316. When the name of the owner or occupier of any holding is not known, it shall be sufficient to designate him, in any notice served or proceeding held under this Part, as the owner or the occupier of the holding on which the rate is assessed, and without further description.

Unknown owner or occupier how to be designated.

Compare sec. 128.

317. If the Commissioners deem it necessary for the purposes of this Part to raise, sink or otherwise alter the situation of any gas-pipe or other gas-work laid in any portion of the said area they may from time to time, by notice in writing, require the person to whom any such pipe or work belongs, or under whose control it may be, to cause forthwith, or as soon as conveniently may be, any such pipe or work to be raised, sunk or otherwise altered in position, in such manner as the Commissioners may direct:

Situation of gas-pipe or other gas-work to be altered at the expense of the Commissioners.

Provided that such alteration be not such as permanently to injure such pipe or work, or to prevent the gas from flowing as freely and conveniently as before; and the expenses attending such raising, sinking or altering, and full compensation for the damage done thereby, shall be paid by the Commissioners out of the municipal fund as well to the person to whom such pipe or work belongs as to all other persons.

318. If the person to whom any such pipe or work belongs, or under whose control it may be, do not proceed forthwith or as soon as conveniently may be, after the receipt of such notice, to cause the same to be raised, sunk or altered in such manner as the Commissioners require, the Commissioners may themselves cause such pipe or work to be raised, sunk or altered as they may think fit:

If owner, &c., neglect to make alterations, the Commissioners may cause the same to be made.

Provided that such works be not permanently injured thereby, or the gas prevented from flowing as freely and conveniently as before.

318A. The lighting rate and all the moneys collected, received or recovered for, or in respect of, lighting or the execution of works, and all fines connected therewith, or in any respect relating to lighting, shall be applied by the Commissioners in defraying the expenses of making, extending or maintaining the lighting system, in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct, in paying the interest of money borrowed for lighting and in the liquidation of debts incurred in connection therewith, or for some other purposes connected with lighting.

Application of rates and moneys received for lighting.

This section is new and has been added by sec. 85 of Beng. Act IV of 1894.

Provisions applicable to other systems of lighting.

319. The provisions of this Part shall apply, so far as may be possible, to any scheme which may be adopted by the Commissioners of any municipality for lighting the municipality under any system involving the laying of pipes or wires or other similar apparatus.

This section gives power to the Commissioners to adopt a scheme for electric light.

PART IX.

Of the Cleansing of Private Privies and Cess-pools.

"Cess-pools" has been substituted for "Latrines" by Beng. Act IV of 1894.

Notice to be issued by the Commissioners.

320. In any municipality to which the provisions of this Part shall have been extended in the manner prescribed by section 222, the Commissioners may issue a notice declaring that, from a date to be specified in such notice, they will maintain an establishment for the cleansing of private privies and cess-pools within the limits of the municipality, or any part thereof; and the Commissioners shall make suitable provision accordingly.

Changes.

By sec. 86 of Beng. Act IV of 1894 the words 'public and' after 'cleansing' have been omitted, and for the word 'latrines' the words 'privies and cess-pools' have been added.

Notes.

Result of change.—Hitherto under the provisions of this Part the Commissioners could maintain public latrines, but by the amendment of this Part it is clear that where this Part has been extended, the establishment to be now maintained will be for the purposes of cleansing private privies and cess-pools only. Cess-pools were hitherto cleansed under the provisions of section 186 which empowers the Commissioners to maintain an establishment for the removal of 'Sewage'. By sec. 69 the Commissioners may apply the municipal fund to the construction and improvement of 'privies'. Under section 322 they can levy fee for the maintenance of the establishment for the purpose of cleansing privies and cess-pools. It is therefore clear that public latrines are to be constructed and maintained out of the general fund.

May issue.—"The words 'may issue' in this section, though in their ordinary meaning giving an enabling and discretionary power, must, regard being had to the context, the particular provisions and general scope and object of the Act according to the well-established rule expounded in *Julius* v. *Bishop of Oxford* (5 App. Cas. 214), be construed as conferring an obligatory duty which the Commissioners are not at liberty to disregard at their discretion. In that case Lord Cairns observes:—'When a power is deposited with a public officer for the purpose of being used for the benefit of persons specifically pointed out and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised'. On this principle it was held that where by the Public Health Act, 1848 (11 & 12 Vic. Chap. 637 section 89), a Local Board of Health "may" make rates to pay charges within that section, an obligatory duty is thereby cast upon such board to make rates (*Rex.* v. *Rotherham*, 8 E. & B. 906, and *Wellington* v. *Halton*, L. R. I. Q. B. 63, cited with approval in *Julius* v. *Bishop of Oxford supra*). Any other construction of the word "may" in this section would enable the Commissioners to render nugatory the order of the Local Government extending the provisions of Part IX to the municipality, in direct opposition to section 222, which provides that on issuing of the notice therein prescribed to be issued and at the date therein fixed, the provision of Part IX extended under section 221, shall come into force." Of course the Commissioners may take reasonable time requisite for due equipment

of establishment. In cases in which the Commissioners consider the provisions of this unsuited to the municipality or any portion of it, they should apply to the Local Government for cancellation or modification of the order under section 221.—*Opinion of the Advocate-General* (Govt. Cir. Vol. III *pp.* 1041-2).

See *App. I. Govt. Lett. para. 36.*

Procedure—for the extension of this Part has been laid down in secs. 221 and 222.

See also note to sec. **223**.

321. When such provision has been made, the Commissioners may levy fees, to be fixed on such scale, with reference to the annual value of holdings containing dwelling-houses or privies within the limits of the municipality, or such part thereof as aforesaid, as the Commissioners at a meeting may from time to time direct ;

Commissioners may levy fees.

but the fee shall not exceed three rupees per annum where the valuation of the holding amounts to, or is less than, twenty-five rupees ;

and the fee on any one holding shall not exceed four hundred and eighty rupees :

Provided that if, on the commencement of this Act, the owners or occupiers of any holding are already under engagement to pay to the Commissioners an annual sum exceeding four hundred and eighty rupees for the cleansing of their premises, such sum, or such other sum as may from time to time be agreed upon between them and the Commis-

sioners, may be levied from them in accordance with the provisions of this Part.

Changes.

The words 'containing dwelling-houses' after 'holdings' have been added by sec. 87 of Beng. Act IV of 1894. This addition excludes waste lands, gardens, tanks, &c., which come within the definition of 'holdings' in sec. 6, cl. (3). The words 'or privies' after 'dwelling-houses' have been added by sec. 15 of Beng. Act II of 1896.

Notes.

Considering the scheme of this Part as amended by Bengal Act IV of 1894 the omission of "cess-pools" after "privies" in this section appears to be due to inadvertence of drafting.

Dwelling house.—This expression does not appear to have been used in this section in the loose sense of *a place of human resort*, but in the definite sense of *a place of dwelling for human beings*. Therefore a shop or place of business will not come under the category, unless it is used for the purpose of such dwelling.

"Premises used as corn-store and kiln, but in which the occupier occasionally slept and where he usually kept a bed; *held* to be a *dwelling house* within sec. 25, Towns Improvement Act (Ir.), 1854, 17 and 18 V. C. 103, although the occupier's usual residence was just out side the boundary of the town.—*Lawson* v. *Fraser*, 8 L. R. Ir. 55. Cf. *R. Exeter.*" See under *Inhabitant in Strand's Judicial Dictionary*, 2nd Edn. Vol. I *p.* 590.

Stall-keepers—in a market cannot legally be made to pay Latrine fees.—*Letter of Legal Remenr. No. 3440* dated 27. 9. 10., *to Commr., Burdwan Dn.*

Court Buildings.—Not exempted from payment of this tax.—*Beng. Govt. Munl. No. 1856 M.—20 Apl. 1900.* (Govt. Cir. Vol. III 2nd Edn. *p.* 997.)

Holdings valued less than six rupees.—Exemption of such holdings from latrine tax is not legal. The general power to exempt was taken away by the repeal of section 327, and in its stead power to exempt certain specified holdings, such as holdings which do not contain any dwelling house, and also jails, reformatories, &c., was given.—*Opinion of Leg. Rememr.* (Govt. Cir. Vol. III *p.* 1000).

In this and the following sections the word 'fee' has been retained. But the Hon'ble Mr. Bourdillon said "that the latrine tax is not a fee for services rendered, but it is a rate on holdings. It was proposed and at one time strongly pressed, that the tax should be a fee for services rendered, but the committee decided that it should continue to be a rate on holdings," (see *Cal. Gaz.* May 9, 1894, Sup. page 807).

Recovery of fees.

322. (*1*) The said fee shall be payable in quarterly instalments by the occupier for the time being of the holding or by the owner thereof if there is no occupier, or under the provisions of the next succeeding section, and shall be recoverable in the manner prescribed for the recovery of the rate on the value of holdings in this Act, and the provisions of section 110 shall be applicable.

(*2*) Every instalment of the said fee shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

(*3*) The net proceeds of the said fees, after deducting a proportionate share, to be fixed by the Commissioners in meeting, of the cost of the staff employed in collecting and in supervising the collection of the fees and in keeping and auditing the accounts thereof, shall be applied to the maintenance of the establishment referred to in section 320, and generally to carrying out the provisions of this Part.

(*4*) A list of the said fees, and of the persons liable to pay the same, shall be published once in every year as prescribed in section 354:

Provided that no such fee shall be levied in respect of any shop or place of business which does not contain any privies or cess-pools, when a fee under this Part is levied from the occupier thereof in respect of his dwelling-house within the same municipality.

Changes.

This section was substituted by sec. 88 of Beng. Act IV of 1894 for the original section and clause (3) was substituted for the old clause by sec. 16 of Beng. Act II of 896.

Notes.

Exemption of Latrine fee.—The Hon'ble the Legal Remembrancer in his letter No. 1265, dated 31. 5. 08, to the Commissioner of the Burdwan Dn. was pleased to say as follows:—"No power (of exemption or remission on account of poverty) has been conferred in the case of Latrine Fee. I must, therefore, with reluctance say that the Commissioners cannot remit the tax or any portion of it in any particular case on the ground of poverty. Though no doubt, with regard to public interest, leniency may rightly be exercised in the proceedings for the recovery of the tax in such cases". It is, however, submitted that although section 103 has not been expressly extended to this part as in the cases of the parts relating to the other subsidiary rates, the use of the expression, "and shall be recoverable in the manner prescribed for the recovery of the rate on the value of holdings in this Act" gives sufficient scope to the Commissioners for the exercise of their discretion. Justice Pargiter in his edition of the Act is also pleased to support this view, see *pp.* 252-53.

Cl. (1).—"Or by the owner thereof if there is no occupier" and "the provisions of section 110 shall be applicable" are new. These additions materially altered the existing law. Hitherto this fee was payable, except under certain circumstances, by the occupier only, and as such when there was no occupier it was remitted. But henceforth when any holding remains vacant for more than sixty consecutive days a remission of of half the fee only shall be allowed when notice of such vacancy is given and the other half shall be payable by the owner.

See notes to sec. 321.

It is to be noted that the lighting-rate is remitted wholly, and the water-rate one-fourth, in case of vacancy of a holding.

Secs. 120 to 129 provide the mode in which the rate on holdings is to be realized.

Holding—containing dwelling-houses, see sec. 320.

Sec. 110—remission or refund for vacancy upon notice.

Cl. (3).—The fund raised under this Part shall be a separate fund.

Publication under sec. 354.—By posting a vernacular copy in a conspicuous place in the office, and in public places by proclamation by beat of drum.

Shop or place of business.—See notes on *dwelling-house* under sec. 321. The proviso cannot by implication enlarge the scope of section 321. The expression, therefore, ought to be read as a shop or place of business used a dwelling-house.

Stall-Keepers—in a market can not legally be made to pay Latrine fees.—*Letter of Legal Rememr.* No. 3440, dated 27. 9. 10, to *Commr., Burdwan Dn.*

In certain cases fee may be levied from owner, who may recover from occupier.

323. If any holding is occupied in severalty by more than one person, the Commissioners may levy the said fee from the owner of such holding, who may recover from each occupier such sum as shall bear to the fee so levied the same proportion as the value of the part of the holding in the occupation of such person bears to the entire vaule of such holding.

Owner may recover fees from occupier as rent.

324. Every owner who, under the provisions of the last preceding section, is entitled to recover any sum from the occupier of any part of a holding,

shall have for the recovery of the said sum all such and the same remedies, powers, rights and authorities as if such sum were rent payable to him by the occupier in respect of such portion of the holding as may be in his occupation.

Commissioners may compound with occupier or owner of certain premises for fee.

325. The Commissioners at their discretion may compound, for any period not exceeding one year, with any occupier or owner as aforesaid of any railway premises or of any premises used as a factory, dockyard, workshop, cooly-depot, school, hospital, market, court-house or other similar place, for a certain sum to be paid by such occupier or owner in lieu of such fee.

Other similar place.—Evidently refers to "places of public resort", for construction of which *cf. Emperor* v. *Dwarkadas*, I. L. R. 30 Bom. 392.

Maximum limit.—The maximum limit of latrine fees leviable from holdings under section 321 is not applicable to the rate per head leviable under this section —*Opinion of Leg. Rememr.* (Govt. Cir. Vol. III *p.* 1000).

Commissioners may levy a rate per head.

326. The Commissioners may, in lieu of the aforesaid fee, levy a rate per head, to be fixed by the said Commissioners at a meeting, on the number of persons living within or habitually resorting to any such railway premises, factory, dockyard, workshop, cooly-depot, school, hospital, market, court-house or other similar place.

327, 328. [*Commissioners may reduce or remit fee; penalty.*] *Repealed by Beng. Act IV of 1894, section 89.*

Exemption from prosecution under section 217.

329. No person liable to pay a fee or rate under the provisions of this Part shall be punished with fine for neglecting or refusing to keep his privy in a proper state under section 217 clause (3).

Powers of servants of Commissioners.

330. All servants of the Commissioners employed for the purposes of this Part may, within such hours as may be fixed by the Commissioners, enter on any premises of which the occupier or owner is liable to pay a fee or rate as aforesaid, and do all things necessary for the performance of their duties under this Part.

Commissioners may require nightmen to take out licenses.

331. The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licenses, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits.

The Commissioners at a meeting may grant such licenses subject to such conditions as they may think fit, and may impose fees in respect of the same.

Subject to the approval of the Local Government, the Commissioners may make rules to define the duties of such persons, and from time to time may alter, add to or repeal such rules; and any breach of such rules shall subject the offender to a forfeiture of license, and to a fine not exceeding twenty rupees.

'Sewage' see sec. 6, cl. (17).

Commissioners may require latrine to be constructed, and in default may construct themselves.

332. If the Commissioners think that any latrine or additional or common latrine should be provided for any house or land within the limits of the municipality, the owners of such house or land shall, within fourteen days after notice given by the Commissioners, or within such longer time as the Comissioners may for special reasons, allow, cause such latrine to be constructed in accordance with the requisition of such notice; and, if such latrine is not constructed to the satisfaction of the Commissioners within such period, the Commissioners may cause the same to be constructed, and the expenses thereby incurred shall be paid by the owners, and shall be recoverable as provided in section 322.

Latrine.—The Hon'ble Mr. Bourdillon makes a distinction between a *latrine* and a *privy*,—"the former imports public convenience and the latter applies to private places" (See *Cal. Gaz.*, May 9, 1894, Sup. page 807). The distinction appears to have been overlooked in this section.

Recoverable under sec. 322.—As a rate on the valuation of holdings (see secs. 120 to 129).

333. The Commissioners may, for the purposes of this Part, by a notice in writing, require the owner or occupier of any holding to furnish, within a time to be specified in the notice, a list of the number of persons residing in, or habitually resorting to, such holding.

Commissioners may require list of persons in a holding.

334. Whoever, being the owner or occupier of any holding, fails to furnish such list within the time specified in such notice, after being required to furnish the same by the Commissioners, shall be liable to a fine not exceeding one hundred rupees.

Penalty.

As to procedure for institution of prosecutions and trial, see notes under *Penalties* (pp. 219-20) & sec. 217.

334A. The provisions of this part shall not apply to any jail, reformatory or lunatic asylum in which an establishment is maintained for the cleansing of privies and cesspools therein.

Exemption of jails, &c.

This section is new and has been added by sec. 90 of Beng. Act IV of 1894.

PART X.

Regulation of Markets.

335. In any municipality to which this Part shall have been extended in the manner prescribed by section 222, the Commissioners at a meeting may provide land for the

Power to construct market.

purpose of being used as a municipal market, and may defray the cost of providing such land and of all expenses necessary for the establishment of such market from the municipal fund, and may take a lease of any market;

and may charge rent, tolls and fees for the right to expose goods for sale in such market and for the use of shops, stalls and standings therein.

All such rents, tolls, and fees may be recovered as arrears of tax under the provisions of sections 120 to 129 (both inclusive).

Definition of "municipal market" and "market".

336. No place shall be deemed to be "a municipal market" within the meaning of the last preceding section, and no place shall be deemed to be a market to which the following sections of this Part apply, unless at least thirty shops, stalls or standings are erected, therein for the sale of goods.

Commissioners may prohibit use of unlicensed markets.

337. The Commissioners at a meeting may order that, within such limits as they may fix, no land shall be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetables and similar provisions, otherwise than under a license to be granted by the Commissioners.

The Chairman's certificate—is indispensable for the grant of a license.

Market—For definition of, sec. 336.

Order.—The order must be in terms of the provisions of this section and sufficiently precise so as to convey a definite meaning, and not a mere repetition of the Government order extending this Part.—*Queen Empress* v. *Mukunda Chunder Chatterjee*, I. L. R. 20 Cal. 663.

Similar provisions—*i. e.*, provisions which are usually described as perishable articles, see I. L. R. 17 Cal. 329 (330).

Penalty.—See sec. 344.

Power to grant licenses for markets.

338. When the Commissioners at a meeting shall have is sued an order under the last preceding section, they may at a meeting grant a license for the use of any land as a market for the sale of provisions as aforesaid within the municipality.

Market—defined in sec. 336.

May grant.—It is within the discretion of the Commissioners to grant or refuse a license, except as regards markets existing at the time of the extension of this Part to the municipality (sec. 339,) and the Civil Courts have no jurisdiction to control such power, however arbitrarily exercised.—*Moran* v. *Chairman of the Motihari Municipality*, I. L. R. 17 Cal. 329. The **existence** of a municipal market or of an **adjoining** market however will be **no ground** for refusing a license to a rival market. See *Queen Empress* v. *Mukunda Chunder Chatterjee*, I. L. R. 20 Cal., 663. See notes to sec. 339.

Duration of licenses and terms on which granted.

339. Every license granted under this Part shall be liable to the payment of a fee not exceeding twenty-five rupees, and shall be in force until the end of the year, and the Commissioners shall, as regards markets lawfully established at the time of the extension of this Part to the municipality, and in all other cases may grant such license, year by year, on the certificate in writing under the hand of the

Chairman, annually renewed, that the land is fit to be used as a market for the sale of provisions as aforesaid.

Changes.

The words "shall, as regards markets lawfully established at the time of the extension of this Part to the municipality, and in all other cases" after the word "Commissioners" are new and have been added by sec. 91 of Beng. Act IV of 1894.

Notes.

Scope of the change.—This addition makes it obligatory upon the Commissioners at a meeting to grant a license to markets existing at the time of the extension of this Part, but the law remains unchanged with regard to license for new markets.

Reason thereof.—The Legislature had in view the following remarks of the Hon'ble Mr. Justice Pigot in *Moran* v. *Chairman of the Motihari Municipality* (I. L. R. 17 Cal. 329.) :—

"There is no doubt that the powers possessed by the municipality under Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the municipality of doing those acts destructive of the plaintiffs' property, and yet no remedy or no right was allowed by the Act to persons in the position of the plaintiffs in case of the Act being so used to the destruction of their property." The learned Judge after holding that the question must be answered in the affirmative, further observed, "we think that it is most lamentable that Acts should be drawn, as they too often are, without that intelligent consideration of, or that anxious regard for, private rights which ought be the study of every Legislature that springs from English authority."

The Commissioners—evidently means the Commissioners at a meeting. See sec. 338.

Certificate.—See sec. 340.

May grant.—The decision of the Commissioners at a meeting, exercising their discretion in refusing a license, in the case of a new mar-

ket, even if the Chairman gives the necessary certificate, is final and cannot be questioned by the Civil Court, nor can it issue a mandatory order compellig them to do their duty, and restraining them from doing that which it is not in their province to do.—*Moran* v. *Chairman of the Motihari Municipality*, I. L. R. 17 Cal. 329; *Queen Empress* v. *Mukunda Chunder Chatterjee*, I. L. R. 20 Cal., 65. Cf. *Ganga Narain* v. *The Municipal Board of Cawnpore*, I. L. R, 19 All. 313.

See also *Govt. Lett. para. 37 App. p. 15a.*

Chairman bound to certify fit places.

340. The Chairman, upon the application in writing of the owner of any land, shall grant such certificate unless the land be defective for the purposes of a market in drainage, ventilation, water-supply or proper width of paths and ways.

Existing markets.

The owners or lessees of all land used as markets for the sale of provisions as aforesaid at the time of the extension of this Part to the municipality, shall be entitled to receive a license for the current year without the certificate required by section 339, but in subsequent years the license shall not be renewed without such certificate.

As to drainage, water-supply, &c., see sec. 249.

Market.—see sec. 336.

Licenses to be registered.

341. Every license under this Part shall be registered in a book to be kept for that purpose by the Commissioners in their office, in which shall be stated—

(*a*) the name and address of the owner of the land and market;

(*b*) the name and address of the lessee thereof (if any);

(*c*) the extent and boundary of the market;

(*d*) the description of articles sold therein; and

(*e*) the days on which the market will be held.

Transfers to be registered.

342. Every transfer of interest in any such market shall be registered within two months after the date of transfer.

Effect of non-registration of transfer.—see sec. 343.

Unregistered markets to be deemed unlicensed.

343. Any market the license of which, or the transfer of interest in which, shall not have been duly registered under the two last preceding sections, shall be deemed to be land used as a market without a license.

Penalty for using unlicensed market.

344. Whoever, being the owner or occupier of any land, wilfully or negligently permits the same to be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetables or similar provisions without a license under section 338, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees for each day during which the offence is continued, after conviction of such offence.

Failure to take out a license is a continuous offence. See sec. 353 para. (2).

Daily fine—See notes to sec. 218.

Market—See sec. 336, for the definition of. Cf. also *Abu Baker* v. *The Municipality of Negapatam*, I. L. R. 29 Mad. 185, and *Emperor* v. *Budhoobai*, I. L. R. 30 Bom. 126.

Power to close unlicensed places.

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

PART XI.

Of the Registration of Births and Deaths.

Registration of births and deaths.

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

347. The Local Government may require the Commissioners of any municipality to appoint and maintain at any burning-ghat and burial-ground a sub-registrar for the registration of all corpses brought to such burning-ghat or burial-ground for cremation or interment.

On requisition of Government, Commissioners to appoint sub-registrars at burning-ghats and burial-grounds.

348. Whenever a sub-registrar shall have been appointed for any burning-ghat or burial-ground under the last preceding section, information of the particulars required by section 8 of Bengal Act IV of 1873 to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such sub-registrar, and information so given shall be deemed to be information given to the registrar of the district as required by the said section.

Information required by Bengal Act IV of 1873 to be given to such subregistrar.

Section 9 of Bengal Act IV of 1873 shall be applicable to all sub-registrars appointed under this Act.

349. Whenever a death shall occur in any hospital within the limits of any municipality in respect of which the Local Government has directed that all deaths shall be registered under Bengal Act IV of 1873, it shall be the duty of the medical officer in charge of such

Information of deaths in hospitals.

hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe; and in such case no other person shall be required to give information of such death to a registrar under Bengal Act IV of 1873 or to a sub-registrar under this Act.

PART XIA.

Extinction and Prevention of Fire.

This part is new and has been added by sec. 92 of Beng. Act IV of 1894.

The provisions of this Part have been mostly taken from the Punjab Municipal Act.

Establishment and maintenance of fire-brigade.

349A. For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire-brigade and to provide any implements, machinery, or means of communicating intelligence which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

Power of fire-brigade and other persons for suppression of fires.

349B. (1) On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, the Secretary to the Commissioners, any member of a fire-brigade maintained by the Commissioners, then and there directing the operations of men belonging

to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any police officer above the rank of constable may—

(*a*) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property;

(*b*) close any street or passage in or near which any fire is burning;

(*c*) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any hose or other appliance, any premises;

(*d*) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred;

(*e*) call on the persons in charge of any fire-engine to render such assistance as may be possible;

(*f*) generally take such measures as may appear necessary for the preservation of life or property:

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) of this section in good faith.

PART XII.

Miscellaneous.

Power to make bye-laws.

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

(*a*) regulating traffic, and for the prevention of obstructions and encroachments, and of nuisances on or near roads;

(*aa*) prohibiting the letting-off of fire-arms, fire-works, fire-balloons or bombs, except (*i*) with the permission of the Commissioners or a member of the ward committee or a municipal officer empowered by the Commissioners in this behalf, and (*ii*) on payment of fees at such rates as may be sanctioned by the Commissioners at a meeting;

(*b*) regulating the use of, and the prevention of nuisances in regard to, public water-supply, bathing and washing-places, streams, channels, tanks and wells;

(*c*) regulating the disposal of sewage, offensive matter, carcasses of animals and rubbish,

and the management of privies, drains, cess-pools and sewers;

(*d*) regulating cremations and burials and the disposal of corpses;

(*e*) preventing nuisances affecting the public health, safety or convenience; and

(*f*) giving effect to the objects of this Act;

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

Changes.

Clauses (*a*) to (*f*) were substituted for the words "for giving effect to the objects of this Act" by sec. 93 of Beng. Act IV of 1894. Clause (*aa*) was added by sec. 17 of Beng. Act II of 1896.

Notes.

See *Beni-Madhab Nag* v. *Mati Lal Dass*, I. L. R. 21 Cal. 837 and notes under sec. 2. The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India—*Emperor* v. *Bal Kishan*, I. L. R. 24 All. 439. A bye-law must conform with provisions of the enactment under which it purports to be made. *Narain* v. *Corporation of Calcutta*, 10 C. L. J. 623, 14 C. W. N. 614, I. L. R. 37 Cal. 545.

Cf. *Ramautar Sahu* v. *Arrah Municipal District Board*, 11 C. W. N. 1099. Cf. *Tribhovan* v. *Ahmedabad Municipality* (I. L. R. 27 Bom. 221) in which **Chandavarkar J.** discusses at length the principles upon which the legality or otherwise of bye-laws should be construed. Among

PART XII.

Miscellaneous.

Power to make bye-laws.

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

(*a*) regulating traffic, and for the prevention of obstructions and encroachments, and of nuisances on or near roads;

(*aa*) prohibiting the letting-off of fire-arms, fire-works, fire-balloons or bombs, except (*i*) with the permission of the Commissioners or a member of the ward committee or a municipal officer empowered by the Commissioners in this behalf, and (*ii*) on payment of fees at such rates as may be sanctioned by the Commissioners at a meeting;

(*b*) regulating the use of, and the prevention of nuisances in regard to, public water-supply, bathing and washing-places, streams, channels, tanks and wells;

(*c*) regulating the disposal of sewage, offensive matter, carcasses of animals and rubbish,

and the management of privies, drains, cess-pools and sewers;

(*d*) regulating cremations and burials and the disposal of corpses;

(*e*) preventing nuisances affecting the public health, safety or convenience; and

(*f*) giving effect to the objects of this Act;

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

Changes.

Clauses (*a*) to (*f*) were substituted for the words "for giving effect to the objects of this Act" by sec. 93 of Beng. Act IV of 1894. Clause (*aa*) was added by sec. 17 of Beng. Act II of 1896.

Notes.

See *Beni-Madhab Nag* v. *Mati Lal Dass*, I. L. R. 21 Cal. 837 and notes under sec. 2. The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India—*Emperor* v. *Bal Kishan*, I. L. R. 24 All. 439. A bye-law must conform with provisions of the enactment under which it purports to be made, *Narain* v. *Corporation of Calcutta*, 10 C. L. J. 623, 14 C. W. N. 614, I. L. R. 37 Cal. 545.

Cf. *Ramautar Sahu* v. *Arrah Municipal District Board*, 11 C. W. N. 1099. Cf. *Tribhovan* v. *Ahmedabad Municipality* (I. L. R. 27 Bom. 221) in which **Chandavarkar J.** discusses at length the principles upon which the legality or otherwise of bye-laws should be construed. Among

others the following observations of the learned judge deserve special notice ;—" In virtue of this power (power to make bye-laws not inconsistent with the Act *relating to municipal administration*) the municipality makes certain rules empowering it to order other things than those specified in the Act itself. The bye-law ordering these other things can be repugnant to or inconsistent with the Act only if it *alters* and thereby contradicts the Act. 'A bye-law is a local law, and may be supplementary to the general law, it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general law by making that lawful which the general law makes unlawful, or that unlawful which the general law makes lawful (*per* Channel J. in *White* v. *Morley* 1899, 2 Q. B. 34 at *p.* 39)" *p.* 256.

See *Govt. Lett. para. 39 App. p.* 16*a*.

Additional power to make bye-laws in hill-municipalities,

350A. The Commissioners of a municipality, wholly or in part situated in a hilly tract may, at a meeting, in addition to such bye-laws as they may make under the last preceding section, make, repeal or alter bye-laws—

for regulating or prohibiting the cutting or destroying of trees or shrubs or the making of excavations or removal of soil or quarrying, where such regulation or prohibition appears to the Commissioners to be necessary for any or all of the following purposes :—

(*a*) the maintenance of a water-supply ;

(*b*) the preservation of the soil ;

(*c*) the prevention of landslips ;

(*d*) the formation of ravines or torrents ;

(*e*) the protection of land against erosion or the deposit thereon of sand, gravel or stones.

This section is new and has been added by sec. 94 of Beng. Act IV of 1894.

See *Govt. Lett. para. 39 App. p. 16a.*

Confirmation of bye-laws.

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

unless one month at least before the making of the application notice of the intention to apply for confirmation has been given in one or more of the local newspapers circulated within the municipality to which such bye-laws relate, or if there be no such newspapers, then in such manner as the Commissioners may direct; and unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the Commissioners, and has been open during office hours thereat to the inspection of the inhabitants of the municipality to which such bye-laws relate, without fee or reward.

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

The Local Government may cancel its confirmation of any such bye-law, and thereupon the bye-law shall cease to have effect.

Local Government may cancel its confirmation of any bye-law.

Changes.

By section 95 of Beng. Act IV of 1894 the last paragraph has been substituted for "a bye-law requiring confirmation by the Local Government shall not require confirmation, allowance or approval by any other authority."

Notes.

Procedure to be followed in making bye-laws.

1. All proposed bye-laws must first be considered and approved by the Commissioners at a special meeting under section 350 or section 350A, as the case may be, of the Act.

2. Notice of the intention to apply for confirmation of the proposed bye-laws must be given as prescribed in sections 351 and 354.

3. A copy of the proposed bye-laws must be kept at the office of the Commissioners as prescribed by section 351.

4. The proposed bye-laws, and the notice referred to in rule 2, must be translated, deposited, posted up and proclaimed as prescribed by section 354.

5. The proposed bye-laws may then be submitted for confirmation, under section 351, to the Local Government, through the Commissioner of the Division.

6. The proposed bye-laws (after such revision, if any, as the Local Government may consider necessary) will be published by the Local Government in draft in the *Calcutta Gazette*. Any objection or suggestion received within a month after such publication will be considered, and the bye-laws as then approved and confirmed will be finally published in the *Gazette*.

7. The bye-laws as finally confirmed by the Local Government must also be translated, deposited, posted up and proclaimed within the municipality, as prescribed in section 354 of the Act.

Draft bye-laws and rules—are to be submitted direct to the Local Government in the Municipal Department and not to the Legal Remembrancer, as it is no longer the duty of the Legal Remembrancer to examine them.—B. G. M. Cir. No. 11 T. M., August 20, 1907.

Procedure for submission for sanction.—Three additional copies of draft bye-laws and rules are to be submitted in all cases in which such drafts are in type-writing or print, and one additional copy only when they are submitted in manuscript. *B. G. M. Cir. No. 28 M. November 23, 1907 to Comrs. of Dns. (communicating B. G. Cir. No. 179 T. Nov.* 19, 1907).

Power to make rules as to business and affairs.

351A. (*1*) The Commissioners at a meeting may from time to time make, repeal or alter rules as to—

(*a*) the time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given;

(*b*) the conduct of proceedings at meeting the due record of all dissents and discussions, and the adjournment of meetings;

(*c*) the custody of the common seal;

(*d*) the division of duties among the Commissioners, and the powers to be exercised by sub-committees or members to whom particular duties are assigned;

(*e*) the persons by whom receipts shall be granted for money received under this Act;

(*f*) the duties, appointment, leave, fining, suspension and removal of municipal officers and servants;

(*g*) and other similar matters :

(*z*) Rules made under this section, consistent with this Act, shall be subject to the sanction of the Local Government, and shall, if sanctioned, be published in such manner as the Local Government may direct, and shall have the force of law.

Changes.

This section was added by sec. 96 of Beng. Act IV of 1894. It is based upon section 32 of the Local Self-Government Act III (B. C.) of 1885. Clause *(f)* has been substituted by sec. 18 of Beng. Act II of 1896.

Notes.

In a municipality, which had adopted, under this section, rule 33 of the Model Rules framed by the Local Government, the question of appointing a paid assessor under section 46 was raised by one of the Commissioners as an amendment to a substantive proposition and such amendment was lost. Within six months, however, the question was again raised as a substantive proposition, without the requisition of two-thirds of the Commissioners and carried. Upon a contention that the appointment of an assessor in terms of such a resolution was *ultra vires*, it was *held* that the subject of the appointment of the assessor had not been "finally disposed of" in the previous meeting and that, therefore, its reconsideration in the subsequent meeting was permissible, *Chairman of Chittagong Municipality* v. *Jogesh Chandra Rai*, I. L. R. 37 Cal. 44.

See *Govt. Lett. para.* 39 *App. p.* 16*a*.

For Model Rules of Meetings see *App. p.*

As to submission of rules under this section for sanction by the Local Government see notes to section 351.

Commissioners may direct prosecution for public nuisance, &c.

352. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties

under this Act, and for the punishment of any person offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.

Public nuisance.—for the defination of, see sec. 268, Indian Penal Code.

Not legalized by length of time.—No one has a right to corrupt the air of a particular locality by the exercise of a noxious trade, simply because, at the commencement of the nuisance, no persen was in a position to be injured by it ; and no prescriptive right can be acquired to maintain, and no length of time can legalize a public nuisance, *Municipal Commissioners of the Suburbs of Calcutta* v. *Ruhomotollah*, 14 W. R. 67, C. R. *Cf. Preo Nath Dey* v. *Gobordhone Malo*, I. L. R. 25 Cal. 278.

There can be no prescription to send sewage into a public river.—*Gale*, 484, note.

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

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

Provided that the failure to take out any license under this Act shall be deemed to be a continuing

offence until the expiration of the period for which such license is required to be taken out.

Changes.

The word 'six' has been substituted for 'three' by sec. 97 of Beng. Act IV of 1894.

Notes.

Consent of Commissioners.—Commissioners in this section means the Chairman or the Vice-Chairman, delegated with the powers of the Chairman ; *see* secs. 44 and 45 and notes thereunder.

Sanction of Government.—On a reference made by the Municipal Magistrate of Calcutta asking the opinion of their Lordships as to whether the Administrator-General of Bengal, who was in charge of certain premises appertaining to an estate not by virtue of his office but by virtue of his appointment by the Court as administrator to the estate, could be prosecuted without the sanction of Government under sec. 197 of the Criminal Procedure Code for failing to comply with a requisition under the Calcutta Municipal Act (Beng. III of 1891), it was held that no sanction was necessary in the case, *Municipal Corporation* v. *Administrator-General of Bengal*, 7 C. W. N. 750.

Institution of Prosecution.—As to court-fee, &c., see notes under *Penalties* (*pp.* 219-20).

Continuous offence.—The Legal Remembrancer in his letter No. 416, dated 12th March, 1874, to the Secretary, Howrah Municipality, expressed his opinion that when an offence is repeated, every successive act is an offence.

In the case of an obstruction or encroachment a person would be liable if he continued it within six months of the prosecution, and a prosecution may be continued for each day until he removes the obstruction.

Continuation of offence.—See *Corporation of Calcutta* v. *Jadub Doolay*, I. L. R. 20 Cal. 665.

Offence under this Act.—The powers conferred upon the Commissioners by this section are restricted to the prosecution for offences under this Act or bye-laws framed under it. So where the Chairman of a municipality ordered a prosecution under sec. 199 of the Indian Penal

Code, the High Court held that the Commissioners had no power to institute such a prosecution, *Abdul Rahaman* v. *Chandi Persad*, I. L. R. 22 Cal. 131.

Limitation.—In the case of a continuous offence, a prosecution instituted six months after the fact of its commission being brought to the notice of the Chairman is barred by the provision of this section, *Lutti Singh* v. *The Behar Municipality*, 1 C. W. N. 492. This section bars all prosecutions under the Act or under any bye-law unless they are instituted within *three* (*six*) months next after the commission of such offence or within *three* (*six*) months of the date when such commission of the offence is brought to the knowledge of the Chairman, *Bidhu Bhusan Mullick* v. *Asansole Municipality*, 6 C. W. N. 167. Compare *Kumud Kumari Dasi* v. *Corporation of Calcutta* (I. L. R. 34 Cal. 909) as to construction of the rule of limitation (11 C. W. N. 1097); cf. *Emperor* v. *Nadirsha*, I. L. R. 29 Bom. 35.

Court-fee.—Petitions of complaint by municipal officers are not chargeable with Court-fee.—*See* sec. 19, cl. xviii, Court Fees Act (VII of 1870).

Commission of offence.—Cf. *Corporation of Calcutta* v. *Keshub Chunder Sen* (8 C. W. N. 142), *Chuni Lal Dutt* v. *Corporation of Calcutta* (11 C. W. N. 30, 4 Cr. L. J. 408), *Sarat Chundra Mukerji* v. *Corporation of Calcutta* (14 C. W. N. 591, I. L. R. 37 Cal. 384) in which it has been held that the limitation prescribed in section 631 of the Calcutta Municipal Act relates only to prosecution for an offence under the Act; and as proceedings in the Magistrates' Court for the enforcement of requisitions under the Act are not prosecutions for commission of offence, the bar of limitation does not apply to such proceedings. See **Proceedings before the Magistrate** under secs. 202, 203, 204 & 233.

Publication of bye-laws.

354. Every bye-law, order, notice or other document directed to be published under this Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous posi-

tion at such office, and in such other public places as the Commissioners may direct.

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

Levy of fines.

355. Fines under this Act may be imposed by a Magistrate on any person who is convicted of the offence to which the fine attaches, and may be levied under the provisions of the Code of Criminal Procedure, 1882.

Procedure, &c.—See under *Penalties* (*pp.* 219-20).

Disqualification of Magistrate.—A Magistrate who is personally concerned in the prosecution or who is a salaried officer of the municipality is disqualified from trying a case under this Act.—See sec. 555 Cr. P. Code, *Khurack Chand Pal* v. *Taruck Chunder Gupta*, I. L. R. 10 Cal. 1030 and *Nobin Kristo Mukerjee* v. *The Chairman of the Suburban Municipality*, I. L. R. 10 Cal. 194.

The mere fact that a Magistrate is the Vice-President of a District Municipality and Chairman of the managing committee does not disqualify him from trying a charge of an offence brought by the municipality under Bombay Act VI of 1873. But if he has taken any part in promoting the prosecution, as for instance by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by every municipal Commissioner in the affairs of the municipality.—*Queen Empress* v. *Pherojsha Pestonji*, I. L. R. 18 Bom. 442; see also *The Queen* v. *Lee*, 9 Q. B. D. 394 and *The Queen* v. *Handly*, 8 Q. B. D. 388.

In the unreported case of *Empress.* v. *Sutto Churn Chatterjee*, who was prosecuted under sec. 273, clause 2, of the Bengal Municipal Act before a Bench of Magistrates, presided over by a gentleman who was

the Chairman of the municipality, Banerji J, *held* that the disqualification created by sec. 555, Cr. P. Code, holds good in his case and the exception introduced by the explanation does not apply to it. His Lordship was pleased to observe "the gentleman, who presided over the Bench that tried the accused, was something more than a mere municipal Commissioner. He was the Chairman of the municipality, and as such the executive head of that body and it was under his orders that the prosecution was instituted".—*Amrita Bazar Patrika*, Oct. 19, 1894. See also *Queen Empress* v. *Erugudu*, I. L. R. 15 Mad. 83.

In the case of *Wood* v. *The Corporation of the Town of Calcutta*, (I. L. R. 7 Cal. 322) it was held that the proceedings and ultimate conviction of A were illegal, in as much as B being a servant of the prosecutor, *i. e.*, the Corporation, had such an interest as might give him a bias in the matter, and that consequently he ought not to have sat as Justice of the Peace, either at the granting or upon the hearing of the summons.

Extends to appeals.—A Magistrate, who is also the Chairman of a municipality, is no less disqualified to try a case sanctioned by the Vice-Chairman, who acts with delegated authority. The expression "try any case" in sec. 555 of the Cr. P. Code is comprehensive enough to include the hearing of an appeal.—*Nistarini Debi* v. *A. C. Ghosh* I. L. R. 23 Cal. 44.

Code of Criminal Procedure, 1882—was repealed by the Code of 1898 (India Act V of 1898).

356. Every notice, bill, form, summons or notice of demand under this Act may be served personally on or presented to the person to whom the same is addressed ;

How notice, &c., may be served.

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

or, if it cannot be so served, presented or delivered, may be put on some conspicuous part of his place of abode ;

or of the land, building or other thing in respect of which the notice, bill, form, summons or notice of demand is intended to be served.

The notification under sec. 180 is to be posted on or near the spot where the acts required are to be executed.

Service of notice on owner or occupier of land.

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

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

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

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

For the definition of the term **owner** see sec. 6, cl. (11).

Tax not invalid for want of form.

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

Notes.

In a case under the Calcutta Municipal Act, in which the corporation had distrained moveables without previous presentation of bills or notice of demand, it was *held*, in view of section 225 of the Act, the wording of which is somewhat similar to this section, that the omission to present bills and notice of demand amounted to a mere irregularity and the distress which was levied could not on that account be deemed unlawful, *Bipin Chand Biswas* v. *The Corporation*, I. L. R. 31 Cal. 452 (472).

Holder of license to produce it when required.

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

Penalty.

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

Recovery of moneys due to the Commissioners.

360. All costs, expenses, fees, tolls or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 120 to 129 (both inclusive).

Note.

Compare *Abdul Azeez Shahib* v. *Cuddapah Municipality* (I. L. R. 26 Mad. 475) wherein it has been *held* that money due under a contract entered into with a municipality for the right to collect tolls in consideration of money payment is neither "rent" nor "toll" and as such the summary procedure of the Act for its realisation is not applicable to such a case.

Power to sell unclaimed holdings for money due.

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

After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the municipal fund and may be paid on demand to any person who establi-

shes his right to the satisfaction of such Commissioners or in a court of competent jurisdiction.

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

Compensation for damages.

362. The Commissioners may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

Damage.—Evidently means actionable damage *i. e.*, loss caused by an unauthorised interference with private rights resulting in a breach of law (*See Underhill on Torts, page 7*).

Scope of the section.—This section gives power to the *Commissioners* to make compensation for any damage caused to any person by any act done in pursuance of the powers conferred by this Act, and to compromise any suit or threatened action for damages which any person may have sustained by reason of their exercising their statutory powers in excess or violation thereof. It is not the intention of the Legislature that it should apply to every case of damage even where there is no improper exercise or breach of the statutory powers. In the case of *Moran* v. *Chairman of Motihari Municipality*, (I. L. R. 17 Cal. 329) the Subordinate Judge found that the Commissioners in refusing license had acted legally and in proper exercise of their powers, and also found that the plaintiffs had suffered loss of income from their market in consequence of such refusal, and was of opinion that the refusal of the license was an act done in the exercise of powers conferred by the Act within the meaning of sec. 362, and that under secs. 362 and 363 the Court could award compensation. The High Court (Pigot and Rampini JJ.) was pleased to observe "we must be satisfied that it was the duty of the Municipality under the provisions of the Act to issue the license which they refused; for breach of such a duty they might per-

haps be liable in damages. **The Municipality was legally entitled to refuse the renewal of the license. **It is impossible that that order of the Subordinate Judge can be sustained. We therefore set it aside".

A corporation, having a statutory obligation imposed upon them to repair and maintain the roads, were liable for a breach of their duty; so that where there is a dangerous obstruction, *a fortiori* where such dangerous obstruction results from a permission accorded by the Commissioners they are to be held liable for damage caused by it. The fact that the Commissioners gave permission to another person to open up the road, although for a perfectly proper purpose, would not relieve them from their statutory duty.—*Corporation of Calcutta* v. *Anderson*, I. L. R. 10 Cal. 445.

The Commissioners are liable for the act of their contractor, and where the work is necessarily attended with risk, they cannot free themselves from their liability by employing a contractor.—*Dhendiba Krishanaji* v. *The Municipal Commissioners of Bombay*, I. L. R. 17 Bom. 307.

In the case of *Ullman* v. *The Justices of the Peace for the Town of Calcutta*, (8. B. L. R. 263), it was, however, held that if a person has to do a lawful act, and he employs a competent person to do that lawful act, and damage occurs, the original employer is not liable. In the Bombay case just cited, it was pointed out that the law has since been modified by English decisions. See *Dalton* v. *Angus*, 6 Ap. Cas. 740.

In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held by the High Court (*per* Henderson J.) that the Corporation having granted, after due inquiry, sanction to erect a building, is not entitled, in an action for damages caused by the withdrawal of the sanction, to plead in defence that its officer made a mistake, and that the sanction was not binding.—*Tullaram* v. *The Corporation of Calcutta*, I. L. R. 30 Cal. 317.

Whether a suit for damages for malicious prosecution lies against a Corporation is a question not free from doubt. "In *Edwards* v. *Mid. R. Co.* (6 Q. B. D. 987) it was held by Fry J. that a Corporation was capable of malice. On the other hand, in *Abrath* v. *N. E. R. Co.* (11 App. Cas. 247), Lord Bramwell strongly supported the opposite view, but this was only a dictum, and not necessary to the determination of the case".—*Underhill* on Torts, p. 145.

No action to be brought against the Commissioners or their Officers until after one month's notice of cause of action.

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

and unless such notice be proved, the Court shall find for the defendant.

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

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

Anything done under the Act.—See notes to section 29—"Jurisdiction of Courts".

Cause of suit and **cause of action**—seem to mean the same thing. Compare with this section 634, cl. (1) of the Calcutta Municipal Act and the interpretation given to it in *Corporation of Calcutta* v. *Shyama Charan Pal*, I. L. R. 32 Cal. 277, 9 C. W. N. 217.

The plaintiff's cause of action accrued on August 30; he served the notice under this section on October 28, filed the plaint on November 28, which was returned and refiled on December 1. The objection that the suit was premature was not taken in the written statement but in the course of argument: *Held*, that, if the suit he considered to have been instituted on December 1, it was barred by limitation, and, if it be considered to have been instituted on November 28, it was premature by one day under the 1st paragraph.

Held, further, that a plea of want or insufficiency of notice may be taken in the course of argument, though not taken in the written statement, *Bisambhar Lal* v. *Chairman of the Municipal Board of Chupra*, 5 Ind. Cas. 81.

Damages.—In the case of *Chunder Shekhur Banerji* v. *Abhoy Churn Bagchi*, (I. L. R. 6 Cal. 8, F. B.) Garth, C. J., *held* "that section, (that is, section 87 of Act III of 1864) as it seems to us, is applicable only in those cases where the plaintiff claims damages for some wrongful act committed by the Commissioners or their officers in the exercise, or the honestly supposed exercise of their statutory powers". In the case of *Sudhangshu* v. *Bejay Kali* (3 C. L. J. 376), which was one for declaration that a tax inposed was not binding for reasons stated, Maclean, C. J., was pleased to hold that the construction put upon section 87 of the Act of 1864, which does not differ from the present, by the Full Bench in the case of *Chunder Shekhur* was binding upon him; although his lordship expressed a doubt whether he would have arrived at the same conclusion, if the matter had come before him *res integra*. *Cf. Greenway* v. *The Municipal Board of Cawnpore*, I. L. R. 28 All. 600, and *Mahamahopadyaya Ranga Chariar* v. *The Municipal Council of Kumbakonam*, I. L. R. 29 Mad. 539 (545). See also *Bhoirab Chundra Banerjee* v. *Makgill*, 17 W. R. 215. In the case of *Moti Lal Bose* v. *The Howrah Municipality*, 23 W. R. 222, the defendant corporation had prosecuted the plaintiff for allowing a piece of land to be covered with jungle and night-soil, and had procured the infliction on him of a fine which they realized by the attachment and sale of his moveable property. The plaintiff brought the suit for the value of the goods and for damages. It was held that the suit could not be maintainable. The Municipal Commissioners are liable to be sued for damages for any breach of their statutory duty which results in injury. See *The Corporation of the Town of Calcutta* v. *Anderson*, I. L. R.

10 Cal. 445. The words "anything done" in the section refers to *tortious acts* and not to any act arising out of a *contractual* or *quasi-contractual* basis. Accordingly a suit for the refund of money paid under protest can be maintained without a notice under this section, *Ambica Charan Mazumdar* v. *Satish Chundra Sen*, 2 C. W. N. 689. No notice under this section is required to bring a suit for restitution of lands taken over by a Municipality.—*In Re Chairman of Bhagalpur*, 3 C. L J. 54*n*. In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held (*per* Henderson J.) that the corporation having withdrawn a sanction on the ground that the plaintiff had not complied with what it believed to be his undertaking, the withdrawal of the sanction was not done, nor did it purport to have been done under the Act; and the suit for damages having been based upon such withdrawal, the special limitation provided in the Act did not apply, *Tullaram* v. *The Corporation of Calcutta*, I. L. R. 39 Cal. 317. This section does not apply to suits for recovery of land. See *Price* v. *Khelat Chandra Ghose*, 5 B. L. R. App. 50, *The Municipal Committee of Moradabad* v. *Chatri Sing*, I. L. R. 1 All. 269 and *Poorna Chundra Rai* v. *Balfour*, 9 W. R. 535 It is doubtful whether a notice under this section is necessary when a suit is not for "anything done" under the Act, but for something left undone, which a municipality is bound to do, *Peary Mohan Mukerjee* v. *Ambica Charan Bandopadhya*, I. L. R. 24 Cal. 900 (903).

Notice.—A suit was brought to recover from the Municipal Commissioners of Madras the balance of a sum of money due for timber supplied under a contract duly made with them. *Held* that the pliantiff was entitled to sue on the breach of contract without giving notice.—*Mayandi* v. *McQuhae*, I.L.R. 2 Mad. 124. In a case under the corresponding section of the Bombay Act, a notice alleging a cause of action to have arisen out of the acts of the servants and agents of the Commissioners and not out of the acts of a contractor, was considered to have been sufficient. The section requires the notice to state with reasonable particularity the cause of action.—*Dhondiba Krisnaji and others* v. *The Municipal Commissioners of Bombay*, I. L. R. 17 Bom. 307.

The Municipal Commissioners are entitled to one month's notice of action when they have been acting *bona fide*, in the belief that they were exercising powers given to them by that Act; not if their proceedings were not justified by that Act, and only colourably done under cover thereof.—

Gopee Kissen v. *Mr. W. H. Ryland and others*, 9 W. R. 280. A notice objecting to, and asking for a reconsideration of, the order complained of, is not sufficient.—*Abhoy Nath Bose* v. *The Chairman of the Krishnagur Municipality*, 7 W. R. 92. The notice previous to suing a Municipal Committee for a thing done by them under the Municipal Act is only necessary where compensation is claimed for the thing done.—I. L. R. 1 All. 269. In Bombay in a suit brought to obtain a declaration that a certain building erected by the plaintiff has been built in accordance with, and not in contravention of orders issued by the municipal authorities and also an injunction restraining the said authorities from pulling it down, the contention was that the suit was not maintainable without notice. The Bombay High Court, upon a review of the previous authorities on the subject, was pleased to hold that no notice was necessary. Their Lordships observed.—"The result of the cases above cited appears to indicate, that for the purposes of section 48 (a section very similar in its terms to the present one-Ed.), what the Court has to look to is the real object of the suit, and the section requires notice only when the suit is for an act already done or purporting to have been already done, under the powers conferred. In such case only can it be necessary for the plaintiff to give an opportunity to make amends or compensation, and in such case the delay necessitated by notice is comparatively immaterial. But when the suit is not for an act already done, neither can amends be claimable, nor can delay be obligatory.—*Municipality of Parola* v. *Lakshmandas*, I. L. R. 25 Bom. 142. Upon a construction of a similar section of the Madras Local Boards Act V of 1884, a Full Bench of the Madras High Court held that no notice of action was necessary in a suit for injunction and that the class of suits for which notice was necessary should be co-extensive with the class of suits to which special limitation was applicable, *Govinda Pillai* v. *The Taluku Board, Kumbakonam*, I. L. R. 32 Mad. 371, 4 M. L. T. 209. The plea that no notice was given cannot be taken for the first time in special appeal.—*The Municipal Committee of Moradabad* v. *Chatri Sing*, I. L. R. 1 All. 269. The notice must be addressed to the Chairman, otherwise a suit against a Municipality is not maintainable.—*Mani Kasana Dhan* v. *Crooke, Secretary to the Municipal Committee of Gorukpur*, I. L. R. 2 All. 296. The cause of action must be disclosed in the notice, and no other cause of action can be raised at the trial.—*Ullman and others* v. *The Justices of the Peace for the Town of Calcutta*, 8 B. L. R. App. 265.

It is necessary that the intending plaintiff should substantially inform the Municipal Commissioners or the officers concerned of the ground of complaint so as to enable them to see if there is any ground for the action; see *Jones* v. *Bird*, 5 B & Ald., 837; he should, therefore, set forth sufficiently clear the grounds of the complaint.—*Smith & Co.* v. *West Derby Local Board*, 3 C. P. Div. 423. It should be in the form of a notice, and not like a mere letter. An attorney's letter declaring that he has been instructed to take legal proceedings is informal; see *Lewes* v. *Smith*, Holt's N. P. C. 27; *Norris* v. *Smith* L. R. 2 P. & D. 353.

The object of the notice is to give the defendant an opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation (I. L. R. 6 Cal. 8, F. B.)

A person suing a municipality for a refund of money illegally levied from him as house-tax was bound to serve a previous notice on the municipality.—*Ranchad Varajbhai* v. *The Municipality of Dakor*, I. L. R. 8 Bom. 421.

Limitation.—Duthoit, J., ruled that the question whether the special limitation provided by sec. 43, Act XV of 1873 (the N. W. P. and Oudh Municipalities Act) applied or not was to be determined by deciding whether the suit was brought in respect of anything done under the aforesaid Act or not. If it was, then the limitation provided by sec. 43 prevailed; if it was not, the ordinary law of limitation was the one to be applied. —*Brij Mohan Sing* v. *The Collector of Allahabad as President of the Municipal Committee*, I. L. R. 4 All. 102. See also *Tullaram* v. *The Corporation of Calcutta* I. C. R. 30 Cal. 317.

This section applies to a suit for damages for an act, which purports to have been done under section 202, when there is nothing to show that proceedings had not been taken *bona fide*. *In Re Bishnu Pada Chatterjee*, 3 C. L. J. 36*n*. This case was followed in *Shama Bibee* v. *Chairman of Baranagore Municipality* (12 C. L. J. 410) where it has been further held that when the act complained of is done in good faith and there is reasonable and probable cause for a criminal prosecution, the provision of this section must be applicable to a suit for damages for *malicious* prosecution.

The right to obtain a declaration that the plaintiff is not liable to assessments under the Act, is a recurring right, and an action to obtain such a

declaration is maintainable even if brought more than three months after the assessment.—*Ambica Charan Mozumdar* v. *Satis Chandra Sen*, 2 C. W. N. 689.

In the case of *Hughes and others* v. *The Municipal Commissioners of Howrah*, (16 W. R. 339) the act complained of was the illegal seizure of an omnibus, and Couch C J *held* that the three months' limitation must be counted from the date of the seizure, and the continued detention of the omnibus could not be treated as fresh causes of action from day to day. See also *Dwarka Nath Gupta* v. *The Corporation of Calcutta*, I. L. R. 18 Cal. 91.

Suits for compensation for an act without colour of, and contrary to, the law, if done *bona fide*, cannot be brought after the period allowed.—*Goorooda Roy* v. *The Collector of Furreedpore*, 5 W. R. 137; see also I. L. R. 8 Bom. 421 and *Mahammad Mohidin* v. *The Municipal Commissioners of Madras*, I. L. R 25 Mad. 118.

Under sec. 24 of the Limitation Act, the period of limitation in a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, shall be computed from the time when the injury results. Cf. *Richard Watson* v. *Municipal Corporation of Simla* (72 P. R. 1909, 108 P. L. R 1909, 2 Ind. Cas 819) in which it has been held by the Punjab Chief Court, that the mere fact that damage resulted not immediately, but after the lapse of some months does not affect the applicability of the special law of limitation, though it does, under section 24 of the Limitation Act, postpone the cause of action, until such time as the damage occurred. Where compensation for damages is sought in respect not of the original act done by a public body under statutory powers, but of the consequences of such act, he must sue within 3 months from the date when the injury resulted.

For the proper description of the Commissioners sued, see sec. 29 of the Act.

Chaukidari Chakran lands.

364. Notwithstanding anything contained in section 3 of Bengal Act VI of 1870 (*an Act to provide for the appointment, dismissal, and maintenance of village chaukidars*)

the provisions of Part II of the said Act, relating to chaukidari chakran lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a municipality, and all duties and functions which the panchayat of a village or any member thereof is required to discharge under the provisions of the said Part shall be discharged, and all powers which the panchayat of a village or any member thereof is authorized to exercise under the said Part shall be exercised, by the Commissioners of such municipality, and the proceeds of the assessment on such lands made under the said Part shall be paid into the municipal fund, and shall be available for the purposes of such fund.

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

365. All police-officers shall give immediate information to the Commissioners of the municipality of any offence committed against this Act or any bye-law made in pursuance thereof.

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

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

Upon the recommendation of the Commissioners any servant of the Commissioners in receipt of a salary of not less than ten rupees per mensem, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a police-officer under this section.

Changes.

The words, "or any bye-law made in pursuance thereof" in the first paragraph, and the last paragraph have been added by sec. 98 of Beng. Act IV of 1894.

Penalty on officers, &c., taking unauthorized fees.

366. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) shall accept or obtain, or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person with the Commissioners or with any public servant, or with the Government in the discharge of his official duties, he shall be punished with imprisonment, either simple or rigorous, as provided in section 53 of the

Indian Penal Code, for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both.

Saving clause.

367. Nothing in this Act contained shall be construed to—

(*a*) render lawful any act or omission on the part of any person which, but for this Act, would by law be deemed to be a nuisance;

(*b*) exempt any person guilty of nuisance from a suit in respect thereof;

(*c*) affect any enactment not hereby expressly repealed.

Note.

No mandatory injunction may be granted against a private individual for what is a mere nuisance in law (*i. e.* that which is only wrong because it contravenes the provisions of an Act), except where such nuisance has been created and persisted in, in defiance of a local authority and such local authority has not sufficient power to enforce compliance with the law, *The Advocate-General of Bombay* v. *Haji Ismail Haskam*, I. L. R. 12 Bom. 274, 5 Ind. Cas. 213.

THE FIRST SCHEDULE.

(See Sections 8 & 17.)

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

Municipality.	*Municipality.*	*Municipality.*
Asansol.	Netrokona.	Nawabganj.
Kamarhati.	Patuakhali.	Lohardaga.
Budge-Budge.	Pirojpur.	Jhalda.
Garden Reach.	Jhallakati.	Raghunathpur.
Titagar.	Nalchitti.	Madhupur.
Garulia.	Chandpur.	Khagole.
Bhatpara.	Coxe's Bazar.	Katihar.
Santipur.	Lalgunj.	
Darjeeling.	Dhulian.	

THE SECOND SCHEDULE.

(See Sections 8 & 23.)

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

Municipality.	*Municipality.*	*Municipality.*
Asansol.	Hazaribagh.	Somastipur.
Sonamukhi.	Coxe's Bazar.	Kishanganj.
Dainhat.	Giridih.	Nawabganj.
Kharar.	Chattra.	Dumka.
Arambagh.	Ranchi.	Daltonganj.
Budge-Budge.	Lohardaga.	Jhalda.
Garden Reach.	Chaibassa.	Raghunathpur.
Garulia.	Purulia.	Madhubani.
Bhatpara.	Patna City.	Siwan.
Santipur.	Dinapur.	Bettiah.
Birnagur.	Gaya.	Jajpore.
Chakdaha.	Tikari.	Kendrapara.
Maheshpur.	Daudnagar.	Netrokona.
Kandi.	Sasaram.	Patuakhali.
Dhulian.	Bhubhua.	Pirojpur.
Jalpaiguri.	Sitamarhi.	Chandpur.
Darjeeling.	Darbhanga.	

THE THIRD SCHEDULE.

Form A.—(*See Section* 112.)

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

BENGAL MUNICIPAL ACT, 1884.

(*Section* 112.)

MUNICIPALITY OF

Whereas an assessment-list of the tax upon persons occupying holdings has been deposited in the office of the Commissioners as required by section 112 of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the office of the said Commissioners during office hours on any day not being a close holiday, and that the several persons whose names are included in the said assessment are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax-Collector or other officer authorized to receive payment, the first payment to be made on the first day of ( ), and every subsequent payment on or before the first day of ( ), the first day of ( ), and the first day of ( ), or in default thereof any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter or which may be found on the holding in respect of which such defaulter is assessed, and by such other proceedings as are allowed by law.

Dated this day of

A. B.,

Chairman of Commissioners.

From B.—(*See Section* 112.)

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

BENGAL MUNICIPAL ACT, 1884.

(*Section* 112.)

MUNICIPALITY OF

Whereas a valuation and rating list of the rate on the annual value of holdings has been deposited in the office of the Commissioners as required by section 112 of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the office of the said Commissioners during office hours on any day not being a close holiday; and that the several owners of the holdings included therein are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax-Collector or other officer authorized to receive payment, the first payment to be made on the first day of ( ), and every subsequent payment on or before the first day of ( ), the first day of ( ), and the first day of ( ), and in default thereof, any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter, or which may be found on the holding in respect of which the valuation is made, and by such other proceedings as are allowed by law.

Dated this day of

A. B.,

Chairman of Commissioners.

THE FOURTH SCHEDULE.

Form A.—(*See Section* 120.)

Notice of Demand under Section 120.

BENGAL MUNICIPAL ACT 1884.

To

MUNICIPALITY OF

Take notice that the sum of Rs. , being the amount due from you as shown in the accompanying bill, is hereby demanded from you, and that if you do not within fifteen days pay the same to an officer authorized to receive payment, or into the office of the Municipal Commissioners, the amount together with costs will be levied by distress and sale of your goods and chattels, or otherwise as provided by law.

A. B.,

Chairman of Commissioners.

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

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

FORM B.—(*See Section* 121.)

TABLE OF FEES PAYABLE UPON DISTRAINTS UNDER THIS ACT.

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

The above charge includes all expenses, including the service of notice of demand, except when peons are kept in charge of property distrained, in which case three annas must be paid daily for each man. If the amount demanded be paid or the warrant discharged before the sale is held so that no sale is necessary, one-fourth of the fees specified in the above table shall be remitted.

Form C.—(*See Section* 122).

Distress Warrant.

BENGAL MUNICIPAL ACT, 1884.

(*Section* 122).

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

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

A. B.,

Chairman of

Form D.—(*See Section* 112.)

Form of Inventory and Notice.

BENGAL MUNICIPAL ACT, 1884.

(*Section* 122.)

(*State particulars of goods seized.*)

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

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

Costs of distraint—

Date

Form E—(*See Section* 124.)

Register of distraints of property and sales held on account of arrears for the month of in

1. Name of defaulter.
2. Number on register and specification of the holding on account of which the arrear is due.

3. Amount of arrear due.

4. Amount of costs and penalty.

5. Total amount to be realized.

6. Inventory of property seized under distress.

7. Date of distress.

8. Date of sale

9. Detail of articles sold.

10. Amount realized on each article.

11. Purchaser's name.

12. Total amount realized.

13. Amount paid into the Commissioners' office on account of the arrear due, with date.

14. Amount paid into the Commissioners' office on account of costs and penalties.

15. Surplus proceeds of sale remaining after deducting the amount of arrears, costs, penalties due.

16. How the surplus was disposed of, with date of such disposal.

17. Balance of arrear still remaining unrealized, if any.

18. On what date such remaining balance was realized or written off by authority.

19. Remarks (explaining why the property seized was realized without sale if not eventually sold, &c.)

THE FIFTH SCHEDULE.

(*See Sections* 86 *and* 131.)

TAX ON CARRIAGES AND ANIMALS.

	Per quarter. Rs.	A.
For every 4-wheeled carriage drawn by two horses... ...	4	8
For every 4-wheeled carriage drawn by one horse or a pair of ponies under 13 hands	3	0
For every 4-wheeled carriage drawn by one pony under 13 hands	2	8
For every 2-wheeled carriage	2	8
For every horse	2	0
For every pony under 13 hands, and for every mule and donkey	0	12
For every elephant	6	0
For every camel	2	0

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

Changes.

By sec. 99 of Beng. Act IV of 1894 the words and figures "for every 4-wheeled carriage drawn by one pony under thirteen hands—2-8" were added.

This omission in Beng. Act III of 1884 was pointed out in a Howrah case and it as now been made up.

THE SIXTH SCHEDULE.

(*See Section* 2 & 4.)

Act of the Governor-General in Council.

Number and year.	Subject.	Extent of Repeal.
XXI of 1857 ...	To make better provision for the order and good government of the station of Howrah.	Sections 4, 5, 6, 8, 9, 16, 17, 24, 33, 34, 35, 36, 37, 39, 46.
	Acts of Bengal Council.	
V of 1873 ...	To provide for the levy of a lighting rate in Howrah.	The whole Act.
V of 1876 ...	By amend and consolidate the law relating to Municipalities.	Ditto.
VI of 1878 ...	To provide for the cleansing and construction of latrines in first class Municipalities.	Ditto.

ADDENDA.

THE BENGAL VACCINATION (AMENDMENT) ACT, 1911.

February 18, 1911.

*An Act further to amend the Bengal Vaccination Act, 1880.**

WHEREAS it is expedient further to amend the Bengal Vaccination Act, 1880, in manner hereinafter appearing; It is hereby enacted as follows:—

1. (*1*) This Act may be called the Bengal Vaccination (Amendment) Act, 1911; and

(*2*) It applies in the first instance only to—

(*a*) Calcutta, as defined in clause (*7*) of section 3 of the Calcutta Municipal Act 1899,

(*b*) the port of Calcutta, and

(*c*) the Cossipore-Chitpur, Garden Reach, Howrah, Maniktola, South Suburban and Tollygunge Municipalities.

2. (*1*) The Local Government may, by notification published in the Calcutta Gazette, declare its intention to extend this Act or any portion thereof to any town or selected area not mentioned in section 1, sub-section (*2*).

* For the Bengal Vaccination Act, 1880, see *p.* 323*a*.

(2) Any inhabitant of any such town or area who objects to such extension may, within a period of six weeks from such publication, send his objection in writing to a Secretary to the Government of Bengal; and the Local Government shall consider all objections so sent.

(3) After the expiration of the said period, the Local Government, if no objections have been so sent, or if it considers that the objections so sent are insufficient, may, by a like notification, effect the proposed extension.

(4) The substance of every notification under sub-section (1) or sub-section (3) shall be proclaimed and notified in the vernacular, within the town or area affected, by such means and in such manner as the Local Government may direct.

3. The Local Government may, by notification in the Calcutta Gazette, suspend the operation of this Act in any place.

4. After the definition of "public vaccinator" in section 2 of the Bengal Vaccination Act, 1880, the following shall be inserted, namely:—

"'Inspector' means a person authorized by the Superintendent of Vaccination to exercise all or any of the functions of an Inspector under this Act."

5. The following words in section 2 of the said Act are hereby repealed, namely:—

(1) the words "or specially licensed by the Lieutenant-Governor to practise vaccination and grant certificates under the provisions of this Act", in the definition of "medical practitioner", and

(2) the word "either" and the words "or by inoculation", in the definitions of "unprotected child" and "unprotected person".

6. In section 3 of the said Act,—

(1) for the words "one year", in the first place in which they occur, the words "six months" shall be substituted, and

(2) the following words shall be repealed, namely :— "or, if the child be at the time of its arrival less than one year old, within one year and three months after its birth ; and the parent or guardian of every unprotected child living in such place at the date of this Act coming into force therein, and whose age at such date exceeds one year, but does not exceed fourteen years, shall, within six months from the said date."

7. In section 4 of the said Act,—

(1a) for words "the same day in the following week" the following shall be substituted, namely :—

"a day not less than seven or more than ten days";

(1) for the words "by the operator or by any person deputed for that purpose by the Superintendent of Vaccination" the following shall be substituted, namely :—

"by the operator (if a medical practitioner) or by an Inspector" ;

(2) for the words "and it shall be the duty of any public vaccinator who has vaccinated a child elsewhere than at a public vaccine-station to visit the child at the time and for the purpose above mentioned, whether he is requested to do so or not, unless the Superintendent of Vaccination has deputed some other person to act for such public

vaccinator in this behalf" the following shall be substituted, namely:—

"and, when any public vaccinator has vaccinated a child elsewhere than at a public vaccine-station, an Inspector shall visit the child at the time and for the purpose above mentioned, whether he is requested to do so or not";

(3) for the words "the public vaccinator" the words "the Inspector" shall be substituted; and

(4) for the words "a public vaccinator" the words "an Inspector" shall be substituted.

8. In section 5 of the said Act,—

(1) for the words "public vaccinator," in both places in which they occur, the word "Inspector" shall be substituted, and

(2) for the words "three months," in both places in which they occur, the words "one month" shall be substituted.

9. For section 6 of the said Act the following shall be substituted, namely:—

"6. (1) If any Inspector or medical practitioner finds—

(*a*) that a child brought for vaccination has already had small-pox, or

(*b*) that a child who has been three times unsuccessfully vaccinated is insusceptible of successful vaccination,

he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form in Schedule B hereto annexed or to the like effect.

(2) If the Superintendent is satisfied that such child has already had small-pox, or is insusceptible of successful vaccination, he shall endorse such certificate.

(3) Such endorsement shall operate as an exemption from liability to vaccination,—

(*i*) in case (*a*) in sub-section (*1*)—absolutely, and

(*ii*) in case (*b*) in that sub-section—for a period of twelve months.

(*4*) Upon the expiration of the said period, the parent or guardian of such child shall forthwith cause the child to be vaccinated again;

and, if an Inspector or a medical practitioner finds after two further unsuccessful vaccinations that the child is insusceptible of successful vaccination, he shall deliver to the parent or guardian a further certificate under his hand, according to the form of Schedule B hereto annexed, or to the like effect;

and, if the Superintendent of Vaccination be again satisfied that the child is insusceptible of successful vaccination, he shall endorse such certificate, and such endorsement shall operate as an absolute exemption from liability to further vaccination."

10. In section 7 of the said Act, for the words "Every public vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child and shall have ascertained that the same has been successful," the following shall be substituted, namely:—

"When a public vaccinator or medical practitioner has performed the operation of vaccination upon any child, and an Inspector or such practitioner has ascertained that the same has been successful, such Inspector or practitioner, as the case may be."

11. In section 8 of the same Act,—

(*1*) for the words "public vaccinator," where they first occur, the word "Inspector" shall be substituted, and

(*2*) after the word "nor" the words "by any public vaccinator" shall be inserted.

13. In section 10 of the said Act, after the word "assistants" the words "or any Inspector" shall be inserted.

14. In sections 13A, 29A and 29B of the said Act, after the words "public vaccinator" the words "or Inspector" shall be inserted.

15. In sections 15, 16 and 33 of the said Act, after the words "public vaccinators," wherever they occur, the words "and Inspectors" shall be inserted.

16. In section 19 of the said Act, for the words "public vaccinator" the word "Inspector" shall be substituted.

17. In clause (*a*) of section 28 of the said Act, before the words "after vaccination" the words "to the operator (if a medical practitioner) or to an Inspector" shall be inserted.

18. In Schedule A to the said Act,—

(*1*) for the words "three months" the words "one month" shall be substituted, and

(*2*) for the words "public vaccinator" the word "Inspector" shall be substituted.

19. For Schedule B to the said Act the following shall be substituted, namely :—

"SHEDULE B.

(*see section 6*)

I, the undersigned, hereby certify that , the child of , residing at

, has already had small-pox

(*or, as the case may be*) ,

that I have (*or* a public vaccinator has) three times (*or* twice, *as the case may be*) unsuccessfully vaccinated , the child of , residing at ,

and I am of opinion that the said child is insusceptible of successful vaccination.

Dated this day of 19 .

(*Signature of Medical Practitioner or Inspector.*)

(*Endorsement by Superintendent of Vaccination.*)"

20. In Schedule C to the said Act,—

(*1*) after the words "by me" the words "(*or* by a public vaccinator)" shall be inserted, and

(*2*) for the words "public vaccinator" the word "Inspector" shall be substituted.

21. In Schedule E to the said Act,—

(*1*) for the words "one year" the words "six months" shall be substituted, and

(*2*) for the words "the public vaccinator," in the fourth place in which they occur, and for the words "a public vaccinator," the words "an Inspector" shall be substituted.

APPENDIX.

GOVERNMENT CIRCULARS

AND

RULES UNDER THE ACT.

I

[*This circular explains the important changes made by Act IV of 1894.*]

Cir. No. 34M., dated Calcutta, The 27th August 1894.

From—C. W. Bolton, Esq.,
Offg. Secretary to the Government of Bengal.

To—All Commissioners of Divisions.

At page 15 of Part III of the *Calcutta Gazette* of the 15th August 1894, it is announced that His Excellency the Governor-General in Council has signified his assent to the Bill to consolidate and amend the law relating to municipalities in Bengal which was passed by the Bengal Legislative Council on the 28th April 1894. The Bill is printed in full in the Gazette of the same date; but, in order to draw attention to the alterations and additions which have been effected, a special set of copies has been printed, which I am now directed to forward to you for information and for communication to the officers subordinate to you, showing in italics the new matter added by Act IV of 1894 and indicating by the method of black underlines the passages in the old Act which have been omitted or altered. I am also to invite your attention to the following observations on the chief points in the new Act.

2. The sections of the bill naturally divide themselves into two groups, *viz.*, (*a*) those which make administrative changes of a more or less important character; and (*b*) those which are merely corrective, which repair omissions, give effect to the decisions of the Law Courts, recast the wording of old sections, and repeal those which are no

longer necessary. The latter form, of course, far the larger group, but they need little notice, as for the most part they explain themselves.

3. The matters on which Government, on behalf of the rate-payers or for the better administration of the country, has felt itself obliged to assume larger powers than it possessed before are few in number, and in each case careful safeguards are provided. First comes the power taken in sections 9 and 9A to disestablish a municipality or to alter its boundaries when it no longer fulfils the conditions which originally justified its creation; then follow the power to appoint Commissioners *ex-officio* (section 14), the power given to Commissioners of Divisions to remove Commissioners (section 20); the delegation to Commissioners of Divisions of certain of the smaller powers of Government (section 29A); the appointment of a special Auditor when the accounts are in confusion (section 82), and, lastly, the power to appoint an Assessor when it has been proved that the affairs of the municipality require it, and when the Commissioners will not move of themselves (sections 111A).

4. On the other hand, the powers and responsibilities of the Commissioners have been advanced in many ways. They will now be able to order a survey (section 223 A), and to organise a fire-brigade (sections 349A and B). Their financial powers are increased by the provision that the Commissioner of the Division shall not finally pass orders on their Budgets till they have had an opportunity of replying to his criticisms (section 76), and their income may be considerably developed in several ways; the maximum of the water-rate is increased to 7½ instead of 6 per cent. (sections 86 and 279); they may levy in the same municipality both the tax on persons and the rate on holdings (section 84); arable lands are no longer exempt from

assessment where the personal tax is in force (section 87); property in their temporary possession may be turned to pecuniary advantage (section 200); licenses may be issued at burning-ghats and burial grounds (sections 262A), and the latrine-rate may be levied from vacant holdings (section 322). Not less important than their increased financial powers are the larger powers of administrative control now confided to Municipal Commissioners. They may control the water-supply where its purity is suspected, even when private rights are affected (sections 199-199A); they will exercise large powers over ruined and dangerous houses, walls and trees (sections 208, 210, 210A); their powers in regard to building regulations may be greatly increased at their option (sections 237 to 242), and they have been enabled to frame wider bye-laws and to enact rules of business for their own guidance (sections 350, 350A and 351A).

5. Turning next to the most important sections of the Bill in detail, I am to direct your attention in the first place to sections 9, 9A and 9B of the Act. Under the old law a place which had once been made a municipality, however little it might be entitled to claim municipal government, could be removed from that category, or could have its limits varied, only upon the recommendation of the Commissioners at a meeting, a course which for obvious reasons was very seldom adopted: the new law does not take from the Commissioners this power of recommendation, but provides that, where the conditions laid down in section 10 as to amount or density or character of population no longer exist, the Lieutenant-Governor after affording full opportunity for objections to be made may exercise in this respect, without recommendation from the Municipal Commissioners, the powers which ordinarily he would only use upon the recommendations of that body.

6. Section 14 of the Act as amended provides that the appointed Commissioners may be appointed either by name or by official designation. The object of this provision is to avoid the inconvenience which sometimes occurs when an official is transferred who has been appointed by name only. As vacancies take place among the appointed Commissioners of municipalities in your division, it is for you to consider in each case whether the new nominee should be appointed by name or by his official designation. This change of principle involves petty changes in sections 17 and 23 of the Act.

7. By the amendment of section 15 of the Act, an important provision is added which enables Government to lay down by rule the authority who shall decide all election disputes under the Act. The question of ammending the election rules is still under discussion, and orders on this point will issue hereafter. A proviso at the end of the section safeguards such jurisdiction as the Civil Courts may now be deemed to have in respect of these disputes. The franchise is extended by the same section to a class of persons whose exclusion hitherto has been felt to be anomalous, *viz.*, those who, being in receipt of a monthly salary of Rs. 50 or more, which implies intelligence and education, have yet had no vote because they were not independent ratepayers. The number of voters added to the list by this section will not be large, but they should all be citizens of weight and importance. A new clause added to this section also declares what shall be included in the term rates—a point which has not hitherto been decided.

8. Section 20 of the Act has been recast so as to enact clearly on what grounds a Municipal Commissioner may be removed, and who shall pass the order for his removal.

9. Section 23 of the amended Act gives to the Local Government power to appoint the Chairman of a muni-

cipality entered in Schedule II by name or by official designation. In clause 2 of this section it is made quite clear that when the Commissioners of a municipality in Schedule I have once asked Government to appoint a Chairman, they do not thereby permanently surrender their right of election, but are entitled to exercise it on the occurrence of any future vacancy in the post of Chairman.

10. The alterations in section 26 of the Act enable a Chairman whose term of office under the Act would ordinarily have expired to carry on his duties till a proper and effective meeting is convened to elect his successor or ask Government to appoint him. By the same section the old body of the Commissioners will continue in office until the first meeting of their successors. Section 26A provides for certain subsidiary but necessary formalities in the same connection. By section 26B leave may be given to a Chairman or Vice-Chairman, and an omission in the present Act, which has not infrequently caused inconvenience, is thus repaired. As a corollary, section 28 authorises the grant of leave allowances to these officers when they are in the receipt of salary. Section 27A defines clearly the procedure to be followed when a Chairman, Vice-Chairman or Commissioner desires to resign.

11. By section 29A certain minor powers, which have hitherto been exercised by Government, may now be delegated to the Commissioners of the Division.

12. Two important alterations have been made in section 30. One has reference to the ruling of the Calcutta High Court in *The Chairman of the Naihati Municipality* v. *Kishori Lal Gossami*, I. L. R., 13 Cal., 171, and *Modhu Sudan Kundu* v. *Promoda Nath Roy*, I. L. R., 20 Cal., 732, where it was pointed out that the absolute property in the soil of a road was not vested in the Commissioners. This will no longer be the case. The object of the other

alteration is to provide that a road, bridge or drain need not be entirely excluded from the provisions of this Act but only from the operation of certain specified sections.

13. The important provisions of the new sections 37A to 37M were very carefully framed by the Select Committee before they were accepted by Council, and the Lieutenant-Governor trusts that they will receive at the hands of local authorities the same careful consideration. It is hoped that recourse will be fully and frequently had to these sections in the larger municipalities which have not yet been provided with a wholesome water-supply, and that they will facilitate the execution of a much-needed reform with the least possible risk of discord or extravagance. It will be noticed first that compulsion will not be employed by Government, except in the last resort (section 37K), and not until the local authorities have had ample opportunity, afforded them of taking action spontaneously, and, secondly, that even then the representations of a substantial and undisputed majority will suffice to procure the abandonment of the scheme.

14. Section 59 requires the consent of Government to the *ad interim* election of a Chairman, and section 66A provides for the settlement of disputes between a municipality and its external neighbours, such as another municipality or the District Board.

15. Some additions have been made to section 68 and 69 of the Act, which allow the municipal fund to be expended on the maintenance of Municipal Benches and on the payment of an officer who may be specially deputed to revise their accounts.

16. Section 76 of the Act is more remarkable for what it omits than for what it enacts. An effort was made when the Bill was passing through Council to confine the supervision of the Commissioner of the Division to the

major heads only of the annual budget estimate, and the refusal of the Council to accept this proposal has been commented upon with some acerbity. It has been alleged that Government insisted on a retrograde step which deprived Municipal Commissioners of a privilege they already possessed. The exact contrary is the case : the Commissioner of the Division has been invested with no new powers, but on the contrary an important, though reasonable, concession has been made in the provision that the Commissioner can no longer alter a municipal budget without affording the Commissioners an opportunity of considering and replying to any modifications which he may think desirable in their estimates.

17. Section 82 of the Act has been recast so as to provide for the appointment of a special officer to examine and report upon the accounts of a municipality whenever the yearly audit has shown that the accounts are in great confusion and the Municipal Commissioners, after due notice, have failed to set them straight.

18. Two important changes in the law on municipal taxation have been introduced in sections 85 and 86 of the Act. Both the tax on holdings and the personal tax may now be levied in the same Municipality, provided that both are not levied in the same ward. But 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. By the second section quoted the maximum percentage for water-rate has been raised from 6½ and 5 to 7½ and 6 respectively. In section 87 of the Act it is now provided that in assessing the personal tax arable lands held by the assessee may be taken into account, but not any public burial ground or burning ghat. It was understood by the Council that, as a matter of fact, Municipal Commissioners when assessing a

man's means and income are unable to leave out of consideration the income he derives from arable land, and it was deemed advisable to sanction this practice by legal enactment. Moreover, it was pointed out that, in the absence of such a provision, arable land within the boundaries of a municipality escaped taxation altogether.

19. As regards the rate on the value of holdings, some changes have been made in sections 97, 98 and 99 of the Act which explain themselves.

20. A new section, 111A, deals with the appointment of an assessor of municipal taxes—a question which has probably given rise to more discussion than any other embodied in the Bill. The provisions of the sections as they now stand have been very carefully considered, and a power, the want of which has sometimes been very acutely felt, has been placed in the hands of Government with the minimum of inconvenience and the greatest possible regard to the dignity of Municipal Commissioners. The authority now conferred will, in fact, be exercised only when the necessity for action admits of no question, and it may be hoped that the very existence of this power in the statute book will make its exercise unnecessary.

21. The importance of the alteration in section 116 should not be overlooked. In accordance with the spirit of the decision of the High Court in the case specified in the margin, section 116 now provides that the decision of the Commissioners or of a Committee appointed by them under section 114 shall be final only as regards the amount of assessment or rating: the larger question of liability to be assessed or rated will now be left to the decision of the Civil Courts.

Appeal under section 13 of the Letters Patent No. 23 of 1863. Chairman, Barisal Municipality, Defendant-Appellant versus Srimutty Addya Soondury Mittra and others Plaintiffs-Respondents.

22. In section 121 an important proviso has been added on the subject of distrained property, and the addition to section 125 provides a punishment for the breach of the orders in the earlier part of the section. Similarly, the addition of sections 141A and 147A is intended to correct what is an omission in the old law, and the same may be said of the addition of the word "sewage" in section 187 of the Act.

23. Important additions have been made to the sections which deal with the control of bathing and washing places, wells and tanks. In the first place, in section 199 wells have been brought under the control of Commissioners to the same extent as other sources for the supply of water for drinking and culinary purposes, and secondly the last clause of that section has been re-written so as to define with greater precision the powers of Municipal Commissioners in respect of the private portion of any water-course which forms part of the public water-supply. Section 199A gives to the Commissioners the power of prohibiting the use of unwholesome water, the absence of which power has often been extremely inconvenient, and the Lieutenant-Governor hopes that it will be freely exercised. It will now be possible for municipalities to close a source of water-supply which may be suspected, and to maintain this prohibition until the purity and wholesomeness of the water is established by chemical analysis in accordance with the rules laid down in the Sanitary Commissioner's circular No. 342 of the 25th June 1894. The reference may be made by the Commissioners, but would ordinarily be made by the person aggrieved by the closing of the well or tank.

24. By section 200 as now enacted, when an unwholesome tank or other source of water-supply has to be put in order, the Commissioners may call upon the owner or

occupier to do one of three things, *i.e.*, either to re-excavate, fill up, or cleanse the place to their satisfaction. If the owner or occupier does none of these things, the Commissioners may do any one of them for him, and by the clause now added, if they re-excavate or fill up, they may retain possession of the property and turn it to profitable account until the expenses thereby incurred have been realised. The Commissioners are not entitled by the law to dictate to the owner which of the three courses open to him he is to pursue.

25. Section 208 has been re-written so as to give the Commissioners power in respect of trees, hedges, &c., which are likely to cause damage or obstruction, or to foul the water of any well or tank.

26. The powers of the Commissioners in regard to buildings in a dangerous state have been a good deal extended in sections 210 and 210A, and these sections should be carefully noted. The Commissioners can now interfere to protect the inmates of a building against the consequences of their own apathy or neglect. The Lieutenant-Governor has no doubt that the good sense of the local authorities throughout the province will prevent the powers now given from being misused to the annoyance of individuals.

27. The penal provisions of section 217 have been extended to section 193A; those of section 218 to sections 206 and 207; and those of section 219 to section 210A; and persons infringing the provisions of those sections can now be punished for so doing.

28. The addition to section 220 should be noted. It is now formally declared by law that wherever the whole of the provisions of any one of the Parts VII, VIII or IX of the Act of 1876 were in force when Act III of 1884 became law, the whole of each of the corresponding Parts

VI, XI or X of this Act shall be considered to have been in force. This provision was necessary in order to remove doubt as to the continued application of these Parts. Where only a portion of the provisions of any one of Parts VII, VIII and IX of the Act of 1876 was in force when Act III (B.C.) of 1884 became law, its continuance was secured by the provision of section 1 of Act III of 1884, as further explained by the additions made to section 2 by the present amending Act IV of 1894. The result is that all notifications or orders passed, and all rules made under Act V of 1876, are still in force, unless expressly rescinded even although the number of the Parts or sections quoted in them may have been altered.

29. By section 223A of the Act power has been given to make a survey, the cost of which is chargeable to the Municipal Fund under section 69 (9).

30. The sections which refer to building regulations (sections 236-244 of the Act) have been considerably expanded and should be carefully persued. The provisions of section 241 are suitable only to large municipalities which include many masonry buildings; and while all the remaining sections of this group came into force on the passing of this Act in every municipality in which the corresponding sections of Act III of 1884 were in force at the time, it will be observed that the provisions of section 241 are expressly exempted from the operation of this general rule, and that this section will not take effect in a municipality until it has been specially extended thereto at the request of the Commissioners at a meeting.

31. Some small alterations have been made in the sections relating to burial and burning-grounds, and it is believed that some income might be derived from the licenses which may now be granted under section 260A. These receipts might well be devoted to the improvement of these

places which are often allowed to remain in very bad order.

32. Three important additions have been made to the provisions of sections 261 and 262, which deal with certain offensive or dangerous trades or occupations. Places for the storage of rags or bones or both have been added to the list of those for the use of which a license is necessary and the last clause of the section has been so re-written as to safeguard, as far as possible, persons following any one of the specified trades or occupations from having to pay unreasonable and unsuitable fees for the privilege. It is important to note that in future no fees can be levied under this section until the scale has been approved by the Commissioner of the Division. No time should, therefore be lost in submitting the scale for sanction. Lastly, section 262A, empowers the Commissioners to prohibit the burning of bricks, etc., for private purposes within defined limits. Under section 263, as now amended, any person who keeps even one horse or pony or one head of cattle, for the purpose of trade or business may be required to take out a license. The object of this change is not to raise an income from the poor, but to bring under control all the places where such animals are kept.

33. The additions in the penal sections—270, 271 and 273—merely give effect to provisions in other parts of the Act.

34. The alterations in Part VII of the Act, which deals with water-supply, are the outcome of prolonged and elaborate discussion. The maximum amount of the water-rate has been raised from 5 and 6½ per cent. to 6 and 7½ per cent. respectively. The principle on which it is to be calculated is carefully defined; and a fair share of the cost of collection and of general supervision has been made a legitimate charge against the fund: lands used exclusively for agricultural purposes are exempted from assessment,

and power is left to the Commissioners to make special arrangements for the supply of water to persons beyond the limit up to which a water-rate can be levied.

35. A new section has been added (section 318A) making the lighting rates into a separate fund and defining how they may be expended.

36. Important changes have also been made in Part IX which deals with the cleansing of private privies and cess-pools. It is now clearly laid down that this Part does not deal with public latrines, which should be provided under section 186 as part of the general scheme of conservancy in the town, but with the cleansing of private privies and cess-pools only. It was at one time proposed to substitute for the existing rate a scale of fees for service rendered, but after the fullest consideration the proposal was abandoned and the existing arrangements maintained. Cess-pools have been brought within the scope of this Part, as it appears that in some cases it was difficult to distinguish between a cess-pool and a privy. No privy rate will be assessed on a holding which does not contain a dwelling-house (section 321), nor on certain public buildings (section 334A), nor will it be levied from a shop-keeper twice over (section 322). Lastly, remissions or refunds will be allowed for vacant holdings. The effects of these changes ought to be to lighten the fees charged under this Part to the poorer residents of the municipality.

37. The effect of the additions made to section 339 in Part X (regulation of markets) is to protect the proprietors of old markets from arbitrary treatment. The section compels Commissioners to renew year by year licenses for markets lawfully established at the time of the extension of this Part to the municipality, so long as the Chairman continues to give year by year the certificate required by section 340 that the land is fit for use as a market for the

sale of provisions. When a market is established after the extension of this Part to the municipality, no such compulsion exists, and the Commissioners may give or withhold the license as they please.

38. Part XIA is entirely new and empowers Municipal Commissioners to make arrangements for the extinction and prevention of fire. The cost of these arrangements is declared to be a legitimate charge upon the Municipal Fund by section 69 (8).

39. It has been found that the wording of section 350 of Act III of 1884 was not sufficiently specific, and that, as a matter of fact, many bye-laws have been made from time to time, and have been accepted by Government which do not, strictly speaking, fall within the scope of the section as it formerly stood. The wording has, therefore been recast, and the matters in regard to which bye-laws may properly be made have been more clearly defined. At the same time an opportunity has been taken in section 350A to give to hill municipalities more stringent powers over private owners of land as regards cutting down timber and excavation of building sites. A new section (351A) has been added, empowering the Commissioners of all municipalities to make rules for the conduct of business in the same way as District and Local Boards have been empowered under Act III (B. C.) of 1885. The Lieutenant-Governor proposes to circulate for adoption by Municipal Commissioners a set of model bye-laws and one of model rules of business. Meanwhile the bye-laws which have already been passed by each municipality and confirmed by Government will continue in force until repealed or altered in the proper manner. Power has been taken by the Lieutenant-Governor to cancel any bye-law which he has sanctioned: an omission in the former law which can only have been due to oversight.

40. The last section to which it is necessary to refer is 365, which now extends to offences against bye-laws as well as those against the Act itself, and allows certain selected servants of a municipality to exercise the powers of a police officer under the section.

II

MEDICAL CIRCULAR No. 20 T.—M.

Darjeeling, the 30th September 1896.

FROM—H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal.

To--All Commissioners of Divisions,

Sir,

I am directed to invite your attention to the important changes introduced into the provisions of the Bengal Municipal Act of 1884, so far as they relate to the establishment and maintenance of hospitals and dispensaries by the amending Bill recently passed in the Bengal Legislative Council.

2. Under the proviso to the section 69 as it stands in the Act, the establishment and maintenance of hospital and dispensaries is one of the purposes on which Municipal Funds may not be expended except with the consent of a majority of the Commissioners present at a meeting specially convened for considering the subject. Section 69 as remodelled by the amending Bill, introduces a proviso based upon a different principle and includes hospitals and dispensaries among the purposes that must be sufficiently provided for before any portion of the Municipal Funds can be applied to any of the purposes

specified in clauses viii to xii. The practical effect of this is to bring the expenditure of a municipality on the establishment and maintenance of the hospitals and dispensaries within control exercised by the Commissioner of the Division under section 76 of the Act and thus to enable him to require the Commissioners to make adequate provision for these important purposes.

3. Section 69A (1) of the Act as amended provides for the keeping of a separate account of receipts and expenditure on account of municipal hospitals and dispensaries and the Account—General has accordingly been instructed to include in the Municipal Account Rules now under revision new rules for giving effect to the above provisions of the law.

III

MUNICIPAL CIRCULAR No. 56M.

Calcutta, the 7th December 1896.

FROM—H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal.

To—All Commissioners of Divisions.

SIR,

In continuation of Government Circular No. 20 T.M., dated the 30th September 1896, I am directed to invite your attention to the following changes introduced into the Bengal Municipal Act, 1884, by Bengal Act II of 1896 which came into force on the 28th October last.

2. The first proviso to section 15 has been recast so as to omit clause (3), which was unintelligible and to extend the franchise to certain classes of persons who

did not enjoy it under the old law. Subject to the conditions specified in the proviso, all persons who have paid or been assessed to income tax or who, besides possessing the occupancy qualification defined in the proviso, have passed the First Arts Examination of the Calcutta University, or the corresponding standard of any other university, or hold a license granted by a Government Medical School to practise medicine or a certificate authorizing them to practise as Revenue Agents, are now for the first time entitled to vote at municipal elections. The clause of section 15 relating to the fifty-rupee income qualification of members of joint families has been omitted as it is covered by clause (ii) of the section as amended.

3. By the amendment of the section 69, Municipal Commissioners are now enabled to devote a portion of the funds at their disposal to the establishment of open spaces for the promotion of physical exercise and education; the training and employment of female medical practitioners, and of veterinary dispensaries, the employment of qualified persons to prevent and treat diseases of horses, cattle, etc.; the improvement of the breed of cattle; and the establishment and maintenance of free libraries. At the same time by the amendment of the proviso to the section, the restriction imposed by Act III of 1884 on expenditure on education, dispensaries and vaccination is removed, and these purposes are classed among those ordinary purposes of municipal expenditure which are controlled by the Commissioners of the Divisions under section 76 of the Act. All of these ordinary purposes are given priority over the special purposes referred to in clauses viii to xiii.

4. The payment of travelling expenses incurred by a Municipal Commissioner in attending a meeting convened for the purpose of recommending a person for nomina-