mentioned in sections 21, 24 and 25 shall be held to include any period which may elapse between the expiration of the said three years and the date of the first meeting of the body of Commissioners newly appointed and elected, at which a quorum shall be present, and any Chairman elected under sections 23 or 27 shall be competent to discharge the duties of his office after his election and pending the orders of the Local Government approving of his election.

Tenure of office under sections 21, 24 and 25.

Change.

The words from 'first' to 'election' have been substituted by sec. 15 of Beng. Act IV of 1894 for the words 'next subsequent appointment or election; not being an appointment or election under the next succeeding section.'

Notes.

These new words distinctly fix the period of the tenure of office of the Commissioners, Chairman and Vice-Chairman to the date of the first meeting of the new body. A Commissioner's tenure of office under

the Act was hitherto terminable on the date of election or appointment, and as appointment of Commissioners was generally made some time after the election, there was virtually an interregnum, which, in several cases, caused great inconvenience in the despatch of business. This change has removed that inconvenience; and the outgoing Commissioners continue in office till their successors actually undertake the administration. In the same way the out-going Chairman or Vice-Chairman remains in office till the first meeting of the new body. The Chairman who is then elected takes charge of his office pending approval of the Local Government, which he could not do under the old section, the Vice-Chairman, as before, taking charge immediately after his election, which does not require the approval of the Local Government. (*See App. p. 7a, Govt. Lett. para. 10.*)

26A. Notwithstanding anything contained in sections 24, 25 and 27A, the Chairman and Vice-Chairman of every municipality shall resign office at the first meeting of the Commissioners newly appointed and elected at which a quorum shall be present. The meeting shall thereupon proceed—

(a) to elect, or to request the Local Government to appoint, a Chairman, and

(b) to elect a Vice-Chairman :

Provided that if the municipality is in the second schedule of this Act, or if the meeting decides to request the Local Government to appoint a Chairman, the resignation of the Chairman shall not take effect until a new Chairman is appointed.

This section has been added by sec. 16 of Beng. Act IV of 1894.

Notes.

The Hon'ble Mr. Bourdillon said "sometimes considerable delay occurs in the election of a Vice-Chairman or in the appointment or

election of a Chairman for a new body of Commissioners. As the ordinary official life of a Municipal Commissioner, a Vice-Chairman, or a Chairman is three years, the result is that the Commissioners at the end of their term go out of office some weeks, or sometimes months before their Chairman and Vice-Chairman. In these circumstances, the old Chairman and Vice-Chairman continue to preside over a body of Commissioners who did not elect or nominate them. The Hon'ble the Advocate-General has given his opinion that such a state of things is quite legal, but it is obvious that the position may often be trying, and especially will this be the case, when—as may easily happen—the old Chairman and Vice-Chairman may not be included in the new body of Commissioners." The object of the insertion of this section is to remove this difficulty.

The proviso covers the case of the municipalities in which the Chairman is appointed.

Another difficulty was pointed out at the debate on this section, as to what was to be done in the event of their being a tie at the meeting; and it was asked who was to preside at this meeting, whether the president should have a casting vote and whether a candidate would be entitled to vote for himself. "These are matters which," the Hon'ble Mr. Bourdillon said, "in the opinion of Government, need not be dealt with by legal enactment. Under section 90 of the present Bill (sec. 351A of Act), it is proposed to give to municipalities power to make rules, among other things for the conduct of business; these rules require the sanction of the Local Government, and when they are prepared, opportunity will be taken to lay down definite and uniform rules on these and other points on which doubt still prevails." If the Local Government is requested to appoint a Chairman the quorum required is two-thirds of the Commissioners [*sec. 23 cl. (2)*].

26B. The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

Leave may be granted to Chairman or Vice-Chairman.

This section has been added by sec. 17 of Beng. Act IV of 1894. It supplies an omission.

Resignation of the officer not necessary—*vide* para. 3, Beng. Govt. Munl. Cir. No. 11M.—22 Feb. 95 to Comrs.

27. If any Commissioner, Chairman or Vice-

Appointment or election of Commissioner, Chairman or Vice-Chairman for unexpired term of office or during term of leave of absence.

Chairman shall be unable to complete his full term of office, or shall avail himself of leave granted under section 26B, the vacancy caused by his resignation, or removal, or death or absence on leave shall be filled by the appointment or election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be.

Changes.

The words 'or shall avail himself of leave granted under section 25 B' 'or absence on leave' and 'or during his absence on leave, as the case may be' have been added by sec. 18 of Beng. Act IV of 1894.

Notes.

The Chairman and Vice-Chairman may avail of leave under sec. 26B and a Commissioner under sec. 20 cl. (c) of sub-sec. (1) may absent himself from five consecutive meetings without leave, but if it exceeds, he will have to obtain permission from the Commissioners at a meeting.

This section contemplates absence on leave granted under sec. 26B to a Chairman or a Vice-Chairman and not to a Commissioner. It is therefore obligatory to fill up the vacancy caused by the officer going on leave. There is, however, no provision in the law in the case of a Commissioner.

The election of a Chairman under this section is subject to the approval of the Local Government [sec. 59 cl. (a)].

27A. (1) A Chairman of a municipality may resign by notifying in writing his intention to do so to the Local Government, and on such resignation being accepted, shall be deemed to have vacated his office.

Resignation of Chairman, Vice-Chairman or Commissioner.

(2) A Vice-Chairman or a Commissioner of a municipality may resign by notifying in writing his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting, and on such resignation being accepted by such Commissioners, shall be deemed to have vacated his office.

Changes.

This section is new and has been added by sec. 19 of Beng. Act IV of 1894. Section 18 of the Act under which a Commissioner might resign has been repealed by sec. 9 of Act IV of 1894.

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

Allowances of Chairman and Vice-Chairman.

And in the case of a salaried Chairman or Vice-Chairman, the Commissioners may grant such leave allowances as they may from time to time determine at a meeting :

Provided that the allowance so granted, together with the acting allowance, if any, of the officiating incumbent shall not exceed the salary fixed for the office.

Change.

Paragraphs 2 and 3 have been added by sec. 20 of Beng. Act IV of 1894.

Note.

A resolution under this section requires confirmation of the Local Government under sec. 59 cl. (c).

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

Incorporation of Commissioners.

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

Perpetual succession.—*Cf. Mahamahopadhyaya Rangachariar v. The Municipal Council of Kumbakonam* (I. L. R. 29 Mad. 539) in which the Madras High Court has held that supersession and re-establishment of a corporation by the Local Government has not the effect of extinguishing the old corporation and creating a fresh one, but simply the temporary suspension and revival of the old corporation.

Common Seal.—For the importance of the common seal see sec. 37 and notes thereunder.

Jurisdiction of Courts.

English Law.—The jurisdiction of a legal tribunal to interfere with the exercise by a corporation of powers, which are beyond the scope of its authority, is usually discussed in the English Law under the head of *ultra vires*. Under the English Law a municipal corporation is an ordinary corporation, whose powers and duties are defined by the statute which brings it into existence and by statutes of general application. A few instances may be considered here :—

(1) **Municipal Fund.**—When the statute defines the purposes towards which the corporate funds may be applied, an injunction may be granted against the application of the fund to any other purpose [See *Attorney-General v. Aspinall*, 2 My. & Cr. 613 and *Attorney-General v. Mayor of Poole*, 4 My. & Cr. 17. Cf. sec. 69 of this Act and the notes thereunder.]

(2) **Alienation.**—Courts have jurisdiction to prevent alienation except on certain defined conditions [See *Arnold v. Mayor of Gravesend*, 25 L. J. Ch. 776. Cf. sec. 34 of this Act and the note thereunder].

(3) **Bye-laws.**—Courts have also assumed jurisdiction to declare whether a bye-law or rule framed by a municipal corporation is *ultra vires* [See Brice on *Ultra Vires*, 195, 3rd edition. Cf. sec. 350 of this Act and the notes thereunder].

(4) **Corporate discretion.**—As the powers of a corporation are usually defined by statute, questions often arise as to the precise extent of such powers contemplated by law, involving an examination of the words employed capable of different interpretations. When, however, no doubt exists as to the powers, general and special with which a corporation is endowed, the court will not interfere with its operations when it is both “keeping within its authorization and acting *bona fide*. It will be deemed the best judge not only of what is most conducive to its own interests, but also of what is proper and fitting as regards third parties;” and it will be unchecked to take whatever action it deems proper [See the authorities cited in Brice on *Ultra Vires*, p. 475 (3rd edition)]. These principles apply with greater force to public corporations, which are allowed a greater latitude in the exercise of their powers than other privileged corporations [See *Galloway v. Mayor of London*, L. R. 1 H. L. 34 and *Quinton v. Corporation*

of *Bristol*, 17 Eq. 524]. The only exception is when private rights are interfered with, *e.g.*, by an act of nuisance, which is illegal and amounts to an invasion of private rights, although the corporation may act with perfect *bona fides* for the public benefit [See *Attorney-General v. Mayor of Kingston*, 13 W. R. 888).

Indian case-law.—Municipal as well as other public boards are included within the restraining and regulating jurisdiction of Civil Courts of the country, which are competent to inquire into and control the action of such bodies, when they have acted in excess or contravention of the powers conferred upon them, *Brindaban Chunder Roy v. Municipal Commissioners of Serampore*, 19 W. R. 309. So where it appeared that the Municipal Commissioners of Gantur had conformed to the procedure laid down in law for the imposition of the profession tax on a person, it was held by the High Court on reference that suit to obtain a refund of the tax levied in the case would not lie in the Civil Courts, *Kamayya v. Leman*, I. L. R. 2 Mad. 37. But there is nothing in the Bengal Municipal Act to prevent a rate-payer from seeking a decision in a Civil Court that the assessment made by a municipality is *ultra vires* and not binding upon him, *Navadip Chundra Pal v. Purnanand Shaha*, 3 C. W. N. 73. So where an assessment of the tax on persons under sec. 85 cl. (a) was made in consideration of the assessee's circumstances and property (wholly or partly) outside the local limits of the municipality, it was held that the action of the Commissioners was *ultra vires* and liable to be set aside by the Civil Courts, *Kameshwar Pershad v. Chairman of the Bhabua Municipality*, I. L. R. 27 Calc. 849. But a Civil Court has no power to revise the valuation of houses made by a municipality for the purpose of imposing house tax, but is bound to accept it as conclusive, *Morar v. Borsad Town Municipality*, I. L. R. 24 Bom. 607. See also *Municipality of Wai v. Krisnaji Gangadhar*, I. L. R. 23 Bom. 446, *Chairman of Giridih Municipality v. Shish Chandra Mazumdar*, I. L. R. 35 Cal. 859, and *Chairman, Chupra v. Basudeb*, I. L. R. 37 Cal. 374.

Thus the result of all these decisions in India also is that the jurisdiction of the Civil Courts is limited to the determination of the question as to whether the act complained of was *ultra vires*, *i.e.*, not within the scope of the authority vested by the law in the municipality. It is not open to the Civil Courts to go into the question of the *propriety* or *necessity* of the act complained of, when the legislature has designedly

made the corporation the sole judge of such propriety or necessity. The matter would, of course, assume a different aspect, if the *bona fides* of the act itself is questioned or malice imputed to the local authority, *Duke v. Rameswar Maliah*, I. L. R. 26 Cal. 811. In the case of *Lalbhai v. The Municipal Commissioner of Bombay* (10 Bom. L. R. 821) the Bombay High Court has been pleased to observe that where the legislature has vested a discretion in the Commissioner in a matter, the Court will not interfere in the exercise of it, merely because the object in view might be carried out in some other way, nor will it lightly impute bad faith to him. But the Court is, in the first instance, entitled to enquire whether the discretion has been exercised. See also *Patel Panachand v. Ahmedabad Municipality*, I. L. R. 22 Bom. 230, *Trilloban v. Ahmedabad Municipality*, I. L. R. 27 Bom. 221 and *Abdul Aziz v. Chairman Pilibhit*, A. W. N. (05) 79. It is not the practice of the Court to interfere with corporate bodies "unless they are manifestly abusing their powers", *Ahmedabad Municipality v. Manilal*, I. L. R. 19 Bom. 212 and *Bhawanishankar v. The Surat Municipality*, I. L. R. 21 Bom. 187 (191, 94 & 195). Certain discretion having been by law vested in the General Committee of the Calcutta Corporation, the High Court, in the exercise of its criminal revisional jurisdiction, has no power to set aside or question acts done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law, *Shamul Dhone Dutt v. Corporation of Calcutta*, I. L. R. 34 Cal. 30, 11' C. W. N. 671. The same principle was followed in *Atarmani Dasi v. The Corporation of Calcutta*, 8 C. L. J. 507 (510).

In *Municipal Council of Mangalore v. The Codial Bail Press*, (I. L. R. 27 Mad. 547) the Madras High Court held that the provisions of the Act not having been in substance and effect complied with, the Court could entertain a suit to recover an amount paid under an assessment; and in *Ali Mardan v. The Municipal Committee of Kohat* (50 P. L. R. 1905) it was held that the acts done by the Municipal Committee, not being acts falling within the scope of the authority given to them by the Act, Civil Courts have jurisdiction to deal with such acts and to restrain them when necessary. In *Chairman, Municipal Board, Baraich v. Parbhu*, [12 O. C. 191 (B), 3 Ind. Cas. 516] it has been held that a Civil Court is not competent to discuss the advisability of actions of a municipal board and has no power to interfere with them

unless the board's action is *ultra vires*. In *Oborno Charan v. King-Emperor*, (9 Cr. L. J. 578, 2 Ind. Cas. 357) it was held that when the order of a Municipal Committee is lawful, the Court has no jurisdiction to consider whether such order is reasonable or not.

Even in a case where a Civil Court ordinarily has jurisdiction to interfere on the ground that the local authority has acted *ultra vires*, the jurisdiction may be withdrawn by express legislation; *e.g.*, as regards the amount of assessment made by the Commissioners under Act. It was accordingly held that even if the Commissioners, in fixing the assessment, had taken into consideration the means of the owner without confining their attention to the annual value of the holding, they might have acted improperly and exceeded their powers under the Act, but the Civil Court had no jurisdiction to question the assessment in view of the special provision in the municipal law contained in the old Act corresponding to sec. 116 of this Act, *Maneswar Das v. The Collector and Municipal Commissioners of Chupra*, I. L. R. 1 Cal. 409. Where the law has given discretion to a corporation in any matter, such discretion must be held to be full discretion; and if there is no reason to suppose that the corporation are not guided solely by the requirements of public interest, it must be presumed that the corporation know far better than the Court what is the best proposal to adopt in such interests. — *In the matter of Jogen-dra Nath Mukhuti*, I. L. R. 36 Cal. 271 (275), 13 C. W. N. 129. The Courts put a wider and more liberal construction on the powers vested for the benefit of the public in a municipal corporation. — *Hansraj v. The Karachi Municipality*, 1 Sindh L. R. 228. In order to justify a Court in over-riding the plain language of a statute by reference to its spirit and general tenor, the argument must be cogent and convincing. — *Mahadeb Aon v. Chairman, Howrah Municipality*, 11 C. L. J. 524.

The Municipal Commissioners are authorised to acquire lands for carrying out the purposes of the law. They are the sole judges of the necessity of such acquisition and no suit lies to restrain them from making the acquisition. — *Shastri Ram Chandra v. The Ahmedabad Municipality*, I. L. R. 24 Bom. 600.

Liability of Corporation to Criminal Prosecution.—A corporation is liable under the Penal Code to be prosecuted for a nuisance

in the same way as if the offence had been committed by an ordinary individual. Sanction of the Local Government is not necessary for such a prosecution, *Empress v. The Corporation of the Town of Calcutta*, I. L. R. 3 Cal. 758. See also *Chairman of the Serampore Municipality v. Inspector of Factories, Hooghly*, I. L. R. 25 Cal. 454. As to liability for neglect of duty see *Mayne's Criminal Law of India*, 2nd Edn, pp. 624—5, also *Patel Panachand v. Ahmedabad Municipality*, I. L. R. 22 Bom. 230.

Civil v. Criminal Proceedings.—It was held by the Allahabad High Court in the case of *Baldeo Prasad v. King-Emperor* (7 A. L. J. 735) that the provisions of the Municipalities Act were not intended to enable municipal authorities to override the decision of a Civil Court, where the court had jurisdiction, and it was not therefore open to the municipal board to prosecute a person in respect of a building pending the decision of the Civil Court and to continue the prosecution after its decision.

A suit for a declaration that the land on which plaintiff's house was built belonged to him and was not a public road and for the withdrawal of an order issued by the Magistrate directing him to demolish it is not barred by section 56 of the Specific Relief Act, *Jagannath v. The Chairman of Berhampur*, 9 C. L. J. 286.

29A. (1) The powers and functions of the Local Government under sections 30, 255, 259 and 331, may be delegated by the Local Government to Commissioners of Divisions.

Delegation of certain powers and functions of Local Government.

(2) In regard to powers or functions delegated to them under this section, Commissioners of Divisions shall have the same authority as the Local Government, and the delegation shall continue until revoked by the Local Government.

(3) A delegation under this section may be of all or any of the powers and functions aforesaid and may be made generally in regard to all the municipalities within the Division of the Commissioner, or it may be made particularly in regard to certain municipalities only.

(4) The delegation may be by name or by official designation, and shall in each case be notified in the *Calcutta Gazette*.

This section is new and has been added by sec. 21 of Beng. Act IV of 1894.

Notes.

By this section certain powers hitherto exercised by the Local Government may be transferred to the Commissioners of Divisions with a view to secure despatch of business.

Sec. 30 para 2 empowers the Local Government to exclude any road, bridge or drain from the operation of this Act or of any specified section.

Sec. 255 provides that no burial or burning ground shall be made or shall be again used, if one lapsed into disuse, without the permission of the Commissioners or of the Local Government.

By sec. 259 the Commissioners at a meeting may, with the sanction of the Local Government, provide out of the Municipal Fund fitting places to be used as burial or burning grounds, and may impose a fee for burying or burning.

By sec. 331 para. 3 the Commissioners with the approval of the Local Government may make, alter, add to or repeal rules for defining the duties of persons employed in the removal of sewage.

Delegation.—The powers and functions of the Local Government under sections 30, 255 and 259 have been delegated to the Commissioners of divisions by notification No. 1095 T. M. 1903 (*Vide Govt. Cir. Vol. III. p. 1038*).

Of the property of the Commissioners.

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

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

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

Changes.

The words 'including the soil and' and 'or of any specified section of this Act' have been added by sec. 22 of Beng. Act IV of 1894.

Notes.

Road.—For definition of, see sec. 6 Cl. (13) and notes thereunder.

Including the soil.—In the cases of the *Chairman of the Naihati Municipality v. Kishori Lal Gossami* (I. L. R. 13 Cal. 38) and *Madhu Sudan Kundu v. Promoda Nath Roy* (I. L. R. 20 Cal.