

732) it was held that the law relating to the ownership in the soil of the road was the same in India as in England, that is, the absolute property in the soil was not vested in the Commissioners but in the owners of adjoining lands, even if there was nothing to show that such road was ever carved out of such lands.

To put a stop to this obvious anomaly, the expression, "including the soil," was inserted in the section; and the result of this insertion has been to nullify the effect of those decisions and to vest the property in the soil of roads, which are not shown to be private property or to be maintained by Government or at the public expense, in the Commissioners.

When, therefore, a road is shown to exist, to take away the soil thereof from the Commissioners, on such road ceasing to exist, either of the two things must be proved, that is, (1) that it is private property or (2) that it is maintained either by the Government or at the public expense.

Not being private property and &c.—*Per Mukerji J.* The word "and" in this expression is to be taken distributively and not collectively.—*Chairman of the Howrah Municipality v. Khetra Krishna Mitra*, I. L. R. 33 Cal. 1290, 4 C. L. J. 343, 10 C. W. N. 1044.

Two classes of roads.—Reading section 6 cl. (13) and this section together, it will appear that the Legislature contemplates the existence of two classes of roads in mofusil municipalities, namely,—(1) roads vested in the Commissioners, and (2) roads, not so vested, but under the control of the Commissioners. A careful study of sections 202, 203, 204 and 233 as well as of the case of *Ram Chandra Ghosh v. Bally Municipality* (I. L. R. 17 Cal. 634) will lead to this conclusion. The following observations of his Lordship, Mukerji J., in the case of the *Chairman of the Howrah Municipality v. Khetra Krishna Mitra* (I. L. R. 33 Cal. 1290) supports this view;—

"The section clearly means that all roads, &c., shall vest in the Commissioners, but roads, &c., not being private property, shall not so vest and roads, &c., maintained by Government or at the public expense shall also not vest. The interpretation of the Legislature appears to have been not to vest in the Commissioners such road, &c., as are either private property or are maintained by Government or at the public expense".

It is necessary, however, here to examine the opinions of the other commentators of the Act on this point. The late Mr. Justice Pargiter in his edition of the Act has been pleased to observe at page 29,—“*All* ‘roads’ are vested in the Municipal Commissioners under sec. 30; see the notes thereunder”. And the late Hon’ble Mr. Collier in his notes under this section has been pleased to observe as follows;—

“Their (the amendments) effect is to confer the full proprietary right in the land covered by public roads on the Commissioners * * * The second change made by the insertion of the words “and all”, thus separating the term roads from the parenthesis “not being private property, &c.” As pointed out in the preceding editions of this work the reservation “not being private property” was unnecessary as regards roads, on account of the definition in clause 13 of section 6. A road over which the public has a right of way is public and not private property *qua* road. The mistake has now been rectified”.

With the greatest respect for this high authority, it is submitted that it is hardly possible to agree in this exposition. Mr. Collier was a member of the Bengal Legislative Council, when the amending Act IV of 1894 was passed, as also of the Select Committee for settling the Bill. Section 21 of the Bill, which proposed the insertion of the words, “including the soil and all” in this section, came out of the hands of the Select Committee without any comment. But the following remarks, occur in the note of dissent recorded by the Hon’ble Mr. Collier;—

“3. *Section 21 of the Bill.*—In amending section 30 of the Act, I am of opinion that the words “not being private property” should have been omitted as regards roads, having regard to the definition of road contained in section 6, clause (13). If the public has a right-of-way over a road, such road cannot be held to be private property; as regards roads, there seems to me to be a contradiction in terms in the section”, (Cal. Gaz. Feby. 21, 1894, Part IV, p. 18).

This evidently goes to show that, in the opinion of the Hon’ble gentleman himself, the effect of the proposed amendment was not to dissociate the expression “not being private property” from the term “roads” in the section.

In the debate on the Bill in Council, which followed, section 21 of the bill was quietly accepted, as it came out of the Select Committee, and

became section 22 of the Act IV of 1894. It is difficult, in the circumstances, to see how this conclusion was arrived at.

The Letter, which the Government of Bengal addressed to the Commissioners of the Divisions subsequently to the passing of the Act, explaining the changes introduced by it, nowhere indicates that the effect of the insertion of the words "including the soil and all" was what Mr. Collier asserts to be in the note (*vide* para. 12, Govt. Lett. App. p.).

It is further submitted that the words of Mr. Justice Mukerji in the judgment of the case of *Khetra Krishna Mitra* quoted above shows clearly that even the incisive intellect of the eminent judge has failed to make out the meaning which Mr. Collier says that the section bears.

Drains.—(*Per Mukerji & Carnduff JJ.*) "A public drain *qua* drain always vests in and belongs to the Municipal Commissioners,—see section 10 of the District Municipalities Act of 1864, section 32 of the Bengal Municipal Act 1876 and section 30 of the present Municipal Act. So long as it continues to be a public drain, any private rights in the subsoil must remain, so to speak, dormant and in abeyance, and there remains nothing more than a very remote and problemetical chance of the drain ceasing to be connected with the drainage of the town," *Chairman of the Municipal Commissioners of Howrah v. John King & Co.* (Original Appl. No. 540 of 1908, decided on 25-7-10 unreported).

Vested right—Of the Commissioners must be exercised in accordance with the provisions of the statute. Thus a road vested in the Commissioners cannot be closed, or diverted or otherwise disposed of by them without the sanction of the Local Government.—*Jadu Nath Ghose v. Brojo Nath De*, I. L. R., 2 Cal. 425.

Busti Roads.—There is nothing preventing roads constructed by the Commissioners under sec. 245 and used by municipal servants for conservancy purposes from vesting in the Commissioners under this section; nor are the purposes for which such a road may be used confined to cleaning the particular *busti* which it opens out.—*Rama Nath Ghose v. F. W. Duke* (Appl. Ap. No. 1105 of 1900, decided 6-2-02 unreported).

Ghat—In this section was not intended to include a burning ground, *Chairman of the Howrah Municipality v. Khetra Krishna Mitra* I. L. R. 33 Cal. 1290 (1903), 10 C. W. N. 1044, 4 C. L. J. 343.

So far as *ghats* are concerned, however, sections 30 and 32 overlap and there is an apparent inconsistency, in view of the qualifying expression, "not being private property and not being maintained by Government or at the public expense" (*Ibid* p. 1304).

Under section 190 all drains shall be subject to the inspection, and control of the Commissioners, and as such no person can interfere with any of them without their consent, even though they are private.

Sec. 191 provides for inspection of house drains by the Commissioners or officers authorized by them after six hours' notice in writing to the occupier between sun-rise and sun-set, and, if necessary, they may cause the ground to be opened for preventing or removing any nuisance arising therefrom, and the expenses, incurred thereby, shall be paid by the owner or occupier.

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

Commissioners may, with consent of owners, take over and repair roads, &c.

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

Notes.

It will be noticed that the expression, "including the soil", added to the word "roads" in the preceding section, has not been incorporated in this section. Does it follow, therefore, that the proprietary right in the road, &c., transferred, remains in abeyance, to revert to the owner,

if it is closed? See *Nehal Chand v. Azmat Ali Khan*, I. L. R. 7 All. 362. The point, if it arises in any case, shall, perhaps, have to be decided with reference to the terms of the transfer.

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

Existing hospitals, schools, rest-houses, &c., may be vested in the Commissioners.

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

See notes to section 30.

33. If the Commissioners at a meeting shall, after publication of the notice mentioned in the last preceding section, object to the transfer to themselves of any hospital, dispensary, school, rest-

Transfer to be conditional in certain cases.

house, ghat or market, on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

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

Power to purchase,
lease and sell lands.

Notes.

For the purposes of the Act.—A lease of land, taken for use as a trenching ground, is one for the purposes of the Act; and it is not beyond the powers of a municipality to enter into such a lease, *Chairman, South Barrackpore Municipality v. Amulya Nath Chatterji*, I. L. R. 34 Cal. 1030 (32), 12 C. W. N. 50.

It was further held in this case, at pages 1032-3, that this section must be read along with section 37; for, although this section refers to certain classes of contracts, section 37 applies to all contracts of whatever nature. Accordingly a *Kabuliyat*, involving a value exceeding Rs. 500, and executed on behalf of a municipality by its Chairman and signed by two Commissioners only as witnesses, and not as contracting parties, and not sealed with the common seal of the municipality, was held to be not binding on the Commissioners.

In view of the proviso to section 44, the exercise of the power of disposing of municipal land by the Chairman without a resolution of the Commissioners in meeting was held to be illegal and not binding on the municipality, *Jagannath v. The Chairman of Berhampur*, 9 C. L. J. 286.

An exercise of the powers, given by this section to the Commissioners, does not debar the Civil Courts from entertaining suits and giving relief in respect of any civil right which may be shewn to have been infringed thereby, *Fazal Haq. v. Maha Chand*, I. L. R. 1 All. 557. See also notes to sec. 29.

35. The Local Government, on the application of the Commissioners at a meeting that any land be acquired for the purposes of this Act, may, on being satisfied that the Commissioners are in a position to pay for such land either at once or in such instalments as the Local Government may think proper, notify under the provisions of the Land Acquisition Act, 1894, or any similar Act for the time being in force for the acquisition of land for public purposes, that such land is required for a public purpose, and may cause such land to be acquired under the provisions of such Act; and, on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

Land may be taken up under Land Acquisition Act, 1894.

For the purposes of this Act.—The 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 such acquisition.—*Shastri Ram Chandra v. The Ahmedabad Municipality*, I. L. R. 24 Bom. 600.

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

Commissioners to pay cost of such land.

Notes.

By sec. 50, sub-sec. 1 of India Act I of 1894 (*The Land Acquisition Act*) the charges of and incidental to the acquisition of any land

at the cost of any fund under the control or management of a local authority shall be defrayed from such fund.

By sub-sec. 2, the local authority concerned may appear before a Collector or Court in any proceeding in which it is concerned and adduce evidence for the purpose of determining the amount of compensation but it shall not be entitled to demand a reference to a Court under sec. 18.

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

Execution of contracts.

Every contract made on behalf of the Commissioners of a municipality in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

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

Notes.

Necessary for the purposes of this Act.—This section authorizes the Commissioners to enter into contracts *necessary for the purposes of this Act*.—Any other contract is *ultra vires*. Agreements having for their object the creation of monopolies are void as opposed to public policy under English Law and under section 23 of the Indian Contract Act.—*Somu Pillai v. Municipal Council, Mayavaram*, I. L. R. 28 Mad. 520. See secs. 14 and 69 and the notes thereunder.

Contract exceeding five hundred rupees.—In the unreported case of *Govind Chandra Dutt v. Chairman of the Howrah Municipality*, it was held (*per* Macpherson & Beverly, JJ.) that the

provisions of secs. 65 and 70 of the Contract Act do not apply to the case of a contract in respect of a sum exceeding five hundred rupees, not entered into in accordance with the provisions of this section, even though the Commissioners may have been benefited thereby.—*Special Appeal No. 1828 of 1891, decided on the 5th June, 1894. Cf. Ramaswamy Chetty v. The Municipal Council of Tanjore* (I. L. R. 29 Mad. 360) decided under the corresponding section of the Madras District Municipalities Act (Mad. Act IV of 1884 as amended up to date) wherein it has been held that such a contract is not only not binding on the municipality, but the municipality cannot be rendered liable on the ground of executed consideration. See also *Raman Chetti v. The Municipal Council of Kumbakonam* (I. L. R. 30 Mad. 290) in which such an agreement was held to be invalid and not binding on either of the parties to it and that the fact that such an agreement was partially acted upon could not render it an operative contract.

In a suit for damages brought by a municipality for breach of an executory contract, it is open to the defendant to show that it is not binding on him, in as much as it is not binding on the plaintiff by reason of the formalities prescribed in the section not having been complied with, *Ahmedabad Municipality v. Sulemanji*, I. L. R. 27 Bom. 618. See also the elaborate judgment of *Stanley C.J.* and *Burkitt J.* in the case of *Radha Krishna Das v. The Municipal Board of Benares* (I. L. R. 27 All. 592) wherein their Lordships arrived at the same conclusion. But it must be noted that *Jenkins C. J.* in the case of *Abaji Sitaram v. Trimbak Municipality* (I. L. R. 28 Bom. 66), was pleased to hold that although a contract by a corporation must ordinarily be made under seal, still, where there is that which is known as an executed consideration, an action will lie though this formality has not been observed.

See, however, *the Municipal Board of Najibabad v. Sheo Narain* (I. L. R. 29 All. 346) wherein an endorsement on the back of the contract, referring to and confirming its contents, by the Vice-Chairman and Secretary was held to be sufficient compliance with sec. 47 of the N. W. P. and Oudh Municipalities Act (I of 1900).

In the case of the *Chairman, South Barrackpore Municipality v. Amulya Nath Chatterji* (I. L. R. 34 Cal. 1030) it was held that this section, applying, as it does, to all contracts of whatever nature, covers section 34, which refers to contracts of certain classes only. Accordingly,

in that case, a *Kabuliyat* for land, involving a value exceeding Rs. 500 and executed on behalf of a municipality by its Chairman and signed by two of its Commissioners only as witnesses and not as contracting parties and also not sealed with the common seal of the municipality, was *held* to be not binding on the Commissioners (*pp.* 1032-03).

"An agreement for a lease is a contract though the lease when completed is a conveyance. Further, a covenant in the lease is a contract, and in this sense the covenant in respect of the lease is a contract,"—*per Woodroffe J. In the matter of Jogendra Nath Mukhuti* I. L. R. 36 Cal. 271 (276).

Where upon a settlement of municipal land made by the Chairman exceeding his powers under the Act, the party, in whose favour the settlement was made, had erected a house, and about 2 years and 4 months after that, the party was allowed to construct a drain round the house, it was *held* that as the house was not erected and the drain made by the Commissioners' permission the municipality was not estopped from requiring the removal of the house, *Jagannath v. The Chairman of Berhampur*, 9 C. L. J. 286.

37A. The Commissioners of any municipality

Formation of Joint-Committees.

may join with the Commissioners of any other one or more municipalities, or with any district board or with any cantonment authority, or with more than one such board or cantonment authority, in constituting out of their respective bodies a joint-committee consisting of not more than two members from each of such bodies for any purpose in which they are jointly interested, and in delegating to any such joint-committee any power which might be exercised by either or any of the municipal bodies, or district boards, or cantonment authorities concerned, and such joint-committee may from time to time frame rules as to the proceedings of any

such joint-committee, and as to the conduct of correspondence relating to the purpose for which such joint-committee is constituted.

Changes.

This and the next following sections 37B, 37C, 37D, 37E, 37F, 37G, 37H, 37I, 37J, 37K, 37L, and 37M are new and have been added by sec. 23 of Beng. Act IV of 1894.

This section has been redrafted on the model of sec. 30 of Bengal Act III of 1885 (*The Local Self-Government Act*) and sec. 27 of Act XX of 1891 (*The Punjab Municipal Act*).

Notes.

The word 'Commissioners' in this and the eleven subsequent sections means "Commissioners at a meeting" and not the Chairman as in all other sections where the word occurs in the Act (see *secs. 37M and 44 post*). See *Govt. Lett. para. 13, App. p. 8a*.

37B. Whenever it appears expedient to the Commissioners of any municipality, or to the Commissioners of a municipality acting conjointly with the Commissioners of any other municipality or municipalities, or with one or more of any of the local authorities specified in the last preceding section, to provide a supply of water for domestic purposes, or to introduce a system of drainage, they may cause to be prepared a scheme and estimates of the cost of the works necessary for the purpose, together with such plans and specifications of the same as may be necessary, and may submit the same to the Local Government through the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain, is situated.

Voluntary introduction of a water-supply or system of drainage.

Notes.

This and the next following sections from 37C to 37L deal with the introduction of schemes of water-supply and drainage, and are the outcome of the resolutions passed at the Belvedere Conference, held on the 18th July, 1892.

In the original Draft Bill it was proposed that Government would take the initiative in all schemes for water-supply and drainage, but on reconsideration it has been left in the hands of the local authorities, and the powers of control under sec. 64 are reserved to Government, if default is made in complying with the orders passed under *sec. 37 K. sub-sec. (1)*—*Compare Govt. Lett. para. 13 App. p. 8a.*

37C. The Local Government may refer such scheme, plans, specifications and estimates to the Sanitary Board, who in consultation with a committee consisting of one member to be appointed by the municipality or by each of the municipalities or other local authorities concerned, and one member to be appointed by the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain, is situated, shall consider the same and report thereon to the Local Government.

Sanitary Board with a committee to consider and report on scheme.

For the definition of "Sanitary Board" see sec. 6 cl. (14A).

37D. The Local Government shall consider the report, together with the plans, specifications and estimates, and may thereupon:

Local Government may sanction, modify or refer scheme.

- (a) sanction the scheme, or
- (b) add to, alter or modify the scheme, and sanction the same so added to, altered or modified, or

(c) add to, alter or modify the scheme and refer the same so added to, altered or modified together with the plans, specifications and estimates, to the Sanitary Board, who, in consultation with the said committee, shall further consider the scheme so added to, altered or modified, and report thereon to the Local Government.

37E. (1) When the scheme recommended for Distribution of costs of scheme. sanction extends to two or more municipalities or other local areas, the Sanitary Board, acting in consultation with the committee, as constituted under section 37C, shall include in their report proposals for distributing the cost of the scheme, including its maintenance and working expenses, between or among the local authorities benefited.

(2) In the case of municipalities, such distribution shall be in proportion to the income derived by each from taxation, allowance being made for any difference in the degree of benefit conferred on each, such as, in the case of a water-supply scheme, the pressure at which the water is delivered, the facilities for procuring water, the distance from the head-works, and the like.

37F. (1) When the scheme has been approved Approved scheme to be published. by the Local Government, there shall be published in the *Calcutta*

Gazette, and locally in accordance with the provisions of section 354, the following particulars :—

- (a) a general description of the scheme ;
- (b) an estimate of the cost of carrying it out ;
- (c) an estimate of the cost of maintaining it ;
- (d) the source from which the cost will be met ;
- (e) the amount of the loan, if any, the annual instalments by which it will be repayable, and the number of years required to repay it ;

and, where several local authorities are concerned,

- (f) the distribution of the loan ;
- and

(2) Where the scheme is for providing or improving the water-supply, the following additional particulars in respect of each municipality concerned :—

- (a) the total annual charge to be incurred by reason of the water-supply and to be met by a water-rate ;
- (b) the percentage of such water-rate on the annual value of holdings ;
- (c) the average incidence of such water-rate per head of the population.

Local publication.—Sec. 354 prescribes the mode in which the publication is to be made, *i. e.* the particulars 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 at such office and public places and a proclamation shall be made throughout the municipality by beat of drum.

37G. After the expiry of two months from the date of such publication, and after considering any objections or suggestions that may be submitted, the Local Government may sanction or reject the scheme as published, or may refer it, with such suggestions as it may think fit, to the Sanitary Board, who, in consultation with the same committee as aforesaid, shall consider the scheme with a view to its amendment, and when the scheme shall have been so considered, it shall be forwarded to the Local Government, and the provisions of this and the last preceding section shall be applied.

37H. When a scheme has been sanctioned by the Local Government under the last preceding section, the Commissioners of the municipality or municipalites, or the local authorities concerned shall, if the rate and other monies to be collected, received or recovered for or in respect of the water-supply or drainage system be sufficient for the purpose, proceed to carry it out, and where two or more municipalities or local authorities are concerned, a joint-committee may be formed for that purpose according to rules to be framed in this behalf by the Local Government.

37I. The Local Government may order the works specified in any scheme, plans, specifications and estimates, or any portion thereof, to be executed by

Sanction of scheme.

Scheme to be carried out by municipalities.

Local Government may appoint an officer to execute the works.

an officer to be appointed by it, and shall fix the remuneration of such officer, (provided that the cost of the scheme as sanctioned be not exceeded) : and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

37J. The cost of making plans, specifications and estimates, and the travelling expenses incurred by the members of the committee in attending the meetings of the Sanitary Board for the consideration of the scheme, and the cost of carrying out the scheme if the same be proceeded with, may be advanced from the public funds on the security of the fund or funds of the municipality or municipalities or other local authority or authorities concerned, and shall be recoverable under the Loans Act, 1879, and all the provisions of that Act and the rules made under it referring to the recovery of loans shall be applicable to such advances.

Cost of the scheme may be advanced from the public funds.

For the Local Authorities Loans Act see *App. p. 247a.*

37K. (1) When it appears to the Local Government that the Commissioners of any municipality, or the Commissioners of a municipality, acting conjointly with the Commissioners of any other municipality or municipalities or with one or more of any other local authorities specified in section 37A, should be required to provide a supply of water for

Compulsory introduction of water-supply or system of drainage.

domestic purposes, or to introduce a system of drainage, it may call upon such Commissioners to show cause within a specified time why they should not be so required, and the Local Government shall consider any objections which may be submitted by the Commissioners, and, if it considers such objections insufficient, it may, after publishing in the *Calcutta Gazette* a full statement of the reasons which have led to action being taken, by an order in writing, fix a time within which the Commissioners shall submit such a scheme, plans, specifications and estimates as are referred to in section 37B, in the manner therein provided :

Provided that when the Commissioners of one municipality are required to show cause, as aforesaid, a resolution against the introduction of such scheme passed at a meeting specially convened for the purpose, in favour of which a majority of not less than two-thirds of the whole number of Commissioners shall have voted, or when the Commissioners of two or more municipalities are required to act conjointly with each other for that purpose, a similar resolution passed by the joint-committee constituted under section 37A, in favour of which a majority of not less than two-thirds of the total number of votes allotted to such municipalities and apportioned to each of them, according to their respective income shall have been recorded shall be final, and in either case no further action shall

be taken by the Local Government under the provisions of this section.

(2) When the said order has been complied with, the provisions of sections 37C to 37J inclusive shall apply.

(3) If default is made in complying with the said order, the provisions of section 64 shall apply :

Provided that in the case of a municipality mentioned in the first schedule and not required to act conjointly with any other municipality or local authority, if within two months from the date of the publication of the particulars of any such scheme in the *Calcutta Gazette* under section 37F, a petition is presented to the Local Government by a majority of not less than two-thirds of the registered rate-payers of a municipality objecting to the compulsory introduction of such scheme into such municipality, the Commissioners thereof shall not be compelled to carry out such scheme.

Notes.

These two provisos have been added to the Draft Bill of the enlarged Select Committee as safe-guards against a compulsory and coercive measure.

In the municipalities named in the first schedule the Commissioners are all appointed, and in order to safe-guard the interests of the rate-payers, who are not represented in such municipal boards, the second proviso has been added.

37L. The provisions of Part VII shall, notwithstanding anything in sections 86, 220, 221, 222, 223, 279 or 287,

Application of Part
VII.

apply to every municipality in which a water-supply is provided under section 37K.

Change.

This section was substituted for the former sec. 37L by Beng. Act II of 1906, sec. 4.

Note.

Part VII contains provisions for water-supply.

37M. The powers conferred on the Commissioners by sections 37A to 37L inclusive shall not be exercised by the Chairman under section 44.

Chairman not to exercise powers of Commissioners.

*Of the Mode of Transacting the Business
of the Municipality.*

38. The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.

Commissioners to meet ordinarily once a month.

If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

Accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of a meeting.

Meeting not invalidated by non-service of notice.

Change.

The last paragraph is new and has been added by sec. 24 of Beng. Act IV of 1894, on the model of the English Corporation Act.

Notes.

Special Meeting.—The Chairman, or, in his absence the Vice-Chairman may convene special or extraordinary meetings. It was held under the corresponding provision of the Bombay Act that in order that such a meeting should be properly constituted it must be called by the president. If the meeting is not so called, it is illegal, *Abaji Sitaram v. Trimbak Municipality*, I. L. R. 28 Bom. 66.

Special Meetings—are necessary for the consideration of the following subjects:—

- (a) under sec. 24 or 25 to remove a Chairman or Vice-Chairman ;
- (b) under sec. 37K to protest against the introduction of a water-supply or drainage scheme ;
- (c) under sec. 47 to frame Provident or Annuity Fund rules, or rules for pensions or annuities ;
- (d) under secs. 85 and 86 to impose rates and taxes ;
- (e) under sec. 221 to apply to the Local Government for extension or exclusion of Parts VI, VII, VIII, IX or X ;
- (f) under sec. 350 to frame bye-laws ;
- (g) under sec. 69 (proviso) to sanction grants for the establishment and maintenance of schools, hospitals, or dispensaries or for the promotion of vaccination. This matter may also be considered at an ordinary general meeting of which special notice has been given.

The object of a special meeting is that each member may attend and consider a special or an emergent matter, and the notice of such meeting shall be such as to draw his special attention to it. A special meeting may precede or follow an ordinary meeting on the same day.

39. The Chairman, or, in his absence, the Vice-Chairman, shall call a special meeting on a requisition signed by not less than three of the Commissioners.

Commissioners to meet at other times on special requisition.

If the Chairman or the Vice-Chairman fails to call a special meeting within thirty days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.

Change.

The last paragraph was added by sec. 5 of Beng. Act II of 1896.

40. The Chairman, or, in his absence, the Vice-Chairman shall preside at every meeting, and, in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside.

Who to preside at meetings of the Commissioners.

Note.

At the first meeting of a new body of Commissioners appointed and elected in which a Chairman is to be elected the Commissioners shall choose one of their number to preside. *Cf. sec. 26A.*

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

Questions to be decided by majority.

Casting Vote.

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

Notes.

Special majority. — Resolutions on the following subjects cannot

be carried merely by a majority of votes, but require the votes of two-thirds of the whole body of Commissioners:—

(a) Removal of a Chairman under sec. 24;

(b) Removal of a Vice-Chairman under sec. 25;

(c) A resolution showing cause against a requisition of the Local Government, under sec. 37K.

A resolution under section 47 for making rules for pensions, &c., requires the votes of two-thirds of the Commissioners present at the meeting.

For an excellent exposition of the duty of the Chairman in meetings see *The Indian Municipality* by H. T. S. Forrest, pp. 25-28.

Casting vote.—"The Chairman must give his vote whilst the vote of the other members is being taken, and before the tendency of the votes is visible. It would, therefore, be a grave irregularity if a Chairman reserved his votes and gave, if the numbers proved uneven, i. e., seven Ayes, and six Noes, first to the Noes his vote as member, then his casting vote as Chairman".—*Palgrave's Chairman's Hand Book*, 7th Ed. page 17.

Poll.—"A poll, unless forbidden by the clear words of a statute may be demanded on any question put to such a meeting as of right though the demander be satisfied regarding the correctness of the declaration by the Chairman on the vote by show of hands; and the moment after that declaration is made, and before the meeting proceeds to other business, is the proper time for urging that demand upon the Chairman of the meeting, who is the authority that grants the same."—*Palgrave's Chairman's Hand Book*, 7th Ed.

42. No business shall be transacted at a meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman, or, under section 39, by persons signing a requisition, nor unless a quorum shall be present.

A quorum shall be, in any municipality, in which the Commissioners are more than fifteen, five;

in any other municipality a number being not less than one-third of the entire number of Commissioners.

If, at the time appointed for a meeting, or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the President, and three days notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

Adjourned meeting

Changes.

The words "or under section 39 by persons signing a requisition" after "or Vice-Chairman" were added by sub-sec. (1) of sec. 6 of Beng. Act II of 1896 and the word "President" was substituted for "Chairman or Vice-Chairman" in the last paragraph by sub-sec. (2) of the same section.

Notes.

Adjourned Meeting —Cf. *Abaji Sitaram v. Trimbak Municipality* (I. L. R. 28 Bom. 66) in which **Jenkins, C. J.** was pleased to hold at page 70, that an adjourned meeting is only a continuation of its predecessor, and if that meeting was not properly convened, then the adjourned meeting was equally defective.

Special quorum.—The law has practically fixed the quorum at two-thirds of the whole number of Commissioners for the purposes of a meeting under sec. 24 for the removal of a Chairman, under sec. 25 for the removal of a Vice-Chairman and under sec. 37K.

It will also be seen that the attendance of at least two-thirds of the whole number is necessary for a resolution requesting the Local Government to appoint a Chairman under sec. 23.

If, in the course of the transaction of business at any meeting, the requisite quorum is wanting the Chairman shall suspend it. An adjourned meeting is held to be the continuation of the original meeting.

and is not competent to transact any business, save that which the original meeting left unfinished.—See *Palgrave's Chairman's Hand Book 7th Ed.*, page 37.

43. Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose, and shall be signed by the President of the meeting, and such book shall be open to the inspection of the tax-payers.

Minutes of proceedings.

Notes.

Minutes of Proceedings.—*Per Edge, C. J., Knox and Burkitt, JJ.*—"The records of the proceedings of a Municipal body in British India is a public document. Clause v of section 78 brings the record of the proceedings of a municipal body in British India within clause 2 of sub-section (1) of section 74, as the record of an official body."—*Reference under sec. 46 of Act I of 1879*, I. L. R. 19 All. 293 (94-95). See also *Woodroffe's Evidence*, 2nd Edn., p. 529.

In letter No. 148 of 1894, Bombay Legislative Department, addressed to the Hon'ble Mr. Chiman Lal Hari Lal Setalvad B. A., L. L. B., the Governor in Council pointed out that documents, forming the acts or records of the acts of official bodies are public documents within the definition contained in sec. 74 of the Evidence Act, and cl. 5 of sec. 78 shows that a municipal body, in British India is an official body within the contemplation of sec. 74.

Proof of Proceedings.—Sec. 78 cl. 5 of the Evidence Act (I of 1872) provides that the proceedings of a municipal body in British India may be proved by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body. The Municipal Secretary is a public officer for the purposes of such certificate, I. L. R. 19 All. 293.

Stamp on Copy.—Copies granted to private persons should bear an eight-anna stamp, under Art. 22 of schedule 1 of the Indian Stamp Act, 1879 (Art. 24 of the present Stamp Act). See the All. case quoted above.

Confirmation of minutes.—The minutes of the proceedings are usually submitted to the next meeting for confirmation. "The object of this proceeding is, it must be remembered, solely to ensure the verbal accuracy of the minutes. No dispute can accordingly be raised thereon regarding the policy the minutes enforce, either by debate or by way of amendment; far less can general discussion be allowed".—*Palgrave's Chairman's Hand Book, 7th Ed., page 23.*

44. The Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order authorized thereby, exercise all the powers vested by this Act in the Commissioners:

Powers of Chairman.

Provided that the Chairman shall not act in opposition to, or in contravention of, any order of the Commissioners at a meeting, or exercise any power which is directed to be exercised by the Commissioners at a meeting.

Notes.

Under section 37M the Chairman shall not exercise, notwithstanding the provisions of this section, the powers conferred upon the Commissioners by secs. 37A to 37L. "The Commissioners" in those sections is, therefore, to be read as "the Commissioners at a meeting."

"It will be noted that the Commissioners cannot set aside any act of the Chairman which he had authority at the time to perform. They can, however, pass a resolution that he should not perform similar acts in future, and after the passing of such a resolution, such acts, if performed, would be invalid and liable to be set aside."—*The Indian Municipality by H. T. S. Forrest, p. 12.*

By section 34 the power of disposing of municipal land is reserved in the Commissioners in meeting. Under the proviso to this section, therefore, the Chairman is precluded from exercising that power, without a resolution of the Commissioners in meeting, *Jagannath v. Chairman of Berhampur* 9 C. L. J. 286.

45. The Chairman may, by a written order, delegate to the Vice-Chairman all or any of the duties or powers of a Chairman as defined in this Act, subject to such restrictions as may seem fit to him, and may at any time by a written order withdraw or modify the same :

Chairman may delegate his duties or powers to Vice-Chairman.

Provided that nothing done by the Vice-Chairman, which might have been done under the authority of a written order from the Chairman, shall be invalid for want of, or defect of, such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained.

Notes.

Scope of the proviso.—The proviso to this section cannot be considered as altogether overriding the body of the section, and relates only to specific acts in which an express or implied consent may have been given or held to have been given. It cannot be held to apply to a general authority, verbally given by a Chairman to a Vice-Chairman, to institute prosecutions under the Act, as such power can only, under the body of the section, be delegated by a written order.

In a prosecution instituted by a Vice-Chairman for obstructing a drain where it appeared that the Chairman had, many months previously, verbally given the Vice-Chairman general authority to institute all such prosecutions under sec. 353 of the Act, and where it was contended in revision before the High Court that, although there was no written order by the Chairman delegating his powers, it must be taken upon the facts proved and circumstances of the case that the prosecution had been instituted with express or implied consent of the Chairman obtained both previously and subsequently within the terms of the proviso to this section, *held*—that the proviso did not apply to the case and that the prosecution had not been properly instituted, *Kherode Prasad Pal v. The Chairman of the Howrah Municipality*, I. L. R. 20 Cal. 442.

Where a prosecution was instituted upon a notice signed by the Vice-Chairman and not by the Chairman as required by sec. 44, and there was no evidence to show that there was delegation of authority by the Chairman under sec. 45 or that his sanction had been either previously or subsequently obtained, it was held that the notice was not issued under proper authority and was therefore bad, and a conviction, based upon such a notice, was consequently bad.—In the matter of *Chairman of the Puri Municipality, v. Kessori Lal Sen*, 1 C. W. N. cexliv (notes).

Cf. Powell v. The Municipal Board of Mussoorie, I. L. R. 22 All. 123 (F. B.) and *Kikam v. The Crown*, 3 S. L. R. 13. Where an objection is raised that a particular person who does an official act has no power to do it, it is for that person to prove that he has such power. No mere presumption under section 114 of the Evidence Act, that official acts have been rightly done, can dispose of the objection, *Harendra Nath v. The Chairman of Birnagar Municipality*, 1. C. L. J. 51.

A written order giving the Vice-Chairman powers under sec. 353 is a sufficient legal authority to institute prosecutions under the Act. It is not necessary that the order shall be given by the Commissioners at a meeting.—*Queen Empress v. Mokunda Chunder Chatterji*, I. L. R. 20 Cal. 662.

46. The Commissioners at a meeting shall from time to time decide whether a paid secretary, engineer, health-officer or assessor is required or not, and what number of subordinate officers, servants and collectors of taxes or tolls may be necessary for the municipality, and shall from time to time fix the salaries to be paid to such persons respectively out of the municipal fund, and the allowances to be granted to such persons during absence on leave.

Subject to the scale of establishment decided upon by the Commissioners under this section, the Chairman shall have power to appoint such persons

Appointment of subordinate officers.

as he may think fit, and from time to time to remove such persons and appoint others in their places :

Provided that no person shall be appointed to an office, the salary of which is fifty rupees per mensem or upwards, without the sanction of the Commissioners at a meeting, and that no officer, whose salary is more than twenty rupees per mensem, shall be dismissed without such sanction.

Change.

The words 'or assessor' have been added by sec. 25 of Beng. Act IV of 1894.

Notes.

The appointment of subordinate officers under this section is subject to the rules laid down in sec. 61.

It was held in a case under the Calcutta Municipal Act that where the statute has provided a special mode of appointing subordinate officers, any appointment made outside the terms authorised by the statute is *ultra vires*, *Kelur Nath Bhandary v. The Corporation of Calcutta*, I. L. R. 34 Cal. 863, 11 C. W. N. 801.

47. The Commissioners at a meeting, specially convened for the purpose, may, by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting shall have voted, from time to time make rules for—

Commissioners may frame rules for pensions and gratuities or for the creation of a provident or annuity fund.

- (a) the granting of pensions and gratuities out of the municipal fund ; or
- (b) the creation and management of a provident or annuity fund, for compelling contribution thereto on the part of their officers

and servants, and for supplementing such contribution out of the municipal fund ;

and may repeal or alter such rules.

The Commissioners at a meeting may, from time to time, in accordance with such rules for the time being in force, grant such pensions or gratuities, or grant allowances or annuities out of such provident or annuity fund to any of their officers or servants, as they may see fit.

Notes.

For the model rules for provident fund and pension see *App.* pp. 103a and 227a.

A resolution under this section must be passed at a special meeting, in which, it appears, no other business is to be transacted, and such resolution, under sec. 59 cl. (d), shall be subject to the approval of the Local Government.

Attachment of Provident Fund money.—The Provident Fund established by the Municipal Corporation of Calcutta was held to be governed by the provisions of the Provident Fund Act of 1897 and the Provident Funds (Amendment) Act of 1903 and subscriptions to the Fund in the hands of the Trustees of the Fund not liable to attachment, *Seth Manna Lal v. Gainsford*, I. L. R. 35 Cal. 641, 12 C. W. N. 633.

48. In the case of a Government official employed by the Commissioners, the Commissioners may—

Pensions, &c., to Government officials.

- (1) If his services are wholly lent to them, contribute to his pension, gratuities and leave-allowances in accordance with the rules of the Government Civil Pension

and Leave Codes for the time being in force; and

- (2) If he devotes only a part of his time to the performance of duties in behalf of the Commissioners; contribute as above in such proportion as may be determined by the Local Government.

49. The Commissioners may take such security as they may think proper from any officer or servant in their employ.

Security from officers or servants.

For form of Security Bond see *App. pp. 127a to 135a*.

The Account Rules make it compulsory upon the secretary, accountant, tax-darogah, cashier and collecting-sirkars to furnish security (see *App. rule 7 p. 41a*).

Of Ward Committees.

50. The Commissioners at a meeting may divide any municipality into wards, and thereupon appoint, or cause to be elected for each ward, not less than three proper persons, whether such persons be or be not Commissioners for the time being, to be members of the ward committee; and the Commissioners at a meeting may define the limits of the ward for which any ward committee may be appointed or elected.

Appointment or election of ward committees.

51. The Commissioners at a meeting may lay down rules, not being inconsistent with the provisions of this Act, in respect of the qualifications required

Commissioners may lay down rules for election.

to entitle any person who is not a Commissioner to stand as a candidate for such election, and to entitle any person to vote for any candidate, and in respect of the mode of election.

And the Commissioners may at any time cancel any rule made by them under this section for such election.

52. Each ward committee may, for each year if it sees fit, elect its own Chairman and Vice-Chairman (if necessary) from among its own number :

Election of Chairman and Vice-Chairman of ward committee.

Provided that, if one or more Commissioners are members of the ward committee, the Chairman of the ward committee shall be a Commissioner.

53. The Commissioners at a meeting may delegate to a ward committee, such of the powers of Commissioners under this Act as to them may seem fit ; and such ward committee, within the limits of its ward, as defined by the Commissioners at a meeting, may exercise all or any of such powers, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such powers.

Commissioners may delegate powers to ward committee.

All acts done, orders issued and assessments made, by ward committees, shall be subject to the control and revision of the Commissioners at a meeting, who may at any time withdraw all or any of such powers.

54. The provisions of sections 38 to 45 (both inclusive) shall, as far as possible, be applicable to the transaction of business by ward committees, and the Commissioners shall sanction the establishments of ward committees in accordance with the provisions of section 46.

Certain sections applicable to transaction of business by ward committees.

55. All questions regarding the removal, resignation and appointment of members of ward committees shall be settled by the Commissioners at a meeting.

Removal, resignation, and appointment of members.

Liability of Commissioners and Ward Committees.

56. No Commissioner or member of a ward committee shall be personally liable for any contract made, or expense incurred by, or on behalf of the Commissioners.

Personal liability of Commissioner or member of ward committee.

Every Commissioner or member of a ward committee shall be personally liable for any wilful misapplication of money entrusted to the Commissioners to which he shall knowingly have been a party, and he shall be liable to be sued for the same.

Notes.

As to contracts and the mode which the Commissioners may adopt with respect thereto see *sec. 37*.

Personal liability.—Municipal Commissioners and their servants incur no personal responsibility, for what they do, so long as they act in the line of their duty. But if they do, or order to be done, that which is

not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable to an action. There is no special law extending to members of municipalities, which protects them so long as they act *bona fide*.—*Soonder Lall v. Bailie and another*, 24 W. R. 287.

57. No Commissioner or member for a ward committee shall have, directly or indirectly, any share or interest in any contract of any kind whatsoever to which the Commissioners are a party or shall hold any office of profit under them and, if any Commissioner shall have such share or interest, or shall hold such office he shall thereby become disqualified to continue in office as Commissioner, and shall be liable to a fine not exceeding five hundred rupees :

Provided that a Commissioner shall not be so disqualified by reason only of his having a share or interest in—

- (a) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or share-holder; or
- (b) any lease, sale or purchase of land, or any agreement for the same; or
- (c) any agreement for the loan of money, or any security for the payment of money only; or

Disqualification of Commissioners; having share or interest in contracts.

(d) any newspaper in which any advertisement relating to the affairs of the municipality is inserted.

But no such Commissioner shall act as Commissioner or member of a ward committee, or take part in any proceedings relating to any matter in which he is so interested.

Changes.

By sec. 26 of Beng. Act IV of 1894, the words "of any kind whatsoever to which the Commissioners are a party or shall hold any office of profit under them" have been substituted for "made with the Commissioners," and the words "by himself or through others," which stood after the words "indirectly" in the first paragraph, have been omitted, and the words "or shall hold such office" and "provided that" have been added.

Notes.

Under this section no person who is a lawyer or a doctor &c, can enter into a professional engagement for profit with the municipality of which he is a member.

"It is improper for a pleader, who is a Municipal Commissioner, to appear in a case against the municipality of which he is a Commissioner."—See *B. Govt. Muni. No. 1805, 28 March 1899, Govt. Cir. Vol. III, p. 1042.*

A Commissioner disqualified under this section may be removed by the Commissioner of the Division by a written judgment. When so removed, he has a right of appeal to the Local Government. (Sec. 20 sub-sec. 1 cl. (d).)

A Commissioner removed under this section may be re-elected. (Sec. 22.)

58. No Commissioner or member of a ward committee shall vote on any matter affecting his own conduct or pecuniary interest, or on any question which regards exclusively the assessment of himself, or the valuation of any property in respect of which

Commissioners disqualified from voting on certain questions.

he is directly or indirectly in any way interested, or of any property of or for which he is manager or agent, or his liability to any tax.

Change.

This section has been substituted by section 27 of Beng. Act IV of 1894.

Note.

The provision, prohibiting a Commissioner or a member of a ward committee from voting on matters affecting his own conduct or pecuniary interest is new.

Control.

59. All resolutions passed by the Commissioners under the following sections, that
Certain resolutions subject to approval of Government. is to say:—

- (a) under section 23 or 27 for the election of a Chairman ;
- (b) under section 24 for the removal of a Chairman from office ;
- (c) under section 28 for the grant of allowances to a Chairman or Vice-Chairman ;
- (d) under section 47 for the making, repeal, or alteration of rules for the grant of pensions or gratuities, or for the creation and management of provident or annuity funds,

shall be subject to the approval of the Local Government.

Change.

The words 'or 27' have been added by sec. 28 of Beng. Act IV of 1894.

Notes.

Though the election of a Chairman is subject to the approval of the Local Government under cl. (a) yet the Chairman *elect* is competent to enter upon his duties immediately on his election pending the orders of the Local Government (*Sec.* 26).

60. A copy of the minutes of the proceedings of all meetings of the Commissioners, referred to in section 43, shall be forthwith forwarded by the Commissioners to the Magistrate of the district.

Copy of minutes to be sent to Magistrate.

61. The appointment by the Commissioners of subordinate officers, as provided by section 46, shall be subject to the following rules:—

Sanction to appointment of subordinate officers.

(a) no appointment, of which the salary is two hundred rupees per mensem or upwards shall be created or abolished, without the sanction of the Local Government ;

(b) no person shall be appointed to, or dismissed from, an office, the salary of which is one hundred rupees per mensem or upwards without the sanction of the Commissioner of the Division.

62. The Magistrate of the district, or the Magistrate in charge of the division of the district in which a municipality is situate, may enter on and inspect, or cause to be entered on and inspected, any immoveable property occupied by the Commis-

Magistrate's power of inspection.

sioners, or any work in progress under their direction; and may call for and inspect any document which may be, for the purposes of this Act, in the possession or under the control of the Commissioners.

63. The Commissioner of the Division or the Magistrate of the district may, by order in writing, suspend within the limits of the division or district (as the case may be) the execution of any resolution or order of the Commissioners of any municipality, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

When a Commissioner or Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the Local Government, which may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

Notes.

By Municipal circular of the Local Government, No. 9T.—M., dated the 6th July 1885, District Officers were instructed to invariably submit

their proceedings under this section through their Divisional Commissioners, who in their turn should forward the papers promptly with such reports and remarks of their own as might be necessary for a complete comprehension of the facts. In cases of extreme emergency a District Officer may submit direct to Government a copy of his report to the Commissioner.

Jurisdiction of the civil court in case of suspension of order.—A Municipal Board granted permission to B to build a temple. The District Magistrate acting under section 183 of the Municipalities Act, which is an exact counterpart of this section, made an order cancelling the permission granted by the municipality and the Local Government confirmed this order of the District Magistrate. B brought a suit for declaration that he had right to build the temple.

Held that the suit was not maintainable; *held* further, that the Civil Court had no power to disturb the order of the District Magistrate who acted within his jurisdiction and whose order had been duly confirmed by the Local Government, *Bulaki Das v. The Secretary of State*, I. L. R. 31 All. 371, 1 Ind. Cas. 896.

64. If at any time it appears to the Local Government, on the report of the Magistrate of the district or of the Commissioner of the Division, that the Commissioners of any municipality have made default in performing any duty imposed on them by or under this or any other Act, the Local Government may, by an order in writing, fix a time for the performance of that duty.

If that duty is not performed within the period so fixed, the Local Government may appoint the Magistrate of the district to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the municipal fund.

Powers of Local Government in case of default.

If the expense is not so paid, the Magistrate, with the previous sanction of the Local Government, may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same.

Compare section 37 K.

65. If, in the opinion of the Local Government, the Commissioners of any municipality are not competent to perform, or persistently make default in the performance of the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the Local Government may, by an order published, with the reasons for making it, in the *Calcutta Gazette*, declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

Power to supersede
Commissioners in case
of incompetency, de-
fault or abuse of powers

Supersession.—Per **Subrahmania Ayyar, J.**—"Supersession is nothing more than the dismissal of the incompetent councillors, followed by the appointment of, to borrow the language of English law, a *custos* for the discharge of the functions of the council pending the nomination or election of other persons who would resume work in the normal way. In a word, supersession is but a suspension of the council," *Mahampho-padaya Rangachariar v. The Municipal Council of Kumbakonam*, I. L. R. 29 Mad. 539 (544).

66. When an order of supersession shall have been passed under the last preceding section, the following consequences shall ensue :—

Consequence of
supersession.

- (a) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners ;
- (b) all the powers and duties of the Commissioners shall, during the period of supersession, be exercised and performed by such person or persons as the Local Government may direct ;

[Powers of the Commissioners.]—The Commissioners of the Santipur Municipality were superseded for a certain period by the Local Government under section 65 and the Sub-Divisional Officer of Ranaghat was appointed under this clause to exercise the powers of the Commissioners. On the expiration of the period of supersession, the Commissioners were re-established, but their number was reduced on the recommendation of the Sub-Divisional Officer. The Commissioners, so re-established, imposed certain rates, and a person, compelled to pay the rates so imposed under pressure of a distress warrant, brought a suit for a refund of the amount. On the case coming before the High Court in second appeal, **Carnduff, J.** was pleased to hold (*vide Bepin Behari Sen v. Chairman of Santipur Municipality*, 1 Ind. Cas. 388, 13 C. W. N. 132 notes) that the officer appointed under this clause could only exercise the powers of the Commissioners and not those of the Commissioners in meeting ; and as under section 9 cl. (c) the power to recommend alteration in the number of the Commissioners was exerciseable by the Commissioners at a meeting, the Commissioners re-established on the recommendation of the Sub-Divisional Officer were not a legally constituted body, and the rates imposed by them were therefore illegal.

There was an appeal under the Letters Patent against the decision of **Carnduff, J.** in which it was held that there was no Second Appeal in

the case. The decision of Carnduff, J. was thus set aside on a preliminary ground without touching his opinion on the merits.

Seeing this difficulty, the Legislature intervened and passed the Bengal Municipal (Amendment and Validation) Act (Bengal Act II of 1910) section 2 of which runs as follows;—

“2. The expression ‘all the powers and duties of the Commissioners’ in clause (b) of section 66 of the Bengal Municipal Act, 1884, shall include, and shall be deemed always to have included, powers and duties which may be exercised and performed at a meeting of the Commissioners, as well as powers and duties which may be exercised and performed otherwise than at such a meeting.”

All doubts and difficulties have thus been removed by the enactment.]

(c) all property vested in such Commissioners shall, during the period of supersession, vest in the Government.

On the expiration of the period of supersession specified in the order, it shall be lawful for the Local Government to direct that the municipality shall be entered in the first schedule or the second schedule, or in both the first and second schedules; but otherwise the Commissioners shall be re-established by appointment and election, and the persons who vacated their offices under clause (a) shall not be deemed disqualified for appointment or election.

Re-established.—The expression, used in the corresponding section of the Madras District Municipalities Act (sec. 4B, sub-sec. (3) cl. (b) Mad. Act IV of 1884), is “reconstituted;” and in construing that

expression, the Madras High Court has held that "reconstitution" is the revival of the old corporation and not the creation of a fresh one, and all the rights and liabilities of the superseded council will devolve on the council so reconstituted as its rightful successor, *Makamohopadhyaya Rangachariar v. The Municipal Council of Kumbakonam*, I. L. B. 29 Mad. 539.

•The first schedule contains the names of the municipalities in which the Commissioners shall be appointed by the Local Government, and the second schedule the names of those in which the Chairman shall be appointed by the Local Government.

66A. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more municipalities constituted under this Act, or between the Commissioners of any such municipality and a district board, or Cantonment authority, the matter shall be referred—

Disputes,

(a) to the District Magistrate, if the local authorities concerned are in the same district; or

(b) to the Commissioner or Commissioners of the division or divisions, if the local authorities concerned are in different districts; or

(c) to the Local Government, if the local authorities concerned are in different divisions and the Commissioners of those divisions cannot agree.

(2) The decision of the authority to which any dispute is referred under this section shall be final.

(3) If, in the case mentioned in clause (a) the District Magistrate is a member of one of the local authorities concerned, his functions under this section shall be discharged by the Commissioner of the Division.

This section is new and has been added by sec. 29 of Beng. Act IV of 1894.

PART III.

OF THE MUNICIPAL FUND.

67. All sums received by the Commissioners, and all fines paid or levied in any municipality under this Act, and all other sums which, under the sanction of Government, may be transferred to the Commissioners, shall constitute a fund which shall be called the "municipal fund," and shall, together with all property of every nature or kind whatsoever which may become vested in the Commissioners, be under their control, and shall be held by them in trust for the purposes of this Act.

What shall constitute the municipal fund.

All moneys, received under Part VII (Water-supply), Part VIII (Lighting with Gas) and Part IX (Cleansing of private privies and cess-pools) shall respectively be applied for the purposes of the Parts under which they are levied, and for payment of a proportionate share of the cost of collection and of general supervision.

The expenses incurred for the cleansing of cess-pools have, under sec. 135, hitherto been met out of the general fund, but cess-pools, having been included in Part IX, the costs of their cleansing shall be defrayed from the moneys received under that head.

Under Part X (Regulation of markets) all necessary expenses for the establishment of a municipal market may, under sec. 335, be defrayed from the general municipal fund, and the incomes, derived from it, constitute a part of such fund.

68. Except as is otherwise provided in this Act, the Commissioners shall set apart and apply annually out of the municipal fund,—

Payment on account of interest on loans and establishment.

(a) firstly, such sum as may be required for the payment of the interest which may fall due on any loan contracted by the Commissioners;

(b) secondly, such sum as they are by this Act required to provide for payment of their own establishment, including such contributions as are referred to in section 48;

(c) thirdly, such sum as the Local Government may direct towards the cost of audit, towards the cost of establishments in any office of account or in any treasury, and towards the salary of any special officer who may be appointed under section 82 :

Provided that the total amount which any municipality may be required to pay under clause (c) otherwise than as the salary of a special officer appointed under section 82 shall not in any year exceed two per centum on the amount of the municipal income for such year.

Changes.

By sec. 30 of Beng. Act IV of 1894 the words "except as is otherwise provided in this Act," "towards the salary of any special officer who may be appointed

under section 82" and "otherwise than as the salary of a special officer appointed under section 82" have been added, and the word "and" in cl. (c) after the word "audit" has been omitted.

Notes.

Cost of audit.—"In supersession of previous orders, the Lieutenant Governor is now pleased to direct that, with effect from the 1st April next, in all municipalities (except Calcutta) an audit fee shall be levied at the rate of one per cent on income, subject, in the case of municipalities with an annual income of Rs. 20,000 and less, to a minimum fee of Rs. 100, and in the case of municipalities with an income exceeding Rs. 20,000 to an additional Rs. 100 for each additional Rs. 20,000 (or part thereof) of income."—*Govt. Cir. vol. III. p. 1006.*

Under the proviso of sec. 82 the Local Government may, under certain circumstances, appoint a special officer to examine and report upon the accounts, and shall fix the salary of such special officer.

69. (1) After the said sums have been set apart under section 68, the Commissioners at a meeting shall, as far as the municipal fund permits, from time to time cause roads, bridges, tanks, ghats, wells, channels, drains and privies, being the property of the Commissioners, to be maintained and repaired, and the municipality to be cleansed ;

and may, except as is otherwise provided in this Act, and subject to such rules and restrictions as the Local Government may from time to time prescribe, apply the municipal fund to any of the following purposes within the municipality, that is to say,—

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

- (ii) the supply of water, and the lighting and watering of roads ;
- (iii) the erection and maintenance of offices and other buildings required for municipal purposes ;
- (iv) the construction and repair of school-houses, either wholly or by means of grants-in-aid ;
- (v) the establishment and maintenance of schools either wholly or by means of grants-in-aid ;
- (vi) the establishment and maintenance of hospitals and dispensaries ;
- (vii) the promotion of vaccination ;
- (viii) the acquiring and keeping of open spaces for the promotion of physical exercise and education ;
- (ix) the training and employment of female medical practitioners and of veterinary practitioners ;
- (x) the establishment and maintenance of veterinary dispensaries for the reception and treatment of horses, cattle and other animals ;
- (xi) the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals ;

- (xii) the improvement of the breed of horses, cattle and asses, and the breeding of mules ;
- (xiii) the establishment and maintenance of free libraries ;
- (xiv) the maintenance of a fire-brigade ;
- (xv) other works of public utility calculated to promote the health, comfort or convenience of the inhabitants ;
- (xvi) the establishment and maintenance of benches for the trial of offences under this Act or any bye-laws made thereunder ; and
- (xvii) generally, to carrying out the purposes of this Act :

Provided that no portion of the municipal fund shall be applied to any of the purposes specified in clauses (viii) to (xiii), both inclusive, unless a majority of the Commissioners present at the meeting are satisfied that the other purposes specified or referred to in this subsection, or such of them as the majority consider it necessary to carry out, have been sufficiently provided for.

(2) The municipal fund shall also be applicable to the payment, at such rates as the Local Government may from time to time direct, of travelling expenses incurred by any of the Commissioners in attending meetings convened under the rules made

by the Local Government in pursuance of sub-section (4) of section 1 of the Indian Councils Act, 1892, for the purpose of recommending a person to be nominated as a member of the Lieutenant-Governor's Council.

(3) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

Changes.

This and sections 69A and 69B are new and were substituted by section 7 of Beng. Act II of 1896 for the old section 69.

Notes.

See Government Circulars Nos. 20T.—M. (30-9-96) and 56M (7-12-96). *App. pp. 17a—20a.*

Subsection (1)—For a proper construction of the expression,—“*shall, as far as the municipal fund permits, from time to time cause roads to be repaired,*” *cf. Achratlal v. Ahmedabad Municipality*, (I. L. R. 28 Bom. 349), in which, an inhabitant of the town having sued the municipality for damages for injury caused to his horse and carriage in consequence of neglect of the municipality to repair a road, it was held (*per Jenkins, C. J.*) as follows;—“as the default leading to the damage was a mere nonfeasance, the plaintiff's suit fails, for the statute does not impose upon the municipality a duty towards the plaintiff, which they negligently failed to perform.” See, however, *Rajendra Lal v. Surat Municipality* (I. L. R. 33, Bom. 393) in which the municipality were held liable for damages, for misfeasance on their part, they having turned their works by their negligence into a nuisance and thus caused damage to the property of a private party.

Maintenance.—*Cf. Aiyasami Aiyer v. The District Board, Tanjore* (I. L. R. 31 Mad. 117) in which their Lordships (**White, C. J. & Miller, J.**) of the Madras High Court have explained the term with reference to roads.

Tramways.—As to the procedure to be adopted for the construction of tramways in a municipality see extracts from the Bengal Tramways Act, *App. pp. 285a—291a.*

Grants-in-aid to schools.—"It is one of the first duties of a municipality to provide primary education for all boys and as many girls as will accept it, and Sir Charles Elliott desires that in future Commissioners of Divisions when dealing with the annual estimates of municipalities will see that provision is made for the proper performance of this duty before any funds are allotted to the support of secondary education. * * A municipality may fairly be required to provide primary education for all boys of school-going age, a number which may be taken to be 15 per cent. of the male population of the town. * * The demands of primary education, thus formulated must be held to take precedence over the secondary education, and Commissioners of Divisions are authorized to give effect to this principle in dealing with municipal budgets under section 76 of the Act."—*Government Resolution on the Administration of Bengal Municipalities, 1890-91, page 22.*

Works of public utility.—The cost of construction and maintenance of public latrines was hitherto a charge upon the fund raised under part IX, but by the omission of the words "public latrines" from sec. 320 by sec. 81 of Beng. Act IV of 1894 it has become a charge upon the General Fund under sec. 186. *See App. p. 15a, Govt. Lett. para. 36.* Serais, urinals and public latrines are works of public utility within the meaning of cl. (xv).

Advances to municipal employees—for the purposes of building houses are outside the scope of the Act and not authorised by section 68 or section 69.—*Opin. of Leg. Rememr. (Govt. Cir. vol. III. p. 1016).*

Cost of prosecution of municipal servants—should be paid out of the municipal fund and not by Government; in as much as the enforcement of honesty and probity on the part of municipal servants is an important step in carrying out the purposes of the Act.—*See B. G. M. Cir. No. 32 M., 2 August, 1894 (Govt. Cir. Vol. III p. 1049).*

Contributions—out of the municipal fund towards the re-excavation, repair, improvement or maintenance of any private tank or well, above one hundred rupees are subject to confirmation by the District Magistrate and are in all cases subject to the condition that the water of such tank or well shall be available for use by the public for domestic purposes and for watering cattle.—*See B. G. M. Not. No. 2260 M., (Govt. Cir. Vol. III p. 1064).*

Subsection (2)—The travelling expenses of delegates under this subsection has been fixed "at the rates admissible under the Civil Service Regulations to officers of the second class."—See *B. G. M. Cir. No. 22 T. M.*, 13 June 1905 (Govt. Cir. Vol. III p. 1062).

Travelling Allowance—of Government officers conducting municipal elections should be paid by Government.—See *B. G. M. No. 747*, 6 March 1888 (Govt. Cir. Vol. III. p. 1025).

Burning and Burial of paupers—may be provided for out of the municipal fund, see sec. 260.

Misapplication of Municipal Fund.—A tax-payer is competent to sue for an injunction to prevent an appropriation by a municipality of any portion of its fund to a purpose not allowed by the Act, and as he has an interest in the disposal of the municipal fund no objection to the maintenance of the suit can be raised under sec. 58 cl. (k) of the Specific Relief Act; nor would it be necessary for the plaintiff to proceed under sec. 30 of the Civil Procedure Code, *Paman v. The Municipality of Skolapur*, I. L. R. 22 Bom. 646.

In England such a suit is generally instituted by the Attorney-General. But a suit may also be maintained by either a single member of a corporation or at any rate by a person who is so related to the corporation that he is entitled to become a member, however small his interest may be. For the English authorities—see *Brice on Ultra Vires*, pp. 714 to 718 (Third Edition).

69A. (1) The Commissioners shall cause to be kept, for each hospital and dispensary vested in them, accounts, in such form as may be prescribed by rules made by the Local Government, showing—

Receipts and expenditure on account of hospitals and dispensaries.

(a) all endowments, funds and contributions received by them,

(b) all sums directed by them to be applied to establishment or maintenance, and

(c) all expenditure incurred by them.

(2) No money which has been received by the Commissioners on account of any hospital or dispensary, or directed by them to be applied to the establishment or maintenance of any hospital or dispensary, shall be expended on any other object.

For rules for the management of hospitals and dispensaries, see *App. pp. 166a to 205a.*

69B. The Local Government may from time to time make rules—

- (i) prescribing the qualifications of candidates for employment under clause (xi) of section 69; and
- (ii) generally, for the guidance of the Commissioners in all matters connected with the carrying out of the purposes of section 69 and 69A.

70. With the consent of two-thirds of the Commissioners obtained in writing, and with the sanction of the Local Government, the Commissioners may contribute a portion of the municipal fund towards the expenses incurred in any other municipality, or elsewhere, for any of the purposes mentioned in section 69, subsection (1); or towards the salary of any officer under another authority whose services are employed by them; and also towards the expenses of making, maintaining and repairing any work for the improvement of a river or harbour (by whomsoever such work may be done).

But no contribution shall be made under this sec-

tion to any work, unless the same is calculated to benefit the inhabitants of the contributing municipality.

Notwithstanding anything in this section, the municipal fund may be applied, by the vote of the majority referred to in the proviso to section 69, sub-section (1), and without the consent and sanction mentioned in this section, to meeting expenses incurred beyond the limits of the municipality in the training of female medical practitioners or of veterinary practitioners.

Changes.

The words "section 69, sub-sec. (1)" after "in" in the first paragraph were substituted for the words "last preceding section" by sub-sec. (1) and the last paragraph was added by sub-sec. (2) of section 8 of Beng. Act 11 of 1896.

71. The account-books of the municipality shall be open to the inspection of any taxpayer at the office of the Commissioners on a day or days to be fixed in each month.

Account books to be kept open and quarterly statement published.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter, and shall, with the account-books, be open to the inspection of any taxpayer.

A similar account shall be prepared for each year as soon as possible after its close and shall be open to inspection as aforesaid.

Compare Account Rules App. p. 40a.

72. The Commissioners, at a meeting held at least two months before the close of the year, shall prepare in detail estimates showing the probable, receipts and expenditure during the ensuing year and the objects in respect of which it is proposed to incur such expenditure.

Annual estimates to be prepared.

For the form in which annual budget estimates are to be prepared—
See *dpp.* p. 108a.

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

Estimates to be published.

During fourteen days after the estimates shall have been so lodged in the said office, of which due notice shall be locally published, the estimates and translations in the vernacular of the district shall be open to inspection at all reasonable times by any tax-payer of such municipality who may desire to inspect the same.

Any written suggestion which may be deposited in the office of the Commissioners shall be recorded and laid before them for consideration at the next meeting.

As to the mode of publication of the notice under paragraph 2, see *sec. 354.*

Consideration of the written suggestions is compulsory under paragraph 3.

74. After the expiration of the said fourteen days, and after such revision as Estimate to be transmitted to Magistrate. may appear requisite, the estimates shall be transmitted to the Magistrate of the district.

75. The Magistrate may either forward the estimates to the Commissioner of Magistrate may record remarks. the Division, or may return them to the Commissioners with such remarks and suggestions as he shall think fit to record. And the Commissioners at a meeting shall take into consideration the Magistrate's remarks, and shall either adopt his suggestions or shall record in writing their reasons for refusing to do so : and the estimates shall thereupon be returned to the Magistrate for transmission to the Commissioner of the Division.

76. The Commissioner of the Division may Powers of Commissioner as to estimate. either sanction the estimate as it stands, or may cause it to be returned to the Commissioners for such modifications as he may think necessary ; and, when such modifications have been made, the estimate shall be re-submitted for ratification to the Commissioner of the Division or if such modifications as may be recommended are not made, it shall be open to the Commissioner of the Division to make such alterations as may seem to him fit :

Provided that the Commissioner of the Division shall not raise the total of the proposed expenditure

above the sum shown by the estimate to be at the disposal of the Commissioners.

Changes.

The words "or if such modifications as may be recommended are not made it shall be open to the Commissioner of the Division to make such alterations as may seem to him fit" have been added by sec. 32 of Beng. Act IV of 1894, and the words "or sanction it after making such alterations therein as may seem to him fit" after the word "stands" have been omitted.

Note.

This omission gives the Commissioners an opportunity of replying to the criticisms and proposed modifications of the Commissioner of the Division. See Govt. Lett. para. 16, *App. p. 8a*.

77. The Commissioners at a meeting may, from time to time, revise any estimate of expenditure with the view of providing for any modifications which they may deem it advisable to make in the appropriation of the amount at their disposal, and such revised estimate shall be published and forwarded in the manner hereinbefore prescribed; and the Magistrate and the Commissioner of the Division may deal with such revised estimate in the manner provided above.

Estimate of expenditure may be revised.

Compare sec. 80 and the note thereunder.

As to publication &c. of a revised estimate the provisions of secs. 73-76 shall apply.

78. After the estimates of the municipality for the year shall have been sanctioned as above, the Commissioners at a meeting may, from time to time, by a general or a special resolution, authorize the expenditure of any sum provided in such estimates, or any part of such sum, for the purpose to which it has been assigned in such estimate.

Disbursement of expenditure sanctioned in estimate.

Notwithstanding anything contained in this section, the Local Government may lay down such rules as it may think fit limiting or regulating the powers of any municipality in respect to the expenditure of money for purposes which are provided for in the budget estimates of the year.

Notes.

Compare sec. 84 and Account Rules *App.* p. 40a.

In addition to the sanction of the budget estimate by the Divisional Commissioner there must be a distinct resolution of the Commissioners at a meeting authorising the expenditures provided in the budget.

79. If any work is estimated to cost above five thousand rupees, the Local Government may require the plans and estimates of such work to be submitted for its approval, or for the approval of any officer of Government, before such work is commenced ;

Power of Local Government, if work estimated to cost more than Rs. 5,000.

and may require statements of the progress and

completion of such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as it may prescribe, for its approval, or for the approval of such officer.

Compare Account Rules *App. p. 97a.*

80. It shall not be lawful for the Commissioners to authorize the expenditure on any object during the year of a sum in excess of that which has been sanctioned in the estimate of the year, or in a revised estimate, for such object; but, if it be found necessary in the course of the year, the Commissioners may recommend to the Commissioner of the Division that the allotments which have been made to the different heads of the estimate shall be modified by transfer of any amount from one head to another, and the Commissioner of the Division may sanction such transfers of allotment.

Previous sanction of the Divisional Commissioner is indispensable for expenditures by transfer.

81. The Commissioners shall, at such time and in such form as the Local Government shall direct, furnish annually a report of their proceedings and statements of the works executed by them, and of all sums received and expended by them.

The report and any orders which may be passed thereon by Government shall be open to the inspection

tion of the tax-payers at the office of the Commissioners, with the account-books and the quarterly and the annual accounts.

82. (1) The Commissioners shall keep such registers, use such forms and submit such returns as the Local Government may from time to time prescribe.

Keeping of registers and submission of returns.

(2) The municipal accounts shall be audited each year in such manner as the Local Government may direct :

Provided that if the officer appointed to make the yearly audit in any municipality shall report that the accounts are in such confusion that the financial position of the municipality cannot readily be ascertained, the Local Government may, by an order in writing, require the Commissioners to submit, within a time and to a person to be specified in such order, the accounts duly adjusted, and if the Commissioners fail to comply with such order, the Local Government may appoint a special officer to examine and report upon the accounts, and shall fix the salary of such special officer, which salary shall be paid from the municipal fund, unless the Local Government shall otherwise direct.

Local Government may appoint special officer to examine and report upon accounts.

Change.

This section has been substituted by sec. 33 of Peng. Act IV of 1904 for "The municipal accounts shall be kept in such form, and shall be audited each year in such manner as the Local Government shall direct".

Compare sec. 68 cl. (c).

Audit.—See *App. pp. 74a and 205a.*

83. Unless the Local Government shall otherwise direct, all sums received on account of the municipal fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality to which they belong :

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the Local Government.

Compare Account Rules *App p. 40a (76a).*

84. Unless the Commissioner of the Division shall expressly extend (as he is hereby empowered to do, on the recommendation of the Commissioners at a meeting) the limit of the powers of the Chairman or Vice-Chairman in this behalf, all orders for the payment of money from the municipal fund, if for a sum not above five hundred rupees, shall be signed by the Chairman or Vice-Chairman ; and all orders for larger sums by both of the said officers, or by one of the said officers and another Commissioner.

No such orders shall be issued otherwise than for the payment of money of which the expenditure has

been authorized by the Commissioners at a meeting, as provided in section 78.

For payment of money see Account Rules App. p. 40a (50a).

PART IV.

OF MUNICIPAL TAXATION.

85. The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, and with the sanction of the Local Government, impose within the limits of the municipality one or other, or both, of the following taxes :—

Tax upon persons or holdings.

- (a) a 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 ; or

- (b) a rate on the annual value of holdings situated within the municipality :

Provided that such rate shall not exceed seven and a half per centum on the annual

value of such holdings, except within the municipalities of Howrah, Patna, Dacca and Darjeeling, in which it shall not exceed ten per centum on such annual value; and provided also that no rate shall be imposed on any holding of which the annual value is less than six rupees.

Provided that both the taxes shall not be in force at the same time in the same ward.

Changes.

Ry sec. 34 of Beng. Act IV of 1894 the word "or" has been substituted for "but not" in the first paragraph, and the words "Howrah, Patna" and the last proviso have been added, and the word "all" which stood before the word "holdings" in cl. (b) has been omitted.

Notes.

Scope of the first change.—The substitution of the word 'or' in the first paragraph has made a material change in the law. Hitherto one form of taxation only, either the tax on persons or a rate on the valuation of holdings, could be enforced in a municipality, but now with the sanction of the Local Government the Commissioners at a meeting may impose both the taxes within the limits of one and the same municipality with this restriction that they shall not be levied at the same time in the same ward. So where a municipality is not divided into wards, it must be considered as consisting of one ward only, and both these taxes cannot, therefore, be in force there at the same time.—*See Govt. Lett. para. 18, App. p. 9a.*

Object thereof.—The object of this change was set forth in the following words of the Hon'ble Mr. Surendra Nath Banerji, who moved the amendment:—

"In every municipality, however poor it may be, there is a section of the people who are rich and dwell in fine houses, and they generally

congregate together. Now the highest tax upon any one holding in a municipality where the tax upon persons prevails is Rs. 84 a year; a person may live in a palatial dwelling, he may have a whole village included in his dwelling-house, but if it is one holding he pays Rs. 84, and no more."—*See Cal. Gaz. 25th April 1898 p. 695.*

Objections thereto.—This principle of taxation was, however, as was pointed out by the Hon'ble Mr. Collier in the Council, condemned by English Judges in the well-known case of Sir Anthony Earby in which "it was held that assessments of rates must be one and equal in proportion to the property of the assesses, and that they must be made in an equal manner." There should be one method of assessment which will affect all occupiers fairly and equally.—*See Cal. Gaz. 25th April 1894, p. 698.*

The Hon'ble the Advocate-General said, "I look upon the first of these taxes,—the tax upon persons according to their circumstances, as a very dangerous mode of taxation, and one which is liable to much abuse. The tax upon persons is an unfair tax, but to allow the Commissioners power to enforce both in the same municipality would be to arm them with greater powers than should be given."—*Ibid. p. 698.*

Tax by whom payable.—The tax upon persons is payable by the occupiers of holdings (sec. 87), and the rate on holdings by the owners thereof (sec. 103), and under some circumstances by the occupiers (sec. 105).

Holdings.—*See sec. 6 cl. (3).* Adjoining holdings, forming part and parcel of the site or premises of a dwelling-house &c., shall not be deemed as one holding for the purpose of imposing a tax upon persons.

Tax upon persons.—The tax upon persons is to be imposed according to their circumstances and property within the municipality. The absence of a standard for ascertaining the circumstances of the assessee may often lead to abuse of power. For instance, the attention of the Hon'ble the Advocate-General was drawn to a case in which a municipality went so far as to assess a poor woman to pay this tax, the reason assigned being that she had a violent temper and was very abusive. The Hon'ble the Legal Remembrancer said that "the Bengal municipalities possess no powers and possible means of making proper inquiries as to the circumstances and condition of the individual to be taxed."—*Cal. Gaz. 25th April 1894, p. 700.* See notes under sec. 87.

Conditions of assessment.—Two conditions are imposed by this section for assessing this tax:—(1) the occupation of a holding or holdings *within* the municipality, and (2) conformity of the taxation to the circumstances and property of a person *within* the municipality. It is therefore illegal to assess the tax on the bases of the circumstances and property of a person *outside* the local limits of the municipality, *Kameshwar Pershud v. The Chairman of Bhabua Municipality*, I. L. R. 27 Cal. 849. A Deputy Collector, drawing a salary of Rs. 300 and occupying holdings within a municipality, being assessed to the tax on the basis of his salary, objected to the assessment and refused to be assessed except upon the basis of the sums spent by him within the municipality. The High Court *held* that the assessment was rightly made and that “the circumstances and property” meant the whole amount he earned, and not what he spent, within the municipality, *Chairman of Giridih Municipality v. Srish Chandra Mojumdar*, I. L. R. 35 Cal. 859, 7 C. L. J. 631, 12 C. W. N. 709. Then again persons living with a particular individual occupying a holding by reason of some connection with or relation to him, such as sons or servants, would not be separately assessable, by reason of possessing separate incomes. It has, however, been observed in this case that there may be circumstances in which more persons than one may occupy a particular holding *jointly* making each of themselves assessable, *Ambica Churn Muzumdar v. Satish Chunder Sen*, 2 C. W. N. 689. See also *Municipal Council, Coconada v. Standard Life Assurance Co.*, I. L. R. 24 Mad. 205.

In the *Burrisal* case it was contended on behalf of the municipality that the plaintiffs were liable to assessment by reason of their employing as their *Ammuktar* or agent, a person who occupied a holding within the municipality, notwithstanding that that holding belonged to another person for whom the *Muktar* also acted as an agent, and who had already been assessed in respect thereof. But the High Court *held* that upon the facts found the plaintiffs did not occupy the holding, *Chairman of the Burrisal Municipality v. Adya Soondri Mitra*, I. L. R. 21 Cal. 319. Where the *naib* of a Zemindar resided on a holding solely to carry on the business of the Zemindar whose representative he was, and who paid the rent therefor to the superior landlord, it was *held* that the Zemindar and not the *naib* must be regarded as the occupier and liable for the payment of the tax, *Gobinda Chandra v. Kailas Chandra*, 2 C. L. J. 602.

The following opinion of the Legal Remembrancer (Gov. Cir. vol. III p. 1003) on this matter may be studied with advantage:—"I think all persons occupying holdings are liable to tax on persons under section 85. This includes persons occupying independently and singly as well as those holding jointly and the circumstances of each person are to be separately considered. The initial condition of liability to taxation is occupation of a holding, but the measure of taxation is not the value of the holding but "the circumstances and property within the municipality" of that person.

"The difficulty arises as to what "occupation" means. If A and B, jointly rent a holding, both paying parts of the rent, they are both liable to tax. But if A is the sole owner or tenant, and B, his relation or friend is permitted by A to share the house with him, *i.e.*, live in it without payment of rent, A retaining full control of the premises, then B is not liable to taxation. Joint-proprietors or joint-tenants are separately liable to taxation, each according to the circumstances and his properties (or shares of properties) within the municipality.

"The maximum of Rs. 84 per annum may be applied separately to each person holding jointly, so if A and B jointly occupy a holding, each may be taxed Rs. 84 for his joint occupation of that holding. To hold otherwise would be to construe the tax on persons as if it was a tax on holdings and to nullify the words " according to his circumstances."

Sec. 3 of India Act XI of 1881 (The Municipal Taxation Act) authorizes the Governor-General in Council to prohibit the imposition of any specified tax payable by military officers residing within the limits of a municipality on duty or by the Secretary of State in Council. *See App. p. 274a.*

Second change.—Howrah and Patna have been included in the first proviso, so that the rate on holdings may be raised to ten per cent. on the annual value in those places.

Rate on holdings.—The annual value of a holding is ordinarily to be assessed according to the gross annual rent at which a holding may be reasonably expected to let, but in case of buildings standing thereon it must not exceed an amount equal to seven and a half per centum on the cost of erection of such buildings, where the cost can be ascertained or estimated, plus a reasonable ground rent for the land comprised.—*See sec. 101 and notes.*

Arable Lands—are not exempted from the payment of this rate, *Mohadeb Aon v. Chairman Howrah Municipality*, 11 C. L. J. 524, 14 C. W. N. 857.

Holdings valued less than six rupees.—Such holdings are not exempted from payment of latrine tax, see opinion of Leg. Rememr. (Govt. Cir. vol III p. 1000).

Annual value—*Per Wilson J.*, “In the English Rating Acts *annual value* has always been held to mean annual letting value”, *Nundo Lal Bose v. The Corporation of Calcutta*, I. L. R. •11 Cal. 275. Cf. *Fleming v. The Municipal Committee of Simla*, (46 P. R. 1910) where it has been held that when municipal taxes are paid by the tenant to the landlord (of a house at Simla), such taxes should be considered as forming part of the gross annual rent or annual value, on which house-tax may be levied under sec. 42 of the Panjab Municipal Act (1891).

Owner.—See sec. 6 cl. (11).

Preliminaries for imposition of taxes:—(1) A resolution at a meeting convened expressly for the purpose and (1) sanction of the Local Government.

86. The Commissioners may, from time to time, at a meeting convened as aforesaid, and with the sanction of the Local Government, order that the following tax, fee, tolls and rates, or any of them, be levied within the limits of the municipality in addition to either of the taxes mentioned in the last preceding section:—

- (a) a tax on carriages, horses and other animals named in the fifth schedule;
- (b) a fee on the registration of carts;
- (c) tolls on ferries and (subject to the provisions of sections 158 and 159) tolls upon bridges and metalled roads;

(*d*) a water-rate not exceeding seven and a half per centum on the annual value of holdings when the houses and lands are situated in streets supplied with water, and not exceeding six per centum when the houses and lands are situated in streets not so supplied ;

(*e*) a lighting-rate not exceeding three per centum on such annual value ;

(*f*) a fee for the cleansing of latrines :

Provided that the taxes mentioned in clauses (*d*), (*e*) and (*f*) shall not be levied in any municipality unless the provisions of Part VII in respect of clause (*d*), or of Part VIII in respect of clause (*e*), or of Part IX in respect of clause (*f*) shall have been extended wholly or partly to such municipality in manner hereinafter provided.

Change.

The words "seven and a half" and "six" have been substituted for "six" and "five" respectively in cl. (*d*) by sec. 35 of Beng. Act IV of 1894.

Notes.

Special meeting.—The meeting contemplated by this section is to be convened expressly for the purpose after due notice being given.—Compare sec. 85, also *Strachey v. The Municipal Board of Cawnpore*, I. L. R. 21 All. 348.

Omission.—The words "privies and cesspools" should have been substituted for "latrines" in cl. (*f*). This however, seems to be an oversight. See sec. 320 and notes thereunder.

Of the Tax on persons.

87. When it has been determined that a tax shall be imposed on persons occupying holdings within the municipality, according to their circumstances and property, the Commissioners, after making such enquiries as may be necessary, shall cause to be prepared an assessment list which shall contain the following particulars, and any others which the Commissioners may think proper to include : -

Assessment list to be prepared.

- (a) name of the street or road in which the holding is situated ;
- (b) number of the holding on the register ;
- (c) name of the person occupying the holding, whether such person be assessed or exempted from assessment ;
- (d) description of the holding, and of the property within the municipality, and the profession or business of the person assessed ;
- (e) amount of annual assessment ;
- (f) amount of quarterly instalment ;
- (g) if the occupier of the holding is exempted from assessment, a note that effect.

The tax upon persons shall be payable in quarterly instalments by persons occupying holdings.

Such tax shall not be assessed or levied on any person in respect of the occupation of any building which is used exclusively as a place of public worship, or in respect of the occupation of any public burial or burning ground registered under section 254.

Changes.

By sec. 36 of Beng. Act IV of 1894 the words 'of arable lands or' in the last paragraph have been omitted, and in the same paragraph the words beginning with 'or' and ending with '254' have been added.

Notes.

Object of the change.—These alterations, have been made with the object of making the provisions in respect of the rate on holdings and the tax on persons similar. In assessing the tax on persons, arable land may, therefore, be taken into account. See *Mohadeb Aon v. Chairman Howrah Municipality*, 11 C. L. J. 524 (527).

The following reasons led the legislature to make occupiers of arable lands liable to pay the tax on persons under sec. 85 :—

(1) To bring practice into conformity with law, it being always the practice with municipal Commissioners to take into consideration the the quantity of land, which a person cultivates, in order to ascertain his circumstances and property within a municipality, for the purpose of assesment of a tax on persons, even though such lands have hitherto been, by law, exempted from such taxation.

(2) To prevent such lands from escaping taxation both under the Road Cess Act and this Act—*Cal. Gaz.* 25th April 1894, pp. 702-703. See also *Gov. Lett. para. 18 App. p. 9a.*

Person—shall include any company or association or body of individuals, whether incorporated or not, sec. 3 cl. 32, *Beng. General Clauses Act I of 1899.*

Circumstances.—This word was not introduced in sections 85 and this section to restrict the term property; the intention of the Legislature seems to have been, on the other hand, to widen the scope of the section so as to make taxable what might be not properly com-

prised under the term "*property*" and at the same time ought not to escape assessment, *Erish Ch. Mozumdar's case*, I. L. R. 35 Cal. 859.

Property—as a subject of taxation without any qualification includes both real and personal property or estate and intangible as well as tangible rights of value. "Circumstances" and "property" put together in the section without any qualification mean unquestionably the whole income, *Ibid.*

Conditions of assessment.—In assessing this tax the circumstances and property of a person *within* the municipality should only be taken into consideration. An assessment based upon a person's circumstances and property *partly within* and *partly without* the municipality is illegal, *Kameshwar Persad v. The Chairman of Bhabua Municipality*, I. L. R. 27 Cal, 849. See also notes to sec. 85. In the case of an officer of Government earning a salary within a municipality the basis of assessment was held to be the whole amount of his salary and not what he spent within the municipality, *Chairman of Giridih Municipality v. Erish Chandra Mozumdar*, I. L. R. 35 Cal. 859, 7 C. L. J. 631, 12 C. W. N. 709.

88. Save as is herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by section 112 is published, and shall be valid for three years and until the beginning of the year next after the date on which a new assessment or valuation may be published, or until the assessment and valuation be revised and amended :

Duration of assessment.

Provided that, when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice shall be published.

89. In any municipality in which the tax on persons is imposed, no tax shall be assessed on any person in respect of his occupation of any holding which contains any building the property of Government or of a local authority, but a rate not exceeding seven and a half per centum may be assessed on the annual value of every such holding, to be ascertained in the manner prescribed by section 101, and such rate shall be payable by Government, or the local authority, concerned.

Assessment of public buildings.

Changes.

By sec. 37 of Beng. Act IV of 1894 the words "contains any building" have been substituted for "is" after "which." By the same section the words "of a railway administration or of a local authority" were substituted for "and used for the purposes of a public building" and the words "or the railway administration or the local authority concerned" were added at the end. But in as much as the levy of taxes from a railway administration is regulated exclusively by sec. 135 of the Indian Railways Act IX of 1890, the words "of a railway administration" and "or the railway administration" have been omitted by sec. 2 of Beng. Act VI of 1894.

Notes.

Beng. Act VI of 1894 was published in the *Calcutta Gazette* on the 10th October, 1894, with the assent of the Governor-General received on the 3rd October 1894.

Taxation of Railways.—Sec. 135 of Act IX of 1890 (Indian Railways Act) runs as follows:—

"Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:—

Taxation of railways by local authorities.

(1) A railway administration shall not be liable to pay any tax in

aid of the fund of any local authority, unless the Governor-General in Council has by notification in the Official Gazette, declared the railway administration to be liable to pay the tax.

(2) While a notification of the Governor-General in Council under clause (1) of the section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification, or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor-General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Governor-General in Council may at any time revoke or vary a notification under clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering, or be prepared to render within any part of the local area under its control.

Local authority in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchman, or for the conservancy of a river.

No. 54 R. DATED CALCUTTA, THE 9TH JANUARY 1908.

Endorsed by—The Government of Bengal, Railway Department.

The undermentioned document is forwarded to the Municipal Department of this Government for information and guidance, in continuation of this office endorsement No. 98 R. dated 18th January 1901.

No. 1630 R. T., DATED CALCUTTA, THE 23RD DECEMBER 1907.

Memo. by—The Secretary, Railway Board.

The undermentioned paper is forwarded to the Local Governments and Administrations and to the officers noted on the margin for in-

formation, with the remark that should any Railway Administration consider any particular tax or assessment unreasonable or disproportionate to the services rendered, the procedure indicated in paragraph 10 of the Govt. of India, Public Works Department, letter No. 20 R.T., Dated the 7th January 1901, copy forwarded under memorandum No. 21 R.T. of same date, and paragraph 20 of Public Works Department Resolution No. 434 R.T., Dated the 17th August 1894, should be followed.

The necessary portion of paragraph 10 of letter No. 20 R. T. of 7th January, referred to above, is as follows :—

“(i) the taxes, if any, imposed by municipal authorities upon railway administrations or communities should be in proportion to and for services rendered, and

“(ii) where no services are rendered, it should not be competent for municipal authorities to enforce taxation.

“As regards (i), if a railway administration considers any tax disproportionate to the services rendered, the procedure laid down in paragraph 2 of the Public Works Department Resolution No. 434 R. T. dated the 17th August 1894, should be followed.”

Paragraph 2 of the Resolution referred to above runs as follows :—

“2. Should any railway Administration, however, consider that any particular tax, or its assessment, is unreasonable or disproportionate to the services rendered, the Governor-General in Council is pleased to decide that an application for the revision of such tax or assessment should be made direct to the Commissioner in charge of the of the division, in which the tax is levied, or where there is not such a Commissioner, to the officer holding a position corresponding to that of a Commissioner (e.g. the Collector in the Presidency of Madras, or the Deputy Commissioner in Sylhet or Cachar), who is hereby appointed under section 135, subsection 2 of the Indian Railways Act, 1890, to enquire specially into all the circumstances of the case and determine, in communication with the contending parties the sum, if any, which should be paid”.

No. 9977 RYS., DATED 29TH NOVEMBER 1907.

Notification—By the Government of India, Department of Commerce and Industry.

In pursuance of clause (i) of section 135 of the Indian Railways Act,

1890 (IX of 1890), and in supersession of the notifications of the Government of India in the Public Works Department, No. 270, dated the 12th June 1890, and No. 136, dated the 5th April 1893, the Governor-General in Council is pleased to declare that every Railway Administration in British India shall hereafter be liable to pay, in respect of property within any local area, every tax which may lawfully be imposed by any local authority in aid of its funds, under any law for the time being in force.

Nonliability to pay tax.—As to prohibition to the levy of municipal taxes, in certain cases on persons, on military duty and the Secretary of State, see The Municipal Taxation Act, 1831, *App. p. 274a*.

90. Whenever any tax shall have been assessed on any person in respect of his occupation of two or more holdings, and the aggregate of the amount so assessed upon him shall exceed eighty-four rupees per annum, such person may, within fifteen days of the publication of the notice required by section 112, apply to the Commissioners to cancel such assessment, and to substitute for the total amount of tax so assessed upon him, in respect of the said holdings, a rate to be calculated at seven and a half per centum on the annual value of such holdings; and the Commissioners shall thereupon substitute such rate; and, for the purpose of calculating the amount of such rate, shall determine the annual value of the said holdings in the manner prescribed by section 101.

Every rate imposed under this section shall be payable by the occupier of the holdings so rated.

Note.

By the law as it now stands the tax on persons as well as the rate on holdings may be in force in one and the same municipality (sec. 85). Now, if the tax on persons be imposed in any portion of the municipality in which the rate on holdings is levied at more than seven and a half per centum under the proviso to sec. 85, a substitution of the rate on holdings under the provisions of this section will involve an anomaly, the maximum tax leviable under this section being seven and a half per centum only.

91. The Commissioners may exempt from assessment any person who may by them

Power of exemption.

be deemed too poor to pay the tax ; but the name of the occupier of every holding shall be included in the assessment-list, whether he be assessed or exempted from assessment.

Note.

Under this section the Chairman of a municipality may exempt any person from assessment, but the exemption under sec. 106 has to be made by a resolution of the Commissioners at a meeting. It is hard to reconcile this difference.

92. If any person mentioned in the assessment-list shall, at any time after the pub-

Power to apply for reduction of assessment in altered circumstances.

lication thereof, have ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed shall have been reduced, the commissioners may on his application exempt him from his assessment, or may revise the same ; and such exemption or revision shall take effect from such date as the Commissioners may direct.

Note.

A person, dissatisfied with the amount assessed upon him, may apply for review under sec. 113.

93 The Commissioners may, at any time after the publication of the notice required by section 112, assess any person who was without authority omitted from the assessment-list, or whose liability to assessment has accrued thereafter, and may enhance any assessment which appears to them to be inadequate, and to have been so made owing to mistake or fraud.

Power to alter assessment.

Any assessment or enhancement made under this section shall take effect from the beginning of the quarter next following that in which such assessment or enhancement is made.

Notes.

Compare sec. 108. It will appear that the words "and to have been so made owing to" in this section have evidently been used in the sense in which the word "through" has been used in sec. 108. The Commissioners cannot, therefore, enhance any assessment under this section unless mistake or fraud is proved.

Splitting of one holding into two and assessing them separately after a year of the general assessment when they had been treated as one holding, is not a case of enhancement of assessment, but of fresh assessment and this section does not authorise such a procedure, *Navadip Chandra Pal v. Purnananda Saha*, 3 C. W. N., 73.

94. The Commissioners may at any time substitute for any name mentioned in the assessment-list the name of any new occupier of a holding, and may assess the tax on such person, and such person shall be liable

Procedure on change of occupation.

to pay such assessment from the date on which his occupation of the holding commenced.

95. If any holding shall become vacant in course of the year, the assessment on account of the occupation of such holding shall cease to have effect from the first day of the quarter next following that in which it became vacant.

Assessment on vacant holdings when to cease.

Of the Rate on the value of Holdings.

96. When it has been determined that a rate shall be imposed on the annual value of holdings, the Commissioners, after making such enquiries as may be necessary, shall determine the valuation of all holdings within the municipality as herein-after provided.

Commissioners to determine the valuation of holdings.

Holding—defined in sec. 6 cl. (3).

All holdings.—Note the word *all*. Holdings consisting of arable lands cannot therefore be exempted, *Mohadeb Aon v. Chairman Howrah Municipality*, 11 C. L. J. 524 (527).

See section 101.

97. Save as is herein otherwise provided, such valuation shall be valid for five years from the date on which it first takes effect in the municipality, and until the beginning of the year next after the date on which a new valuation may be made, or until the valuation be revised and amended.

Duration of assessment.

The word "five" has been substituted for "three" by sec. 38 of Beng. Act IV of 1894.

For definition of "year" see sec. 6 cl. (9).

97A. If within the period prescribed in the last preceding section the percentage on the valuation of holdings at which the rate is to be levied is altered by the Commissioners under the provisions of section 102, the amount of the rate and the amount of the quarterly instalments thereof payable in each case, shall be altered accordingly in the rating list, but the Commissioners shall not thereby be deemed to have made a new or revised assessment list.

This section has been added by sec. 33 of Beng. Act IV of 1894.

Notes.

Under the provisions of sec. 102 the tax payable according to the alteration of percentage shall take effect from the beginning of the year next following that in which the percentage has been altered.

The duration of a new or revised assessment under sec. 97 is five years, but it is not so in the case of the alteration of percentage under this section. It remains in force only till the expiration of five years from the date of the new or last revised assessment.

98. The rate on the value of holdings shall not be assessed or levied on any holding which is used exclusively as a place of public worship, or which is duly registered as a public burial or burning ground under section 254.

Buildings exempted from tax.

The Commissioners at a meeting may, with the sanction of the Local Government, exempt from assessment any holding used for purposes of public charity.

Exemption of charitable holdings from assessment.

Change.

The second paragraph of this section is new and has been added by sec. 40 of Beng. Act IV of 1894.

Note.

Holding—defined in sec. 6 cl. (3).

Used exclusively.—In a case referred by the Bally Municipality to the Hon'ble the Advocate-General for his opinion, he recorded that "if the lands form one holding as described by the Act, it is necessary that the whole holding should be used exclusively as a place of public worship and therefore there must either be a total exemption or an assessment of the whole; there can be no partial exemption".

From the above opinion of the Hon'ble the Advocate-General it is clear that there can be no exemption of a holding, part of which is used exclusively for the purposes of *public worship* or *public charity* and the remaining part is used for other purposes; nor can there be a partial exemption and partial assessment of one and the same holding.

In the same case the Hon'ble the Advocate-General was also of opinion that if a deity, which is not an object of worship by such an important section of the Hindu community as the Brahmins, by reason of its consecration by a Sudra in his own name, is located in a holding, such a holding can not be said to be used exclusively as a place of public worship.—*In the matter of the assessment of the Thakurbaree of Purna Chundra Dawn, dated 11th Sept. 1891.*

Conditions of exemption.—In order to claim exemption under this section it must be established (a) that it is a holding as defined in sec. 6 cl. (3), (b) that it is used as a place of public worship or for purposes of public charity, and (c) that the *whole* of it is used *exclusively* for any of those purposes.

In Madras certain buildings, the property of Government lent to certain persons free of rent for being used exclusively for the purposes of a college, which was not a proprietary institution managed by the conductors for their own benefit, but was purely a public institution, were assessed for municipal taxes. The High Court held that the tax was illegal, *Fischer v. Twigg*, I. L. R. 21 Mad. 367.

Other rates.—This section applies to water-rate (sec. 280) and lighting-rate (sec. 311.)

99. The Commissioners, in order to prepare the valuation-list, may, whenever they think fit, by notice, require the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof; and the Commissioners, or any person authorized by them in writing in that behalf, at any time between sunrise and sunset, may enter, inspect and measure any such holding after having given forty-eight hours' previous notice of their intention to the occupier thereof;

What returns may be required for ascertaining annual value.

Provided that where an assessor is appointed, such assessor shall not be competent to authorize any other person to enter, inspect and measure any such holding.

Change.

The words "in writing" and the proviso have been added by sec. 41 of Beng. Act IV of 1894.

Notes.

Government Buildings.—Officers entrusted with the duty of looking after the interests of Government in matters of assessment of several classes of such buildings.—See *Munl. Cir. No. 5—6 M, 30 Jang. 93* (Govt. Cir. vol III pp. 997-8).

The object of adding this proviso is to prevent levying of blackmail, and to make the special officer appointed for the particular purpose responsible (*Cal. Gaz. April 25, 1894, Sup. pp. 703-4*).

As to appointment of assessor see sec. 111A.

As to the time within which the return is to be furnished and penalty for default therein see sec. 100.

100. Whoever refuses or fails to furnish any such return for the space of one week from the day on which he shall have been required to do so, or knowingly makes a false or incorrect return, shall be liable to a fine not exceeding twenty rupees, and to a further daily fine not exceeding five rupees for each day during which he shall omit to furnish a true and correct return; and whoever hinders, obstructs or prevents any Commissioner, or any person appointed by the Commissioners as aforesaid, from entering, or inspecting or measuring any such holding shall be liable to a fine not exceeding two hundred rupees.

Daily fine—in addition to a substantive fine is bad in law (See notes to sec. 218).

101. The gross annual rent at which any holding may be reasonably expected to let shall be deemed to be the annual value thereof, and such value shall accordingly be determined by the Commissioners, and entered in the valuation-list:

Provided that, except in the Darjeeling Municipality, if there be on a holding any building or buildings, the actual cost of erection of which can be ascertained or estimated the annual value of such holding shall in no case be deemed to exceed an amount which would be equal to seven and a half per centum on such cost, in addition to a reasonable ground-rent for the land comprised in the holding:

Provided also that, where the actual cost so ascertained shall exceed one lakh of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one lakh of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section 102 :

Provided further that, in estimating the annual value of a holding under this section, the value of any machinery that may be on such holding shall not be taken into consideration.

Change.

The words "except in the Darjeeling Municipality" have been added by sec. 42 of Beng. Act IV of 1894.

Notes.

Proviso 1.—"The proviso in sec. 101 is imperative,—where there are buildings the *actual cost* must be *ascertained* or *estimated*. It has been contended that the word 'actual' being emphasized, the word 'estimated' must be treated as surplusage or as being no more than 'ascertained'; because in ordinary language an *actual cost* cannot be *estimated* and that the word applies to approximate or probable cost. The Legislature has however used the word 'estimate', and we must endeavour if possible to give a meaning to it. I am of opinion that 'actual cost' means no more than 'cost', and that the Legislature intended that the cost should be ascertained if practicable and where that is not practicable it should be estimated."—*Opinion of the late Advocate-General (Sir G. Paul), dated the 17th March, 1887 on the assessment of the E. I. Railway, Howrah.*

Calculation.

Proviso (1)

The maximum annual value = reasonable ground rent + $7\frac{1}{2}$ per cent. on the cost of erection.

The annual rate = the percentage determined under sec. 102 on maximum annual value.

Proviso (2)

The maximum annual value=reasonable ground rent + $7\frac{1}{2}$ per cent. on the first lakh of the cost of erection + $7\frac{1}{2}$ per cent. on the cost exceeding the first lakh.

The annual rate=the percentage determined under sec. 102 on ground rent + the same percentage on the valuation on the first lakh + one-fourth of the same percentage on the valuation on the amount exceeding the first lakh of the cost of erection.

The Darjeeling Municipality—has been excepted from the operation of the first proviso, the reason assigned being that the cost of construction of houses there is extremely low and the expenditure of the municipality extremely high. The assessment of holdings within that municipality shall, therefore, in all cases be in accordance with the annual letting value.—Cal. Gaz, 25th April, 1894, Sup. p. 704.

Annual letting value.—See *The Secretary of State v. The Madras Municipality* I. L. R. 10 Mad. 38; *Nanda Lal Bose v. The Calcutta Municipality*, I. L. R. 11 Cal. 275, and notes under sec. 85.

102. Subject to the provisions of section 85, the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which the rate shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year :

Determination of rate
of tax on holdings.

Provided that, when this Act is first extended to any place, the first rate may be levied from the

beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting.

For the definition of 'year' see sec. 6, cl. (19).

103. As soon as possible after the percentage at which the rate is to be levied for the next year shall have been determined under the last preceding section, the Commissioners shall cause to be prepared a valuation and rating list, which shall contain the following particulars, and any others which the Commissioners may think proper to include :—

- (a) name of the street or road in which the holding is situated ;
- (b) number of the holding on the register ;
- (c) description of the holding ;
- (d) annual value of the holding ;
- (e) name of owner ;
- (f) amount of rate payable for the year ;
- (g) amount of quarterly instalment ;
- (h) if the holding is exempted from assessment, a note to that effect.

The rate upon holdings shall be payable in quarterly instalments by the owner of the holding.

Notes.

Apparent conflict between this and the preceding section.

—At first sight it may appear difficult to reconcile sec. 102 with sec. 103.

Sec. 102 says that a percentage fixed shall remain in force until expressly rescinded or altered; whereas sec. 103 appears to require that, in the preparation of the valuation and rating list, the percentage, at which the rate is to be levied *for the year in which the valuation and rating list is to come into force, should be fixed under the preceding section before the close of the year next preceding*. It is, however, unreasonable to construe two sections of an Act so as to lead to conflicting conclusions. If the Legislature had intended that the procedure of sec. 102 is to be repeated each time that a new valuation is to be made under sec. 97, it would have said so expressly, instead of laying down the clear rule that a percentage once fixed under the provisions of that section shall remain in force until altered. The intention of the Legislature appears, therefore, to be that the percentage, fixed under sec. 102 before the close of a year, applies not only to the rate to be levied for the immediately following year, but for every succeeding year until it is altered; so that, when a new valuation is to come into force under the provisions of sec. 97 in any particular year, the percentage applicable or the percentage, at which the rate is to be levied under the new valuation, will refer back to the percentage last fixed under sec. 102, which must be deemed to have been determined not only for the year in which it was originally fixed, but for all succeeding years including the one immediately preceding the new valuation.

Cl. (a).—This provision is purely ancillary and incidental, and it would be absurd to allow the bare allusion in it to streets or roads to have any effect upon the general scope of the enactment, *Mohadeb Aon v. Chairman Howrah Municipality*, 11 C. L. J. 524 (6).

There is nothing to prevent a parcel of arable land from lying alongside (and, so to speak, *in*) a road, and even if it were not actually so situated, there would be nothing incongruous in describing it in a municipal register as being "in the road" to which access from it is available, *Ibid.*

Government Buildings.—As to payment of taxes of different kinds in respect of such buildings occupied as residences, see Government orders (Govt. Cir. vol III. pp. 998-9).

As to holdings exempted from taxation see last proviso to sec. 85, and secs. 98 and 106.

As to the definition of the term "owner" see sec. 6 cl. (11).

This rate may be recovered from the *occupier* in certain cases, see sec. 105.

104. If any house belongs to one owner, and the land on which it stands and any adjacent land which is usually occupied therewith belongs to another, the Commissioners may value such house and land together and may impose thereon one consolidated rate.

Power to assess upon house consolidated tax for house and land on which it stands.

The total amount of the rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

If the owner of the house and the owner of the land do not agree in respect of the proportion of the rate so deducted by the owner of the house, the Commissioners shall, on the application of either party, make an award declaring the amount payable by each, and such award shall be final.

Notes.

As to definitions of the terms "house" and "owner" see sec. 6 cls. (4) and (11) respectively.

105. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the municipality, or the place of

Tax due from nonresident owner may be recovered from occupier and deducted by him from his rent.