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COLLIER'S MUNICIPAL MANUAL

FOR

BENGAL, BEHAR AND ORISSA, AND ASSAM

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COLLIER'S MUNICIPAL MANUAL

FOR

BENGAL, BEHAR AND ORISSA, AND ASSAM

CONTAINING

THE MUNICIPAL ACT, B. C. ACT III OF 1884, AS AMENDED BY ACT V OF 1897, BENGAL ACTS III OF 1886, IV OF 1894, II OF 1896, I OF 1900, AND II OF 1914, AND OTHER LAWS RELATING TO MUNICIPALITIES

Repairing
713.

WITH

RULES, CIRCULAR ORDERS BY THE LOCAL GOVERNMENTS, AND NOTES

SEVENTH EDITION

BY

W. S. MILNE, I.C.S

CALCUTTA

THACKER, SPINK & CO

1917

MINISTRY OF CULTURE · GOVERNMENT OF INDIA
संस्कृति मंत्रालय · भारत सरकार

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Explanation of Abreviations used in this work.

P.C.	Proceedings of Council.
L.R.	Opinion of Legal Remembrancer.
Bl. Coms.	Blackstone's Commentaries.
Steph. Coms.	Stephen's Commentaries.

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PREFACE TO THE SEVENTH EDITION.

MANY amended Rules and Instructions have been issued by the Government of Bengal since the Sixth Edition was published in 1904 so much so that so far as the Rules and Bye-laws framed under the Act are concerned, this edition is practically new. An attempt has been made to bring the edition completely up to date and it is hoped that most of the Circular letters and Instructions issued by Government before the end of 1916 will be found in the book. Where the Governments of Bengal, Behar and Orissa, and Assam have issued different rules an attempt has been made to embody all three versions in this volume. This edition owes a very great debt to the labours of Mr. Forrest, a Member of the Civil Service of the Behar and Orissa Government, who was good enough to make over to me a large mass of new matter which he had written with the idea of bringing out a new edition of this work himself. I have taken advantage of Mr. Forrest's generosity and made full use of the notes which he so kindly handed over to me. In fact a large portion of the notes to the early Sections of the Act may be said to be almost entirely the work of Mr. Forrest.

W. S. MILNE.

CALCUTTA.
The 9th March, 1917.

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PREFACE TO THE SIXTH EDITION.

DURING the seven years that have elapsed since the last Edition, a very large number of Rules and Instructions have, from time to time, been issued by Government. The systems of Account and the inspection of Water-works and Schemes of Sanitary improvements have, in particular, been revised.

These matters have been added in the present Edition, and the opportunity has also been taken to insert various Acts and sets of Rules which experience as Chairman of various Municipalities and as an Inspecting Officer has shown often to need consultation, but not to be readily available outside Government Offices.

H. LEMESURIER.

CALCUTTA,
December, 1904.

ADDENDA.

MUNICIPAL—CIRCULAR No. 22 M.

Calcutta, the 27th September 1915.

FROM—The Hon'ble Mr. K. C. DE, C.I.E., I.C.S.,
Offg. Secretary to the Government of Bengal,

TO—ALL COMMISSIONERS OF DIVISIONS.

SIR,

IN continuation of Circular No. 2 T.—M., dated the 2nd August 1912, on the subject of the principles to be adopted in submitting recommendations for the appointment of Municipal Commissioners, I am directed to say that in preparing the statistics mentioned in paragraph 3 thereof, the rates paid by Government or large corporate bodies, such as Railway Companies, etc., should not be included in the rates paid by any community, but should be shown separately.

I have the honour to be,
SIR,
Your most obedient Servant,
K. C. DE,
Offg. Secretary to the Govt. of Bengal.

No. 3, dated Delhi, the 12th January 1916.

FROM—The HON'BLE SIR E. D. MACLAGAN, K.C.I.E., C.S.I.,
Secretary to the Government of India, Department of Education,

TO—THE SECRETARY TO THE GOVERNMENT OF BENGAL,
Municipal Department.

SIR,

I AM directed to refer to the correspondence ending with this Department letter No. 175, dated the 23rd August 1915,

regarding the revision of the Standard Form III for the exhibition of the annual expenditure of municipalities.

2. The Government of India have considered the proposals of the Government of Bengal in the light of the remarks offered thereon by the other Local Governments, and have decided upon the addition of the following new columns under the major head "Public Health and Convenience," the columns of the form being numbered accordingly :—

(1) A column headed "Charges on account of Health Officers and Sanitary Inspectors" between existing columns "21—Conservancy and Latrines" and "22—Hospitals and Dispensaries."

(2) A column headed "Other Sanitary requirements" between columns "24—Vaccination" and "25—Markets and Slaughter-houses."

3. I am directed to add that the suggestion to add a fresh column under "Public Health and Convenience" to show expenditure under the Hackney Carriage Act does not commend itself to the Government of India.

4. I am to request that, with the permission of the Governor in Council, Form III, as amended above, may be adopted for reports commencing with the year 1915-16.

MUNICIPAL—NO. 2445 M.

Calcutta, the 25th September 1916.

FROM—L. S. S. O'MALLEY, ESQ., I.C.S.,
Secretary to the Government of Bengal,

TO—THE COMMISSIONER OF THE CHITTAGONG DIVISION.

SIR,

I AM directed to refer to your letter No. 3921-G., dated the 6th June 1916, and its enclosures, in which you ask for an authoritative decision of Government on certain questions raised by the Chairman of the Comilla Municipality regarding the entry of the names of members of joint family in the municipal voters' register. The questions raised are—

(a) Under what circumstances, and how, should the members of a joint family be entered in the voters' register ?

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(*b*) Under what circumstances, and how, should persons who are not members of a joint family, but who are in joint occupation of a holding and pay municipal taxes jointly, be entered in the voters' register ?

2. The circumstances which gave rise to the above questions are as follows :—In the Comilla Municipality, where a tax on persons is levied, the joint occupiers of a holding are entered as voters in the voters' register, if the joint tax paid by them reaches or exceeds the minimum prescribed by section 15 of the Bengal Municipal Act. The joint sharers are, however, entered in the register not as individuals, each with full voting power, but as a joint unit with the voting power of one person only. In the last general election two joint sharers appeared at the polling station and wished to vote for different candidates. Their names were bracketed together in the voters' register for one of the wards, and neither had a separate vote. As they refused to vote jointly for any candidate, the polling officer declined to record the votes of either. After the election an objection against the polling officer's decision was presented to the District Magistrate, who set aside the election of the ward in question, and directed that a fresh election should be held, on the ground that the voters' register was not drawn up according to the rules. In the opinion of the District Magistrate, these rules, require that a voting register should be composed of the names of individuals only and do not admit of joint occupiers of holdings being entered as voters.

3. In reply, I am to say that secton 15 of the Bengal Municipal Act provides for male persons only being voters at the election of Municipal Commissioners, and that the same qualification of sex is given in the election rules published with Notification No. 4345-M., dated the 21st November 1896. As regards the definition of person, that term, under section 5 of the Bengal General Clauses Act, I of 1899, includes an incorporated company or incorporated association of persons, but Government are advised that a joint family cannot be regarded as an incorporated body. For both these reasons, therefore, a joint family has no legal capacity to vote.

4. As regards the second question, I am to say that Government are advised that persons in joint occupation of a holding and paying municipal taxes jointly, though not constituting a joint family, have also no right to vote at a municipal election, because the Municipal Act and the rules made thereunder do not provide for such cases, a body of persons of this kind not being

an incorporated association which can be regarded as a "person" under the Act.

5. I am to add that the questions now raised have been noted for consideration when the amendment of the Bengal Municipal Act is undertaken.

MUNICIPAL DEPARTMENT.

CIRCULAR No. 24 M.

Calcutta, the 23rd November 1916.

FROM—L. S. S. O'MALLEY, ESQ., I.C.S.,
Secretary to the Government of Bengal,

TO—THE COMMISSIONER OF THE DIVISION.

SIR,

IN this Government circular No. 5 M., dated the 19th January 1916, it was stated that, in view of the growing sense of responsibility and capacity for self-management displayed by municipal bodies, the Governor in Council had decided to relax the control exercised by Commissioners of Divisions and District Magistrates over municipal budgets. It was accordingly laid down that, as a general rule, municipalities might be allowed to frame their budgets according to their discretion, the Commissioners of Divisions being required only to see that provision was made for the necessary closing balances and for the service of municipal loans and that the statutory law and rules, as well as standing orders of Government, were observed. As, however, it was thought possible that there might be particular municipalities, the maladministration of which had proved their unfitness for such a measure of financial freedom, the Commissioners were requested to examine the position of the municipalities in their respective divisions and to report whether there were adequate grounds for excepting any of them from the effect of this general order.

2. The Governor in Council is gratified to observe that, out of 113 municipalities in the province, there are only three, viz., the municipalities of Rampur-Boalia, Pabna and Maheapur (Jessore), to which it appears to be unsafe at present to grant such a financial independence. For the present therefore and until their administration improves, the Commissioners and District Magistrates concerned will continue to exercise control over the budget estimates of these three municipalities, and the concession above referred to will be enjoyed by all other municipalities of the Presidency.

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INTRODUCTION.

Act III of 1884 received the Lieutenant-Governor's assent on the 4th April 1884 and the Governor-General's assent on the 15th April 1884. It was published in the *Calcutta Gazette* on the 7th May and came into force on the 1st August of the same year.

Previous Legislation in Bengal.—The following extract gives a sketch of the previous legislation in regard to Municipalities in Bengal :—

" Mr. Bernard moved for leave to bring in a Bill to amend and consolidate the law relating to Municipalities. He said that at present municipal government in Bengal towns, exclusive of Calcutta, was conducted under four different laws, each with its own system and procedure. The earliest of these Acts was Act XXVI of 1850, which empowered Government to constitute a corporation in any town where the inhabitants may express a wish for self-government. Under this law there were only two Municipalities in Bengal, namely, Monghyr and Jamalpore. The next Municipal Act is Act XX of 1856 under which the whole municipal government vests in the Magistrate. The main object of this Act is to provide for the payment of chowkeydars or town watchmen. The Magistrate appoints these chowkeydars, assigns their salaries, manages the town fund, devotes its surplus to cleaning or lighting the town, and nominates a punchayet, who are to help him in assessing the town tax. Forty towns in Bengal had a quasi-municipal organization under Act XX of 1856. The next municipal law was enacted by this Council as Act III of 1864, and was called the ' District Municipal Improvement Act.' Under this Act something approaching to self government was allowed to townships in Bengal. It provides for the appointment of a governing body, on which certain *ex-officio* members sit. This body imposes taxation of four different kinds—it must keep up a town police force, and it may spend municipal money on roads, streets, and conservancy. The Act of 1864 also provides penalties for the breach of certain ordinary and reasonable conservancy rules. A limit is prescribed for each of the different kinds of taxes which the Act permits. Twenty-six towns in Bengal

have been incorporated as Municipalities under this Act; most of these towns are municipal head-quarters of districts, and all of them are places of some size and importance."

"The next Act is Act VI of 1868, the District Towns Act. This Act was introduced in 1868 by the hon'ble member who had to-day rejoined the Council (Mr. Dampier), and he explained that the bill of 1868 was drawn on the model of Act XX of 1856; the Town Committee were to be rather a consultative than an executive body. Their functions were to advise the Magistrate on general matters, to examine and remark upon the town estimates, and either to assess the municipal taxes themselves, or to direct their assessment by the Ward Committees appointed for different sections of the town. Only one form of taxation is allowed under this Act, namely, a tax according to the circumstances and property of the persons to be protected; and the town fund thereby raised is applicable first to the payment of police, and then to the repair of roads or streets, to the conservancy or general improvement of the town, and to the maintenance of dispensaries and vaccination. The Act also contains sundry conservancy clauses, any or all of which can be extended to a town, and it empowers the members of the Town Committee to try persons accused of transgressing these conservancy provisions. This Act is now in force in ninety-four towns in Bengal."—(*P. C., 9th December*, 1871.)

Acts XXVI of 1850, XX of 1856, III of 1864 and VI of 1868 were repealed by Act V of 1876, which was repealed by the present Act.

Act V of 1876 expanded the provisions of Act III of 1864. It was next supplemented by Bengal Act VI of 1878 which dealt with latrines.

The present Act as the Preamble shows consolidates and amends the preceding Municipal Laws. Part VIII is based on Act V of 1873, Part X on Act VI of 1878 and the rest of the Act follows Act V of 1876.

Act III of 1884 has not however been left untouched, since it has been modified both by the Bengal and the India Council.

The amending Bengal Acts are III of 1886, I of 1888, II of 1888, I of 1893, IV of 1894, VI of 1894 and II of 1896 and the amending India Acts are V of 1897 and I of 1903.

Act II of 1888 removed the Suburbs of Calcutta from the purview of this Act. Act V of 1897 amended ss. 37J and 219 of this Act while Act I of 1903 amended ss. 1 and 2J repealed Acts III of 1886, I of 1893, IV of 1894 and II of 1896.

Act II of 1914 published in the *Calcutta Gazette* of the 18th February 1914 further amends Act III of 1884 in order to provide for the appointment of Sanitary Officers in certain municipalities. This Act is called the Bengal Municipal (Sanitary Officers) Act 1914. By it Part XIB is inserted after Part XIA of Act III of 1884.

Bengal Act II of 1914 which received the assent of the Governor-General on the 10th February1914 (*Calcutta Gazette*, February 18th, 1914), was introduced in order to strengthen the sanitary executive in mofassal municipalities. Section 349C, authorizes the Local Government to extend the new Act to any municipality after hearing objections. Section 349D makes it compulsory for every municipality to which the new Part XIB is extended, to appoint

(*a*) a Health Officer, or

(*b*) a Health Officer and one or more Sanitary Inspectors, or

(*c*) one or more Sanitary Inspectors.

The number of these officers must depend on the circumstances of each municipality and may vary in each municipality from time to time. The nature and strength of the superior sanitary service is left to be prescribed by the Local Government after full consideration of the circumstances of each case.

Section 349E requires the Local Government to fix the salaries and allowances of Health Officers and Sanitary Inspectors.

Section 349F empowers the Local Government to make rules prescribing the qualifications of Health Officers and Sanitary Inspectors.

Section 349H enacts that no Health Officer shall be dismissed without the sanction of the Local Government.

For the statement of objects and reasons see *Calcutta Gazette*, April 2nd, 1913. Part IV, p. 133. For the Bill see *Calcutta Gazette*, 10th December, 1913, Part IV A, p. 782 and for the Report of the Select Committee, *Calcutta Gazette*, 23rd July, 1913, Part IV, p. 162.

Previous to the partition of 1905, Act III of 1884 was in force in old Bengal. It remained in force after the partition in the Provinces of Western Bengal, and Eastern Bengal and Assam.

When the territorial re-adjustments were made on the 1st April, 1912, the Municipal Act remained unaffected by reason

of the Bengal, Behar and Orissa and Assam Laws' Act 1912 (VII of 1912). By Bengal Act I of 1914 published in the *Calcutta Gazette* of the 14th January, 1914 the following enactments relating to Western Bengal were extended to Eastern Bengal :—

(1) The Bengal Municipal (Amendment and Validation Act 1910) Act II of 1910, sections 1 and 2.

(2) The Bengal Vaccination (Amendment) Act, 1911, Act II of 1911. The whole Act.

The following Eastern Bengal Acts were similarly extended to Western Bengal.

(1) The Eastern Bengal and Assam Disorderly Houses Act, 1907, (II of 1907). The whole Act as applying to the other Acts specified in Schedule II of Act I of 1914—provided that Act II of 1907 shall not apply to any municipality constituted under the Bengal Municipal Act, 1884 in which the Calcutta Suburbon Police Act 1866 (II of 1866) is in force.

The following Act was similarly repealed, *viz.*, The Bengal Disorderly Houses Act, 1906 (III of 1906).

The Eastern Bengal and Assam Act II of 1907 was published in the *Eastern Bengal and Assam Gazette* of the 6th April, 1907.

Local Self-Government Policy of the Government of India.

Historical retrospect.

Local self-government as a conscious process of administrative devolution and political education dates, outside presidency towns, from the financial reforms of Lord Mayo's government. Consultative committees had indeed been appointed in various towns in 1850, and measures were taken in 1864 and following years to give effect to the recommendations of the report of the Royal Army Sanitary Commission, which was published in 1863, but no comprehensive scheme was introduced until the years following 1870. Legislation affecting several provinces was then undertaken. Lord Ripon's government in 1882 carried still further the principles of local self-government with the object, by measures cautiously but substantially progressive, of inducing the people themselves to undertake, as far as might be and subject to necessary control from without, the management of their own local affairs, and of developing and creating, if need be, a capacity for self-help in respect of all matters that had not, for administrative reasons, to be retained in the hands

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of a representative of Government. Various Acts were passed, by which the elective principle, financial independence and the reduction of official control were given a wide extension. In two resolutions Nos. $\frac{1}{140\text{-}184}$, dated the 24th October 1896, and Nos. 18-37, dated the 20th August 1897, respectively, Lord Elgin's government again reviewed the subject and laid down further conditions of progress. Important principles have, from time to time, been considered by the Government of India in connection with the revision of local self-government Acts and otherwise, and recently the whole field of policy has, in their survey of Indian administration, been ably and exhaustively reviewed by the Royal Commission upon Decentralization.

Substantial progress.

The Governor-General in Council is glad to be assured by the report of the Commission and the opinions of local Governments and Administrations upon it, that the results have on the whole justified the policy out of which local self-government arose. The degree of success varies from province to province and from one part of a province to another, but there is definite and satisfactory evidence of the growth of a feeling of good citizenship, particularly in the towns. The spread of education is largely responsible for the quickening of a sense of responsibility and improvements in the machinery. In certain provinces, beneficial results have followed the elaboration of a system of local audit. On all sides there are signs of vitality and growth.

Future general policy.

The obstacles in the way of realising completely the ideals which have prompted action in the past are still, however, by no means inconsiderable. The smallness and inelasticity of local revenues, the difficulty of devising further forms of taxation, the indifference still prevailing in many places towards all forms of public life, the continued unwillingness of many Indian gentlemen to submit to the troubles, expense and inconveniences of election, the unfitness of some of those whom these obstacles do not deter, the prevalence of sectarian animosities, the varying character of the municipal area, all these are causes which cannot but impede the free and full development of local self-government. The growing demand among the educated classes in towns for greater efficiency, involving more direct expert control, in matters affecting public health and education, is a further influence of a different character. A similar tendency, it may be observed, is discernible in England and in other European countries, the Governments of which

have shown a growing disposition to place on central authorities the duty of stimulating and encouraging local bodies in cases of default or deficiency on their part, and to give to the former powers of intervention and, in case of need, of actual supersession of the latter. These and similar considerations indicate the need for caution in delegating powers to non-official bodies, when they are not as yet adapted nor prepared for them. But on the whole the Government of India declare unhesitatingly in favour of a general policy of further progress, limited only by such conditions as local circumstances may dictate. Uniformity, even were it attainable, would be undesirable as tending to monotony, lifelessness and discouragement of new experiments. But, in fact, any attempt to exact uniformity in local administration would be foredoomed to failure. In each province, sometimes in each part of a province, the administrative system has grown up on lines of its own with reference to local needs and the wishes and abilities of the people. On a review of all the circumstances, the Government of India have decided to accept in almost every case the conclusion of the local Government or Administration as to the degree of progress possible at the present time. But in the more backward provinces in particular, it is their conviction that there is room for advance, and that the aim to be steadily pursued is abstention from interference in detail and increased reliance on the non-official element in local bodies.

Reforms accepted by the local Government.

Local Governments and Administrations in general are prepared to advance in the direction of the main recommendations of the Commission. They propose in varying degrees to expand the electoral element in the constitution of local bodies, to extend the employment of non-official chairmen in municipalities, to allow local bodies more ample control over budgets and freer powers of re-appropriation, to concede increased authority to local bodies over establishments and to relax existing restrictions in regard to outside sanction for expenditure on works of importance. These changes will mark a real and immediate extension of the principles of local self-government.

The Government of India now propose to state the principal conclusions that have been reached after full discussion in the public press, in debates of the Legislative Councils, and in consultation with local Governments and, in certain matters, with His Majesty's Secretary of State, on the questions that arise respecting (1) towns, (2) districts, (3) villages or other

small local areas; in other words, in relation to (1) municipal boards, (2) district and sub-district boards, and (3) panchayats or other unions. In each case they will consider the constitution of the local body, its ability to tax and its powers in regard to its budget and its establishment. Finally, they will deal with the recommendations of the Commission in connection with presidency towns and Rangoon.

Municipal Boards.

Elective majority.

The Commission recommended that municipal boards should ordinarily be constituted on the basis of a substantial elective majority, and that nominated members should be limited to a number sufficient to provide for the due representation of minorities and official experience. This recommendation has already been adopted in several provinces and is generally accepted by local Governments and the Government of India, subject to the proviso that the principle should in places, where its success is doubtful, be introduced gradually, and after experiment in selected municipalities.

Chairman.

The Commission also proposed that the municipal chairman should usually be an elected non-official, that Government officers should not be allowed to stand for election, and that where a nominated chairman might still be required he should be an official. The following statistics show how in the different provinces chairmen of municipalities are at present secured :—

Number of chairmen of municipalities, elected and nominated, officials and non-officials.

Province.	Elected non-officials.	Elected officials.	Nominated non-officials.	Nominated officials.	Totals.
Madras	38	2	15	8	63
Bombay	53	37	3	60	153
Bengal	74	10	8	19	111
United Provinces ..	20	34	19	11	84
Punjab	15	77	1	11	104
Burma	..	41	..	4	45
Behar and Orissa ..	7	7	5	36	55
Central Provinces and Berar	12	36	..	8	56
Assam	3	4	..	8	15
North-West Frontier Province	..	..	..	6	6
Coorg	..	..	..	2	2
Delhi	..	..	..	1	1
Total ..	222	248	51	174	695

Non-official chairmen.

The majority of local Governments are in favour of substituting, so far as possible, non-official for official chairmen, and the Government of India are in full sympathy with the proposal. The increasing burden of administration, apart from other considerations, renders it desirable that the district officer should be relieved of the executive control of municipal bodies. The Governor-General in Council recognises, however, that the change must be made gradually, and that in the absence of suitable candidates, it may not be possible to make it finally and once for all in particular places. He agrees with the opinion expressed in several quarters that discretion should be reserved to a local Government to nominate a non-official as chairman. Many gentleman of influence, well fitted to be chairmen of boards, are not prepared to offer themselves for election, and insistence on election as the only alternative to the nomination of an official would unnecessarily narrow the field of choice. Nor does it appear necessary to prohibit boards under any circumstances from electing an official as their chairman. It may be desirable, however, to require the election of an official as chairman to be confirmed by the Commissioner, or even higher authority.

The Bombay system in larger municipalities.

The Commission suggested that some of the largest cities should adopt the system in force in Bombay city, where there is an elected chairman, who is the official mouthpiece of the corporation as a whole, the executive administration, however, vesting in a full-time nominated official subject to the control of the corporation and of a standing committee thereof. In the Bombay District Municipal Act, 1901, also there are provisions under which a Chief Officer can be appointed by a city municipality, on its own initiative or at the instance of the Governor in Council. The Governor in Council may also appoint an executive officer known as the Municipal Commissioner for any municipal district which contains one hundred thousand inhabitants, or for any other municipal district on the application of the municipality, provided that such application has been previously supported by not less than two-thirds of the whole body of councillors. A Municipal Commissioner has in some respects more extensive powers than a Chief Officer. Under this arrangement the direction of the general policy of a municipality vests in the whole body of councillors, while the executive power, with certain reservations, vests in the Municipal Commissioner. The municipal committee may cause him to

furnish any returns and reports on matters appertaining to municipal administration and they retain financial control. The Chief Officer or Municipal Commissioner is not removable, except by order of the Governor in Council, or by the vote of three-fourths of the whole number of councillors. These officers exercise certain executive powers specifically conferred on them by the Municipal Act, and such other powers as may be delegated to them under the provisions of the Act; and the Governor in Council may require that they shall be invested with any powers which can be lawfully delegated. The system works well in Bombay. The Government of India do not desire to press for its adoption in provinces where it may not be suited to the local conditions. They are, however, of opinion that it has the advantages of ensuring a continuous and strong executive administration by an efficient paid staff, while maintaining the corporate control and activity of the municipal board. It is in fact not dissimilar to the system in force in England. They commend it to local Governments as a means of overcoming, at any rate in large cities, the difficulties inherent in the introduction of the important changes contemplated, especially when non-official chairman are busy professional men. In smaller towns they suggest that the object aimed at might be attained by the wider delegation of executive functions to responsible secretaries, engineers and health officers and that power to enforce such delegation might be secured by legislation.

Financial resources.

The aggregate income of 701 municipalities in existence at the close of 1912-1913 (excluding the presidency towns and Rangoon) amounted to £3,282,845 (Rs. 4,92,42,675) apart from loans, sales of securities and other extraordinary receipts, or an average of about £1,683 (Rs. 70,245) a year. This income was distributed as follows:—

	£
Madras	454,908
Bombay	586,054
Bengal	339,979
United Provinces	502,391
Punjab	435,039
Burma	202,524
Behar and Orissa	145,270
Central Provinces	177,496
Berar	37,594
Assam	34,764
North-West Frontier Province ..	72,560
Coorg	3,700
Delhi	110,566*
	£3,282,845 (Rs. 4,92,42,675)

* NOTE.—The figures are abnormal on account of large grants from Government during the year.

The following further statements show the proportions under various heads of municipal income and expenditure respectively in the different provinces for the year 1912-1913.

Income.

Province.	Octroi.	Percentage of total income from municipal rates and taxes derived from						Percentage of total income excluding loans and advances derived from						
		Tax on houses and lands.	Tax on animals and vehicles.	Tax on professions and trades.	Tolls.	Water-rate.	Conservancy tax.	Other taxes.	Taxation.	Under special Acts.	Municipal property.	Grants from Government and other sources.	Miscellaneous.
Madras ..	..	45·0	10·2	8·6	19·0	16·8	..	0·4	44·0	0·3	15·1	36·4	4·2
Bombay ..	..	16·3	3·2	0·3	4·5	16·9	8·0	3·9	62·6	0·5	16·4	17·1	3·4
Bengal ..	..	37·2	5·5	1·8	2·1	13·9	25·1	14·4	75·8	2·1	8·4	11·5	2·2
United Provinces	..	5·4	1·0	3·8	2·8	6·6	1·1	10·1	62·8	1·6	19·7	13·6	2·3
Punjab ..	..	6·8	0·8	..	..	1·3	1·2	0·2	63·1	0·8	19·3	13·7	3·1
Burma ..	..	42·5	3·7	..	14·0	9·2	20·6	10·6	38·1	1·1	42·3	17·2	1·3
Behar and Orissa	..	40·7	9·5	1·8	5·6	3·5	21·6	15·6	62·5	1·4	9·9	25·1	1·1
Central Provinces	..	1·7	4·3	0·1	1·2	15·3	10·9	3·3	60·3	2·7	16·3	16·4	4·3
Berar ..	..	61·6	4·3	26·8	10·4	4·6	20·5	12·7	47·9	8·2	13·5	29·5	0·9
Assam ..	..	3·3	7·6	..	9·9	11·6	22·1	8·3	36·8	4·0	10·8	47·3	1·1
North-West Frontier Province ..	98·0	0·6	0·1	..	..	1·3	0·1	..	42·1	0·2	15·9	41·1	0·7
Coorg ..	..	62·7	3·9	18·9	7·1	7·4	..	..	28·7	2·6	11·9	56·8	..
Delhi ..	80·2	13·1	4·8	..	11·9	..	..	..	38·5	0·3	19·8	39·5	1·9

Expenditure.

Province.	Percentage of Municipal Expenditure on							
	General administration.	Public safety.	Water-supply and drainage.	Conservancy.	Public works.	Other measure for public health and convenience.	Public instruction.	Miscellaneous.
Madras	6·9	4·2	10·5	20·3	27·6	13·2	10·2	7·1
Bombay	8·5	5·2	25·1	14·1	14·3	10·5	15·2	7·1
Bengal	7·2	6·9	24·7	26·8	16·4	7·5	3·3	7·2
United Provinces	10·2	6·0	27·7	17·2	13·9	6·2	4·5	14·3
Punjab	12·0	6·1	16·8	13·8	15·5	15·9	10·6	9·3
Burma	10·1	6·6	10·7	19·3	18·3	25·5	4·3	5·2
Behar and Orissa	8·2	5·5	12·7	28·3	15·7	21·9	3·0	4·7
Central Provinces	11·1	3·2	30·4	15·9	10·3	11·9	10·2	7·0
Berar	9·4	4·6	24·4	21·6	8·9	10·5	18·3	2·3
Assam	5·7	3·8	32·6	23·3	19·4	7·9	4·2	3·1
North West Frontier Province	10·8	7·4	11·1	16·5	13·7	21·3	14·3	4·9
Coorg	10·8	3·4	1·6	10·3	9·6	8·4	16·5	30·4
Delhi	7·4	4·0	33·5	18·0	10·9	11·0	1·8	13·4

Taxation.

The taxes, tolls and fees which may ordinarily be levied by municipalities are provided for in the municipal enactments in force in the different provinces. They are imposed in most cases with the previous sanction of the local Government concerned and within the limits laid down in the Acts. They usually take one or other of the following forms :—

(1) Tax on arts, professions, trades, callings, offices and appointments.

(2) Tax on buildings, lands and holdings.

(3) Water, drainage, sewage, conservancy, scavenging and lighting tax.

(4) Tax on vehicles, boats, palanquins and animals kept for use or used within municipal limits.

(5) Tax on circumstances and property.

(6) Tax on private menials and domestic servants.

(7) Tax on private markets.

(8) Octroi on animals or goods or both, brought within municipal limits for consumption or use.

(9) Tolls on vehicles and animals entering municipal limits, and tolls on ferries, bridges and metalled roads.

(10) Fees on the registration of cattle sold within municipal limits and of carts and other vehicles.

The taxes provided for in the Acts vary, however, in the different provinces, and not all these taxes are actually levied in any one province. Any tax other than those specified in the Acts, which is proposed to be levied, ordinarily requires and should continue to require the sanction of the Governor-General in Council.

The most important taxes now in force are octroi duties, levied principally in Bombay, the United Provinces, the Punjab, the Central Provinces and the North-West Frontier Province, and the tax on houses and lands which holds the chief place in the other provinces as well as in Bombay city.

Octroi and the terminal tax.

The octroi system in the existing circumstances of the country has certain obvious advantages. As a tax octroi is productive and grows with the prosperity of the town. Its imposition is sanctioned by immemorial usage, and the people are habituated to the system by long custom. The tax is usually paid in small amounts and the effect of the payment is not generally felt as a burden. On the other hand, there is no doubt that it provides

constant opportunities for fraud, delay and oppression owing to the necessity of entrusting large discretionary powers to a subordinate agency, that it is expensive to collect and wasteful and, finally, that in many places it constitutes a serious burden on trade in general, and in particular on through trade, notwithstanding the provision made for refunds. On the recommendation of a strong representative committee and the local Government, the Government of India have sanctioned an experiment in the United Provinces, which involves (*a*) the substitution of direct taxation for octroi in the smaller towns, and (*b*) the application to a large number of other towns in which conditions are suitable of the system of a terminal tax, or light transit dues on imports or exports, subject to no refunds. The Government of the United Provinces considers that some of the main benefits of such a system, and in particular a reduction of the high cost of collection, can only be secured if the tax is collected through the agency of the railway companies, who should be adequately remunerated for their services. The Government of India are prepared to facilitate negotiations to this end. The Government of Bombay have assented to the tentative replacement of octroi by a terminal tax in a few municipalities selected from those desirous of making the experiment. The question is under consideration or experiment in other provinces also. The Government of India while adhering to the principle that municipal taxation should not operate, so far as can be avoided, as a transit duty on through trade, are prepared to concede that a light terminal tax with no refunds may in practice prove less burdensome to through trade than the octroi system as hitherto administered, provided that the following conditions are observed—*viz.*, (1) that the terminal tax, wherever imposed, should be substantially lower in its rates than the octroi which it replaces, (2) that it should be limited to places where there are special grounds for applying it, which must be adequately demonstrated, (3) that it should be regarded as facilitating the transition to a system in which direct taxation will form an increasingly important factor, and not as an elastic means of progressively increasing the resources of municipalities apart from normal development due to increase of traffic and (4) that it should not be adjusted with the primary object of compensating municipalities for the loss of octroi.

House and land tax

The house and land tax is the chief source of municipal income in Madras, Bengal, Burma, Behar and Orissa, and Assam and it has been imposed with some success in portions of Northern India.

This tax, however, is difficult of assessment, in many places, where it is the custom to own rather than to rent dwelling houses, because in such cases the house affords no indication of the financial status of the owner. Many aristocratic but impoverished families live in large buildings which are merely relics of vanished prosperity, while the rich trader often remains content with the humble dwelling in which he was born. There is, however, a growing tendency on the part of the professional and trading classes to spend a larger proportion of their incomes on securing sanitary accommodation, so that it is reasonable to anticipate that the house-tax revenue will gradually expand, and will generally be contributed by those best able to pay. The technical and administrative difficulties of assessment have in places been overcome by entrusting the preparation and periodic revision of registers to oustide agency.

Tax on professions and trades.

A tax on professions and trades yields a considerable revenue in certain provinces, *e.g.*, £17,239 (Rs. 2,58,591) in Madras, £4,697 (Rs. 70,465) in Bengal, £14,106 (Rs. 2,11,599) in the United Provinces, and £4,869 (Rs. 73,036) in the Central Provinces. It has also been imposed in some towns in Northern India. But neither it nor the tax on circumstances and property is likely to yield a large revenue, and there is always danger lest local taxation of this kind encroach on the field of Imperial taxation.

Tax on pilgrims.

In Benares there is a form of terminal tax which is imposed, with certain exceptions, on passengers coming to or leaving that station by rail. There is a radius of exemption beyond which the tax is levied and it is collected by the railway companies as a surcharge on railway fares. A similar tax is also in force in Calcutta which is levied by the Calcutta Improvement Trust and is collected from passengers entering or leaving that city by rail or steamer. In Hardwar, Ajudhia, and Thaneswar, there is a tax on pilgrims and other persons who enter the limits of those municipalities. The tax at Hardwar is levied on railway passengers throughout the year, while that at the other two municipalities is imposed only on the occasion of certain special fairs. In Bombay a pilgrim tax may be levied under section 59 (*b*) (*x*) of the District Municipal Act III of 1901.

Powers of taxation.

The Commission were of opinion that municipalities should have full liberty to impose or alter taxation within the limits laid down by the

municipal laws but that the sanction of an outside authority to any increase in taxation should be required where the law did not prescribe a maximum rate. Subject to the general control of the Goverment of India over the principles to be followed, the sanction of the local Government is at present necessary to every proposal for the imposition of taxation. A maximum rate is prescribed in the Madras, Bengal, and Burma Acts, and in the Punjab, United Provinces, and Central Provinces, so far as regards the tax on buildings and lands; but none is laid down in Bombay. The recommendations of the Commission do not command general assent. It is pointed out, for instance, that a municipality might reduce its taxation without due consideration to the needs of the administration and the security of loans. The Government of India, while recognizing the force of such objections, are, on the whole, in general sympathy with the Commission's recommendations. They think, however, that power to vary any tax might be reserved by such local Governments as are unable to accept in full the recommendations of the Commission and that in the case of indebted municipalities the previous sanction of higher authority should be required to any alteration of taxation.

Subventions by Government.

Municipal finance has shown a marked expanse during the last decade. The total income of 701 municipalities in 1912-1913 was £3,282,845 (Rs. 4,92,42,675) as compared with £1,844,081 (Rs. 2,76,61,215) for 753 municipalities in 1902-1903. Contributions from Government have materially assisted this expansion. Since 1911, the Government of India have made grants amounting to £3,076,466 (Rs. 4,61,47,000), of which £368,200 (Rs. 55,23,000) are recurring, for urban sanitation. Municipalities have also received their share—the exact figure is not easily ascertainable—of the large educational grants made by the Government of India since 1911, amounting to about £3,987,800 (Rs. 5,98,17,000), of which £826,666 (Rs. 1,24,00,000) are recurring. Municipal boards have been relieved of all charges for the maintenance of police within municipal limits. In almost every province the recommendation that municipalities should be relieved from financial responsibility for famine relief and should receive assistance from Government in the case of severe epidemics, has been already given effect to, or the principle has been accepted.

There is a growing demand on every side for improvements and it is not possible for all municipalities to finance large schemes of water-supply and drainage without substantial aid.

Such aid has been freely given by the Imperial and local Governments. The power of the Government to make grants is, however, limited, and financial assistance of this nature cannot be expected unless the rate-payers are prepared to bear a reasonable proportion of the burden. Where, however, further taxation is not possible, the Government of India trust that municipalities will bear in mind the possibility of supplementing taxation by development of municipal property, so as to ensure the best possible returns and by maintaining the principle that special services, such as the supply of water, electric lighting, etc., should, as far as possible, pay for themselves.

The Government of India have also accepted a further recommendation of the Commission, namely, that assistance may legitimately be given by Government to poorer municipalities which, without it, would be unable to carry on the normal standard of administration required from them. In such cases, the Government of India agree with the Commission that assistance can best be given, when it is given, by a general recurring grant-in-aid, which should be at the discretion of the local Government and met from its own resources.

Payment and control of services.

The Commission proposed that if a municipal or rural board has to pay for a service it should control it, and that where it is expedient that the control should be largely in the hands of Government, the service should be a provincial one. The Government of India while not prepared to accept the proposal in full have approved it in a somewhat modified form. They consider that charges should be remitted in cases where a local body contributes to Government for services inherent in the duty of supervision and control by Government officers, or for services which cannot expediently be performed except by Government agency. For example, Government may properly cease to charge for clerical establishments in the offices of supervision and control, or for the collection of District cesses which it is clearly expedient to realise along with the Government revenue. On this principle they have made assignments which will relieve both municipalities and rural boards of payments amounting to £40,000 (Rs. 6,00,000) a year approximately.

Tramway cess.

It was suggested by the Commission that municipalities should be empowered to levy a special rate for the construction or promotion of tramways. Local Governments generally are doubtful as to the value of the proposal. The Government of India will

however, to be prepared to consider any practical proposal to this end, which they may receive.

Budgets and financial control.

Commenting on the minute control exercised in some provinces over municipal finance, the Commission recommended that municipalities should have a free hand with regard to their budgets ; the only check required should, they thought, be the maintenance of a minimum standing balance to be prescribed by the local Government. They acknowledged that relaxed control might lead to mistakes and mismanagement, but they were of opinion that municipal bodies could attain adequate financial responsibility only by the exercise of such powers and by having to bear the consequences of their errors. Further checks would be provided by the control which local Governments would exercise over loans, and by the power which should be reserved to compel a municipality to discharge its duties in case of default. The system proposed is stated to be in force in the Bombay Presidency where, however, no minimum balance is required by law. The Government of the United Provinces accepts the recommendations subject to the condition that Commissioners should pass and that Government should see the budgets of indebted municipalities. The Punjab Government also agrees subject to the proviso that the budget of an indebted municipality should be forwarded to the Government for information. The Government of Bengal are prepared to introduce the change experimentally in certain selected municipalities. They intend also to issue general instructions to Commissioners in this province to abstain from interference in details and to restrict their supervision to securing (1) a minimum closing balance, (2) provision for the service of loans, (3) the observance of the provisions of the Act or statutory rules and of any standing orders of Government. Other Governments concede certain relaxations of existing rules. The Government of India accept these opinions for the present, but they nevertheless regard the recommendations of the Commission as expressing a policy to be steadily kept in view and gradually realised.

Estimates for public works.

The Commission proposed that the existing restrictions on municipalities, which require outside sanction for works estimated to cost more than a certain amount, should be removed but that Government should scrutinize and sanction estimates of projects to be carried out from loan funds. The majority of the local Governments are prepared to relax the existing rules in the direction of giving more freedom to municipal

boards. The Government of India are in favour of extended freedom subject, where necessary, to proper precautions against extravagant and ill-considered projects. They are content, however, to leave the precise extent of relaxation to be determined by local Governments. One important factor in this connection will be the quality of the professional agency available in the various boards. In their resolution No. 1019-A., dated the 10th November 1914, promulgating rules relating to the grant of loans to local bodies under the Local Authorities Loans Act, 1914, the Government of India have emphasised the necessity for a proper scrutiny of projects financed with borrowed money and they trust that the rules in question will be carefully observed.

Establishments.

It was recommended by the Commission that the degree of outside control over municipal establishments should be relaxed, that the appointment of municipal secretaries or other chief executive officers, of engineers and health officers, where these exist, should require the sanction of the local Government in the case of cities, and of the Commissioner elsewhere, and that the same sanction should be required for any alteration in the emoluments of these posts, and for the appointment and dismissal of the occupants. As regards other appointments, they proposed that the local Governments should lay down for municipal boards general rules in respect to such matters as leave, acting and travelling allowances, pensions or provident funds and maximum salaries, and that their sanction should be required for any deviation therefrom. Almost all local Governments have expressed their willingness to relax outside control over the appointment of the staff employed by local bodies. In Bombay, the system is generally that recommended by the Commission. In some other provinces, the existing rules give a free hand to municipalities, subject to outside control in the case of certain appointments. The Government of India, while considering that Government control over other posts might reasonably be relaxed, accept the view that outside sanction should be required to the appointment or dismissal of secretaries, engineers and health officers, and they have already advised local Governments to take powers where these do not exist, to require a municipality to appoint a health officer and to veto the appointment of an unfit person. Such powers already exist in the Bombay Presidency and have recently been taken by legislation in Bengal. The Imperial and Provincial Governments have given liberal grants to selected municipalities in order to establish

a trained service of health officers and sanitary Inspectors, the conditions of these grants being, as in England, such as will ensure the appointment of qualified men and reasonable security of tenure.

Special outside control.

The Commission thought that the Collector should retain certain powers, given under the existing Acts, *e.g.*, the power to suspend in certain cases the operation of municipal resolutions and that the Commissioner should be able to require a municipality which had neglected a particular service to take such action as he may consider necessary. The local Governments generally and the Government of India are of opinion that special powers of outside control are necessary and should continue.

Town-planning and relief of congested areas.

The question of extending the powers of selected municipalities to enable them to relieve the pressure of population in congested areas, and to undertake schemes of orderly town-planning in order to provide for future needs, has been dealt with by the Government of India in paragraphs 43 and 44 of their Sanitary Resolution Nos. 888-908, dated the 23rd May 1914. A Town Planning Bill, combining many original features with others derived from the latest English and Continental legislation, has now been passed into law in the Bombay Presidency, and the Government of India will watch with deep interest the results of this experiment, which will, they trust, pioneer a fruitful expansion of municipal activities in India.

Conclusion.

In conclusion, the Governor-General in Council hopes that this declaration of policy may lead to steady and sound progress, without hampering local Governments and Administrations or unduly fettering local self-government. It is designed to mark a definite advance in devolution and political education. His Excellency in Council trusts that it will be interpreted in the spirit in which it is framed, a spirit of prudent boldness, calculating risks but not afraid to take them in the cause of progress.

[Extracted paras 1 to 25, and para 46 of India's Resolution, Nos. 55—77, dated the 28th April 1915, (published in Gazette of India, dated 1st May 1915.)]

THE

BENGAL MUNICIPAL ACT

BEING

B. C. ACT III OF 1884.

[AMENDED UP TO DATE.]

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

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Municipalities within the territories subject to the Government of the Lieutenant-Governor of Bengal : it is enacted as follows :—

Preamble.—The preamble states that the Act consolidates the Municipal Laws. It was held in *Chandi Prasad* v. *Abdur Rahman* (22 Cal. 131) that "the Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code for submitting a false return under s. 133."

The preamble refers to Bengal generally, that is, to old Bengal as it stood before the partitions of 1905 and 1912. The Act, therefore, is in force in BENGAL, BIHAR and ORISSA, and ASSAM. It does not, however, apply to Calcutta, for which there is a special Act (Ben. Act III of 1899). In the case of Howrah ss. 236 to 244, and certain other sections were repealed by s. 642 of the Calcutta Act and Notifications issued thereunder. (No. 1853-M., dated 17th July 1903, published in the *Calcutta Gazette* of 22nd idem, Part I B, Page 147, and No. 715, T. M., dated 20th May 1904, published in the *Calcutta Gazette* of the 25th idem, Part IB, page 638). The Act does not apply to Angul (Bengal District Regulation I of 1894, s. 3), nor to the Chittagong Hill Tracts (Chittagong Hill Tracts Regulation 1 of 1900, s. 4). It was extended to the towns of Sylhet, Gauhati and Dibrugarh by s. 5 of the Scheduled Districts Act XIV of 1874, under Notification No. 109, dated 28th October 1887, and to Dhubri, under Notification No. 2057-G., dated 17th August 1901. Bengal Act I of 1900 enacted special provisions for Darjeeling. The names of the Municipalities in Bengal, Bihar and Orissa, and Assam, with the number of Commissioners, and the names of the Municipalities in which the Commissioners, and in which the Chairmen are appointed by the Local Government, will be found *post*.

PRELIMINARY.

Short title and commencement.

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

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

Enactments repealed.

2. (2) The enactments specified in the sixth Schedule shall be repealed to the extent mentioned in the third column thereof.

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

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

Saving clause.

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

"Notifications" defined.

"The expression 'notifications' as used in this section shall be deemed to include, and to have always included, all directions, declarations and orders given, or made, and published under any enactment referred to in this section:

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

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

All rules and bye-laws made under the former Act must be consistent with the present Act; if consistent they will remain in force. Vide *Baikunta Nath Das v. Lalit Mohan Sarcar* (1893, 20 Cal., 699). A

bye-law passed under s. 313 of Act V of 1876 which was *ultra vires* cannot be valid under this section—*Boni Madhab Nag* v. *Motilal Das* (1894, 21 Cal., 837). So in a case under s. 2, para. 5 of Bengal Act II of 1888 (the Calcutta Consolidation Act) in which the Corporation had commenced proceedings to enforce the improvement of a *busti* under the old Act, and notwithstanding that the new Act provided totally different preliminaries and procedure, had continued the proceedings practically under the old Act :—*Held* that proceedings commenced before the passing of the new Act, must to be effectual be continued under its provisions and could only be used to enforce rights and powers in existence at the time it was sought to enforce them. Even if the proceedings could be considered under section 2, to have been commenced under the new Act, the action of the Municipality amounted to trespass for which they were liable in damages to the owner of the land.—*Corporation of Calcutta* v. *Jadu Lall Mullick*, 21 Cal., 528.

Notifications.—The first two clauses were added by Act IV of 1894 in consequence of the decision given in 20 Cal., 699, (*supra*).

Existing Municipalities.

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

"For a list of the existing Municipalities *see* post."

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

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

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

5. (5) Notwithstanding anything contained in section three this Act shall not take effect in any cantonment without the consent of the Governor-General in Council previously obtained, nor shall the Local Government extend this Act, or any part thereof, to any cantonment without such consent.

"In Bengal there are no cantonments within Municipal limits. Under s. 17 of the Cantonment Act XIII of 1889, the Local Government may, with the previous sanction of the Governor-General in Council by notification in the Official Gazette, impose in any Cantonment, not included

in a Municipality, any tax which can be imposed in a Municipality, and under s. 25 the Governor-General in Council may by notification in the *Gazette of India*, extend to any Cantonment, or part of it, any enactment in force in any Municipality in British India. See also s. 3 of the Municipal Taxation Act XI of 1881.

Interpretation.

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

"Carriage."

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

"Cart."

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

Distinction between a 'carriage' and a 'cart.'

A carriage must have wheels and must be ordinarily drawn by animals. A carriage must also fulfil two other conditions: it must have springs and must be used for the conveyance of human beings. A push-push, jinricksaw, dandi, palanquin or cycle does not fall under either definition, and cannot be taxed under the Act. An ekka will fall under the definition of 'cart.' A point has been raised whether an ekka can be regarded as a wheeled vehicle with springs on account of the bamboos acting as springs. In accordance with the accepted canons of interpretation this cannot be so, as the word 'spring' must be taken in its popular sense. Under the Calcutta Municipal Act III of 1899 a 'carriage' expressly includes a ricksaw and a cycle.

It was held in *Wilson* v. *Madras Municipality* (1895, 19 Mad., 83), that a bicycle is a vehicle with springs but not being drawn by animals it is not a 'carriage' or a 'cart' within the meaning of the definition.

"Holding."

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

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

Explanation.—"Holdings" separated by a road or other means of communication shall be deemed adjoining within the meaning of this proviso.

Under the definition, adjoining holdings, occupied by the same person may be separately assessed under s. 45 (*a*), provided the tax assessed on him, does not exceed Rs. 84 per annum. The Legal Remembrancer passed

the following opinion on a reference from the Deoghur Municipality :— "If 3 buildings are distinct and form separate dwelling-houses intended or suited for different occupants, there is no legal objection to their being treated as different holdings, provided the owner divides the compound into parts by *metes and bounds* and assigns to each house a separate compound which will thus have a separate set of boundaries."

It follows from the definition of 'land' given in clause 5 below that "holding" means the land and the houses on it, and the things attached to the earth.

Having regard to s. 6 (3) and s. 6 (5) the word 'holding' is wide enough to cover arable land which is therefore liable to be assessed. Exemption cannot be claimed under s. 98 or 87. It has been argued that the Municipal Act, taken as a whole, contemplates taxation only in respect of some sort of habitation or residence, and that purely agricultural holdings are outside the scope of the Act. (*Vide* ss. 8, 9, 103, 110). But proviso to s. 9 does not *exclude* agriculturalists, and the provisions of s. 103 are incidental.

The legislation of 1894 indicates that the exclusion of agricultural lands was intended to cease. Compare s. 79 of the Act of 1866 and s. 87 of the existing Act as passed in 1884 with the law as amended in 1894.

See also s. 86 (*d*) and s. 279. proviso first. clause (*b*). The exemption contained in the proviso to s. 279 and the absence of any such exemptive clause in s. 308 taken with the amending legislation of 1894 and the other provisions of the Act referred to above, show that arable lands are not intended to be exempted.

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

The Act does not define a hut. The question has been raised as to the meaning of the word *hut*. The term is defined in Webster's Dictionary as "a small house, hovel or cabin ; a mean lodge or dwelling ; a cottage. It is particularly applied to log houses erected for troops in winter." There can be no doubt that the term is not intended. in the present Act. to refer to *pucca* houses, however small, but merely to be ordinary mud or bamboo and mat habitations, of the poorer classes. It has been held that it does not include a structure with *kutcha-pucca* walls.

"A suit was instituted by one Okhil Chunder Dhang of Bajulpurah in the Moonsif's Court, to restrain the Commissioners from carrying out *bustee* improvements on a piece of land which he alleged was in his *mourosee* tenancy, on the grounds that the structure ordered to be removed was not a hut, because it had *kutcha-pucca* walls. The case was decreed in favour of the plaintiff. As the point involved was a very important one, and as the judgment of the Moonsif appeared to be doubtful, an appeal was filed in the Court of the Judge of Hooghly."—*Report of the Howrah Municipality for* 1882-83. On appeal the judgment of the Moonsif was upheld by the Judge.

"In the Calcutta Municipal Act (III of 1899) a hut is defined to be a building no material portion of which above the plinth level is constructed of masonry. This definition has been adopted in the case of the Darjeeling Municipality with a slight addition (See Note after Clause 19)."

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

"Immovable property" and "land."

(6) "Movable property" means property other than immovable property.

"Movable property."

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

"Magistrate of the District."

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

"The Magistrate."

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

"Municipality."

English Law.—The term is unknown to English law. The corresponding term in English law is the word "borough" which is defined in s. 7 of the Municipal Corporation Act, 1882, to mean a city or town to which that Act applies. A "Municipal Corporation" is defined in the same section as "the body corporate constituted by the incorporation of the *inhabitants* of a borough."

Under the present Act the body corporate is constituted by the incorporation of the Commissioners, and does not include the inhabitants of the Municipality. See s. 29. "For a list of places in which the Act or any part of it is in force, see *post*.

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

"Offensive matter."

(11) "Owner" includes—

"Owner."

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

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

(*c*) an agent for any such person;

(*d*) a trustee for any such person:

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

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As to whether Receivers appointed by Courts come under this definition, see *W. R. Fink* v. *The Corporation of Calcutta* (1903), 7 C. W. N., 200 ; 30 Cal., 721, and as to the liability of the Administrator-General of Bengal, see (1903), 30 Cal., 927. An 'owner' includes not only an owner in actual occupation of the holding, but also an owner entitled to receive rent from the occupier or otherwise. A house was purchased in the name of the father, but the son paid the major portion of the consideration money out of funds belonging to himself and his brothers. He similarly defrayed the expenses of extensive alterations, and the son occupied the house while the father was abroad. It was held [*Biswas* v. *Biswas* (1911), 38 Cal., 501], that the son could be treated as 'owner' and was liable to pay rates under s. 103. The son is both competent and liable to pay.

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

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

English Law.—The definition of road here given is similar to that of a highway, which has been defined as a passage which is open to all the king's subjects. "It may be a *footway*, appropriated to the sole use of pedestrians ; *a pack and prime way*, which is both a horse and footway : or a *cart way*, which comprehends the other two, and also a cart and carriage way. (Co. Lit., 56). But to whichever of these classes it belongs, it is still a highway, for 'highway is the genus of all public ways, as well cart, horse or foot ways.'"—2 Smith's Leading Cases, p. 137.

A highway need not be a thoroughfare, *cal de sac* may be a highway. *Bateman* v. *Black* (1852) 18 Q.B., 870. "A highway leading to a navigable river, itself a highway, or to a ferry accross a river across a river is not a *cul de sac* ; and the right of passage over the *solum*, whether covered by water or not, is continuous and will not be interrupted by a natural or artificial narrowing of the river."

A highway ordinarily "derives its existence from a dedication to the public by the owner of the land over which the highway extends of a right of passage over it ; and this dedication, though it may not be made in express terms, as it indeed seldom is, may and will be presumed from an uninterrupted use by the public of the right of way claimed.—*R.* v. *Lloyd*, 1 Camp., 260. . . . . An open user as of right, by the public raises a presumptive inference of dedication requiring to be rebutted ; and when such user is proved, the *onus* lies on the person who seeks to deny the inference resulting from it to shew negatively that the state of the title was such that no one could make a valid dedication."—*R.* v. *Petrie*, 4 E. and B. 437 (*ibid*, p. 40). "No particular time is necessary for evidence of a dedication. If the act of dedication be unequivocal, it may take place immediately. For instance, if a man build a double row of houses opening into an ancient street to each end, making a street, and sells or lets the houses, that is *instantly* a highway."—*Per* Chambre, J., in *Woodyer* v. *Hadden*, 5 Taunt., 125.

"It is an established maxim—once a highway, always a highway—for the public cannot release their rights, and there is no distinctive presumption or prescription." . . . . See the judgment of Byles, J., in

Dawes v. *Hawkins*, 8 C. B. N. S., 848 ; 2 Smith's Leading Cases, p. 144. Compare *Empress on the prosecution of Jodunath Ghose* v. *Brojonath Dey* (1877), 2 Cal., 425, quoted in the note to s. 201.

See Halsbury's Laws of England Vol. XVI.

Indian Law.—A right of way limited to the occupants of houses in a court, and access to such court by persons having business with the occupants, is not a public right of way.—*Kalidas* v. *Municipality of Dhandaka* (1882), 6 Bom., 686.

For the public to acquire a right of way, no fixed period of enjoyment need be shown. It is sufficient if the acts of user by the public are shown to have been acquiesced in by the owner of the land over which the road passes, and that these acts are of such a character as to warrant the inference that the owner intended to make over to the public the right to use the land as a highway. Eight or even six years have been held to be time enough to warrant the presumption of the dedication from user. *Anderson* v. *Jagadamba* (1880), 6 C. L. R., 282.

A right of way may be created either by grant, express or implied, dedication, immemorial custom or necessity.—*Imambundee Begum* v. *Sheo Dyal Ram*, 14 W. R., 199.

"Street." Jessel in *Taylor* v. *Oldham* (46 L. J., Ch. 109), said; "The definition of a street is correctly laid down in the Imperial Dictionary; the street itself is no doubt properly the paved or prepared road ; that is the street. It sometimes includes houses on either side of it. But that is not its proper meaning. It is called a street even without houses. There are some streets with no houses. But the common meaning of the word *street* is—a road with houses on one or both sides of it.

A *Cul de sac* not dedicated as a highway may be a street under the Public Health Act (*Walthamstow* v. *Sundell*, 68 J. P., 509).

'Road' includes a path over the ridges between rice fields—*Ram Ch. Ghose* v. *Bali Municipality* (1890), 17 Cal., 684.

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

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

See sections 37 C, 37 D, 37 E, 37 G and 37 J.

In Bengal the Sanitary Board consists of 7 members. Rules regulating the duties of the Sanitary Board and its Secretary as well as the duties of the Sanitary Engineer, Bengal, were laid down in Government letter No. 2620, dated the 25th November 1913 as amended by Government Order No. 155-San., dated the 21st February 1914. See *post*.

"Schedule." (15) "Schedule" means a schedule annexed to this Act.

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"Section." (16) "Section" means a section of this Act.

"Sewage." (17) "Sewage" means nightsoil and other contents of privies, drains, and cesspools.

In s. 86 the word "latrine" seems to be used in the same sense as "privy." On the subject of the disposal of nightsoil, see Government Circulars given in Circulars and Orders Vol. III, p. 1044 foll.

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

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

No other date having as yet been fixed by the Local Government, the Municipal year commences, as before, on the 1st April.

"Local Government" is defined in the General Clauses Act I of 1899, cl. 24, s. 3.

The following additions have been made by Act I (B. C.) of 1900 and apply only to the Darjeeling Municipality, and to such area within the Darjeeling District and adjacent to the Darjeeling Municipality as the Local Government, on the recommendation of the Commissioners at a meeting may by notification in the Calcutta Gazette *declare to be deemed to be included within that Municipality for the purposes of such portions of the Bengal Municipal Act, 1884, as amended by that Act, as may be specified in that behalf in such notification :*

"(20) '*bridge*' *includes a culvert ;*

"(21) '*drain*' *includes a jhora, watercourse, channel or natural drainage line ;*

"(22) '*dwelling-house*' *means a masonry or framed building constructed, used or adapted to be used wholly or principally for human habitation ;*

"(23) '*framed building*' *means a building the external walls of which, are constructed of timber framing or iron framing, and the stability of which depends on such framing ;*

"(24) '*Government road*' *means a road maintained by the Government or at the public expense ;*

"(25) '*hut*' *means any building no material portion of which above the plinth-level is constructed of masonry or of squared timber framing or iron framing ;*

"(26) '*masonry building*' *means any building other than a framed building or a hut ;*

"(27) *the expression* '*materially alter*,' *when used with reference to a building, includes—*

(a) the construction of a roof or an external or party wall,

(b) any repairs to the building which involve the reconstruction of a masonry or framed wall or a masonry chimney after the same has been entirely or in great part demolished.

(c) *the closing-up of any door or window in an external wall,*''

(d) *any alteration of the internal arrangements of a building which affects an alteration of its drainage, ventilation, or sanitary arrangements, or which affects its security,*

(e) *the addition of any building, room, verandah, out-house, or other structure,*

(f) *the roofing of any space between one or more walls and buildings,*

(g) *the enclosing of any verandah,*

(h) *the conversion into more than one place for human habitation of a building originally constructed as one such place, and*

(j) *the conversion of two or more places for human habitation into a greater number of such places :*

Explanation.—*Clause* (f) *applies only as regards the structure which is formed by roofing a space and not as regards adjoining buildings ;*

"(28) '*plinth*' *means the part of a wall between the ground-level and the level of the lowest floor of a building ;*

"(29) '*private bridge*' *means any bridge which is not a public bridge as defined in this section ;*

"(30) '*private drain*' *means any drain which is not a public drain as defined in this section, and includes any surface sullage or other drain on private property ;*

"(31) '*private road*' *means any road, path, street, alley, way, or passage which is not a public road or a Government road as defined in this section ;*

"(32) '*public bridge*' *means a bridge on or over which a public road or any public work is carried, and the property in which is for the time being vested in the Commissioners ;*

"(33) '*public drain*' *means any drain which is vested in the Commissioners ;*

"(34) *the expression* '*public road*' *means any road, path, street, alley, way, or passage over which the public have a right of way, and the property in which is vested in the Commissioners ; and, as used in ss.* 189, 207, 216, 217, *clause* (1), *and s.* 235, *and in rule* 5 *of Schedule B and rule* 18 *of Schedule C, includes also a Government road ; and*

"(35) *the expression* '*re-erect*' *when used with reference to a building, includes—*

(a) *the re-construction of a building after more than one-half its cubical extent has been taken down or burnt down or has fallen down,*

(b) *the conversion of one or more huts or temporary structures into a masonry or framed building, and*

(c) *the conversion into a place for human habitation of any building not originally constructed for human habitation ;*

Explanation.—*Clause* (a) *applies whether the re-construction takes place (after the commencement of the Darjeeling Municipal Act,* 1900) *entirely at the same time or by instalments at different times, and whether more than half the cubical extent has (after the commencement of the Darjeeling Municipal Act,* 1900) *been taken down or been burnt down or fallen down at the same time or at different times.*"

"6A. *The Commissioners may decide whether any particular building is a framed building, a masonry building or a hut, as defined in s. 6; and their decision shall be final.*"

Power to define character of building.

6. *Sections 175 to 185 of the said Act shall not apply in the case of any notice issued under any of the clauses enacted by this Act or under any rule or bye-law made under any such clause.*

Restricton on application of sections 175 to 185.

PART I.

OF THE CREATION OF MUNICIPALITIES.

7. (7) In every place which, in accordance with the provisions of section three, becomes a Municipality under this Act, every person who has been appointed or elected to be a Commissioner for such place under the Bengal Municipal Act, 1876, and who is holding office as such Commissioner at the commencement of this Act, shall be deemed to be a Commissioner duly appointed for such Municipality, until such time as the election or appointment of Commissioners in respect of such Municipality shall take effect under the provisions of this Act. And in every such place in which a rate on the annual value of holdings, or a tax upon persons, or a tax upon carriages and animals, or a fee upon the registration of carts, or tolls on roads or on ferries, or a fee under Bengal Act VI of 1878, may have been levied by the Municipal Commissioners before the commencement of this Act, it shall be deemed that the said rate, tax, fee or tolls have been duly imposed under this Act, and such rate, tax, fee or tolls shall continue to be levied accordingly until the Commissioners at a meeting, with the sanction of the Local Government, shall otherwise direct.

Existing Commissioners and existing rates and taxes temporarily continued.

Bengal Act VI of 1878 is the Latrines Act, and has been repealed by the present Act.

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

Local Government may extend Act.

town or village, within the limits mentioned in such notification, shall be deemed to be created a Municipality for the purposes of this Act :

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

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

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

Notification.—*Vide* s. 2 and *Baikuntha Nath Das* v. *Lalit Mohun Sarkar* (1893), 20 Cal., 699.

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

Notification of intention to alter limits of Municipality.

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

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

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

(*d*) to sub-divide any Municipality into two or more Municipalities ; or

(*e*) to alter the number of the Commissioners of a Municipality ;

And the Local Government may, on the recommendation of the Commissioners at a meeting of both or all the Municipalities concerned, by notification similarly published, declare its intention to unite two or more Municipalities so as to form one Municipality :

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

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

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

Under the old law the rule was 'once a Municipality, always a Municipality' since no place could be removed from that category or have its limits varied without the recommendations of the Commissioners. Now Government can exercise the power without the recommendation of the Commissioners. *See* Government letter No. 34, dated the 27th August, 1894.

All applications for transfer of lands in cantonments to Civil Departments, etc., should be submitted for sanction through the local military authorities. (Bengal Government letter No. 5251—55-M., dated the 9th November, 1894.)

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

Objection to proposed alteration may be submitted to Local Government.

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

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

Local Government may apportion and dispose of Municipal property upon a sub-division or union of Municipalities.

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

Conditions on which Municipality may be created.

11. *Repealed by Bengal Act* IV *of* 1894.

12. *Repealed by Bengal Act* IV *of* 1894.

PART II.

Of the Municipal Authorities.

Of the Constitution of the Municipality.

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

Number of Commissioners.

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

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

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

Under this section the number of Commissioners must be determined by a notification of the Local Government, published immediately after the Act comes in force, and after such publication the number can only be altered on the recommendation of the Commissioners at a meeting, as provided in section 9. The notification referred to in the first clause was published in the *Calcutta Gazette* of the 6th August, 1884. Compare note to section 42.

Constitution of body of Commissioners.

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

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

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

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

1. *Resident within the limits of such Municipality.*—The term "resident" must here be understood in its legal and not in its ordinary acceptation. The legal meaning of the terms "residence," "dwelling," "domicile," and "home," all of which appear to be synonymous in law, is discussed at some length in *Gopal Chander Sircar* v. *Kurnodhar Mookhee and others*, 7 W. R., C. R., 349 from the judgment in which the following extracts may be quoted:

"Now the word 'dwelling' is synonymous with the term 'place of abode' or 'residence.' It is the place where a man lives and which he considers his home. A dwelling is constituted by an actual occupancy coupled with an intention to give the character of per-

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manency to such occupancy. 'Residence,' said Park, B., 'means a domicile or home.'—*Lamb* v. *Smith*, 15 L. J., 207, Exch.

"A man's dwelling is *primâ facie* the place where his wife and family reside, and if he has a family dwelling in some place, and he occupy a house and occasionally sleep in another, he will not be a resident in the latter place for his residence is his domicile, and his domicile is his home, and his home where his family reside (Story's Conflict of Laws, 63; *R.* v. *The Duke of Richmond*, 6 T. R., 561); and where a man had a shop and private parlour in which he carried on his business and entertained his friends, but neither himself nor his servants slept there, the Judges held that such occupation did not constitute a dwelling (*R.* v. *Martin*, R. & R., 108). A man may have two dwelling-places at the same time. Thus it was held by the Judges that, when a man has two houses and servants in both, and lives sometimes in one and sometimes in the other, both will be his dwelling-houses (C. Rep., 389), and during his temporary absence each house, although empty, if there be the *animus revertendi*, will yet be his dwelling house (*Rex* v. *Murray*, 2 East P. C., 496).

"So also in the case of *Whitthorne, Appellant* v. *Thomas, Respondent* (7 Man. and Gr. 5), where the question was as to the meaning of the word 'residence' in the Reform Act, Earle, J., said: 'The fact of sleeping in a place by no means constitutes a residence, though, on the other hand, it may not be necessary for the purpose of constituting a residence in a place to sleep there at all. If a man's family are living in a borough, and he is absent for six months, but with the intention of returning there, he will still be considered as residing there."

See also *Kassi Nath Kooer* v. *Deb Kristo Ramanooj Dass and others*, 16 W. R., C. R., 240; *Fatima Begum* v. *Sakina Begum and another*, 1 All., 51.

On the other hand it has been held that where a person is regularly employed in service in one place, and his family reside in another place to which he has no immediate or definite intention of returning, he may correctly be said to reside or dwell at the former place.—*Pargash Paray* v. *Hachim Khansamah*, W. R., C. R., 417. In such a case for the purposes of this section, it would probably be correct to consider such a person a resident of both places.

The term "residence" does not necessarily have the same meaning in different enactments or with respect to different subject-matters. Although a merchant's place of business was considered to be his "place of abode" for the purpose of the service of a notice [*Waterloo with Seaforth Local Board* v. *Bibby*, 10 Jur. (N. S.) 519], a person was held not to be qualified to be placed on the burgess list as an inhabitant house-holder, when he only had in the borough a house in which he carried on business and in which there was a bed-room and sitting-room, and in which he sometimes slept. *Reg* v. *Mayor of Exeter*, L. R., 4 Q. B., 110. *Per* Blackburn, J.—"There is no strict or definite rule for ascertaining what is inhabitance or residence. The words have nearly the same meaning. Sleeping once or twice in a place will not constitute inhabitance. There is no precise line to be drawn. It is always if the inhabiting is *bonâ fide*, a question of more or less. The question is whether there has been such a degree of inhabitance as to be in substance and in common sense a residence. Where a person has a country and a town house, it is a mere question of fact whether he has two or only one residence."—*Ib.*, p. 113.

"And a person may inhabit a place without sleeping there, or he may sleep there without inhabiting it. The fact that a person sleeps in a place, is generally a very important ingredient in deciding whether he inhabits it, but it is not conclusive."—*Ib.*, p. 116.

A definition of the term "resident" has now been included in the Election Rules. The definition runs as follows:—

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

(1) ordinarily lives within those limits; or

(2) has his family dwelling house within those limits, and occasionally visits it; or

(3) maintains within those limits a dwelling house ready for occupation in the charge of servants, and occasionally occupies it.

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

This definition is, however, merely intended to explain the law on the subject, and has no authority, save so far as it is in accordance with the decisions of the Courts. It cannot be held to be enacted under the authority conferred by s. 15, as that section confers no power of defining the meaning of terms used in other sections of the Act.

2. It will be noted that by the addition made to this section Commissioners can be appointed by official designation. By s. 25A, if a Commissioner is appointed by official designation, the person for the time being holding the office shall be a Commissioner.

"In my opinion the words 'official designation' are not restricted to officers appointed or paid by Government. Nor do they extend, as the Commissioner of Burdwan suggests, to the holder of any office such as that of the manager of a mill. In Wharton's Law Lexicon the word 'official' is defined to mean 'pertaining to a public charge.' In the Century Dictionary the word 'official' as an adjective is no doubt defined to mean 'pertaining to office,' but as a noun it is interpreted to mean 'one who is invested with an office of a *public nature*; one holding a civil appointment;' as a Government official, a railway official."

"I think, therefore, that the Government may, if it think proper, appoint a person holding a public office to be a Municipal Commissioner by his official designation under s. 14 of the Bengal Municipal Act whether the officer is a Government servant or not. If an official, though not a Government servant, is clearly a public servant within the meaning of s. 21 of the Indian Penal Code, there need be no doubt that his office is of a public nature. In this view of the question a Railway officer is an official, since by s. 137 of the Railways Act (IX. of 1890) every railway servant is declared to be a public servant for the purposes of Chapter IX of the Indian Penal Code."

"In case of doubt as to whether a particular office is of a public nature or not, the appointment should, I think, be made by name." (L. R. Govt. Cir., 147-T. M., dated 24th April 1903).

3. *Commissioners appointed by Government.*—When a Commissioner is to be appointed by Government, only one name should be sent up for each vacancy, with a note whether the person named is willing to serve. Government Resolution No. 3348 M., dated 5th August 1896.

An appointed Commissioner need not be a resident of the Municipality. "The age of 21 years" is attained at the beginning of the 21st anniversary of the birth day (s. 4, Act XI of 1875). As to what is the point of time at which age is to be reckoned it would seem that the person is to be 21 years old not at the date of election, but at the time when the register of voters is prepared. *Hargreaves* v. *Hopper* (1875), 1 C.P.D., 105.

The Civil Surgeon should be a member of the Municipality at Headquarters and, if possible, of all Municipalities of importance in the mofassal (Municipal Regulation M. $\frac{6-A}{1}$ 2 of April 13th, 1889. Assistant Surgeons and Civil Hospital Assistants pecuniarily independent of the Municipality may be nominated. Municipal Circular No. 5-M., dated 31st January 1901.

With regard to the principles which should be adopted in submitting recommendations to Government for the appointment of Commissioners —see Circular 2-T/M., dated 2nd August 1912, and Circular No. 3-T.M., dated the 10th September 1912, quoted below :—

CIRCULAR No. 2-T/M.

Dated Dacca, the 2nd August 1912.

1. ONE-THIRD of the number of such Commissioners are under the law to be appointed by Government and it is considered desirable that some indication should be given of the policy Government wish to adopt in making these nominations.

2. The object of retaining these nominations in the hands of Government is to enable them to correct possible inequalities in the operation of the elective system and to provide a necessary element of official experience in the corporation. The only difficulty that is likely to arise is with reference to what should be held to constitute an adequate representation of any particular community or interest and while recognising that circumstances must differ in particular localities and that therefore no hard and fast rule can be enforced, Government desire to indicate generally the criterion which may properly be used to guide the local officers in this matter.

3. For the sake of simplicity the most common case of a Municipality inhabited practically entirely by Muhammadans and Hindus may be taken as an illustration. In order to form an opinion as to the proportional representation that each of these communities should rightly be given, statistics should be compiled to show (1) population : (*a*) Muhammadans, (*b*) Hindus ; (2) the number of voters : (*a*) Muhammadans, (*b*) Hindus ; (3) the total rates paid by (*a*) Muhammadans, (*b*) Hindus. These figures should be carefully considered by the local officer and, although it is not suggested that the tests thus provided are of equal value, they will serve to correct what might prove an erroneous view of the importance of one community or the other were the population test to be taken by itself. Having thus formed his view as to the proper portion of the representation to which each community is entitled, the local officer should use his nominations to correct any material variation from these proportions which may be shown by the results of the elections, after providing for the necessary element of official experience. After thus utilising his nominations in the first instance, the residue, if any, should be distributed by him among various communities or interests in the way that may appear to him to be most equitable.

CIRCULAR No. 3-T—M.

Darjeeling, the 10th September 1912.

The proposed nominations should be accompanied by the statistics which, according to paragraph 3 of that Circular, (*i.e.* Cir. No. 2-T—M.) are to be carefully considered with a view to correct possible inequalities of representation.

Rules to be laid down for election.

15. (16) For the purposes of the aforesaid election of Commissioners, the Local Government, with respect to each Municipality, shall lay down such rules, not inconsistent with the provisions of this Act, as it shall think fit, in respect of the division, where necessary, of each Municipality into wards, and the number of Commissioners to be elected for each of such wards, the qualifications required to entitle any person to vote for a candidate for election, and in respect of the mode of election "and the authority who shall decide disputes thereunder." And the Local Government may at any time cancel any rule made by it under this section:

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

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

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

(iii) being a graduate or licentiate of any University, or having passed the First Arts Examination of the Calcutta University, or the corresponding standard of any other University, or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorizing him to practise as a pleader or as a mukhtar or as a revenue agent—occupies a holding, or part of a holding, in respect of which there has been paid during the year aforesaid, in respect of any rates, an aggregate amount of not less than three rupees,

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

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

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

"Rates" defined.

" The term 'rates' in this section *means*—

(*a*) the tax upon persons and the rate upon the annual value of holdings levied under section eighty-five ;

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

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

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

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

"Explanation-Rules made under this section may reduce but not raise any of the sums mentioned in the first proviso thereto, and may declare that any persons who are not referred to in that proviso shall be entitled to vote."

The rules laid down by Government under this section will be found, *post*.

By the rules in force, the amount of rates the payment of which confers a qualification to vote, has been reduced to Re. 1-8 except in Howrah and Cossipur-Chitpur.

By comparing this with the preceding section, it becomes obvious that an elected Commissioner must be a resident of the Municipality. For the electors must be residents (s. 14), and the elected Commissioners must be qualified to vote.

The only restriction as regards candidates is contained in the last clause, and it follows therefore that any one entitled to vote is entitled to come forward as a candidate. The following extract bears upon the matter :—

" It is not, we think, desirable to have any separate qualification for candidates for election. In Burdwan and Kishnagur, any resident rate-payer may offer himself for election, if only he can read and write. Such an educational test as this seems to us superfluous. It is most improbable that a totally illiterate man would offer himself for election, or would be elected if he should offer himself. A more practical difficulty has been raised by some critics of the Bill, who have urged that the absence of a special qualification for candidates may lead to the election of persons of inferior social status, with whom respectable gentlemen would be unwilling to sit. While we admit a certain force in this objection, we do not see how the difficulty could be met by any form of qualification which could be devised. A mere property test would evidently be

insufficient, and, on the whole, we are not inclined to fetter the choice of the electors by imposing any qualification." (*P. C., January 12th*, 1884).

English Law.—It has been held under the English Act that payment of rates to entitle a person to vote must be a payment by his own act or authority. Payment by another person acting as a volunteer, and without any authority from the person liable, is not sufficient.—*Reg.* v. *Mayor of Bridgnorth*, 10 A.& E., 66. "But a payment by the landlord in consequence of an arrangement between him and the tenant has been considered a sufficient payment under the Reform Act (1832)." *Rawlinson's M. C. Act*, 82.

Indian Law—In *Sabhapat Singh* v. *Abdul Ghafur* (24 Cal., 107), the High Court ruled that a suit for a declaration of a right to vote and stand as a candidate or for a declaration that a candidate has been duly elected will lie in the Civil Court. See note on Rule 29 of the Election Rules, *post*. In the opinion of the Advocate-General no Civil Court has authority to issue an injunction (*ad interim* or permanent) against the holding of Municipal Elections. (Ben. Govt. Cir. No. 33-M., dated 3rd July 1897).

A person whose income is below the taxable minimum, but who submits to the levy of the tax, does not thereby acquire the statutory qualification contemplated by this section. Similarly, a person who is not legally liable to pay rates, but who does pay, does not become entitled to become a voter by the mere fact of such payment. It must be proved that he is a person legally liable to satisfy the demand.—*Norendra Nath Sinha* v. *Nagendra Nath Biswas*, 38 Cal., 501. See note under "owner" s. 6.

Must income tax be paid during the official year preceding the election? 'Year' as defined in s. 6 (19) means the year beginning on the 1st April. On the other hand is the definition given in s. 6 qualified by the words "unless there is something repugnant in the subject or context"? The phrase "during the year immediately preceding such election" seems to show that the 'year' here meant must differ from the year as defined in s. 6 (19). It would seem as though 'year' here meant the 'year' which ends at the date of the election.

The First Arts Examination is now the Intermediate Examination in Arts or Science. See Election Rules *post* which add the Final Commercial Class Examination. "To practise medicine." This includes "veterinary practice."

It is to be noted that the qualifications required have reference to property and education and not to character. An ex-convict elected as a Commissioner can only be removed by the Local Government on the recommendation of the Commissioners under s. 19.

The tax on carriages and horses levied under Pt. IV.—It appears that the words "and other animals" have been accidentally omitted after the word "horses." See ss. 86 and 131.

A specimen notification showing the form in which proposals for the division of a Municipality into wards should be submitted was given in Govt. Cir. No. 197, dated 4th October 1910.

As the section now stands, it seems to be impossible legally to revise the boundaries of a ward, until the term of office of the existing Commissioners has expired. The Act should be amended so as to make this undesirable postponement unnecessary.

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The section as it stands seems defective, and it would seem desirable to amend it in the following ways:—

(*a*) to provide that undue influence, bribery, force or fraud shall render an election void,

(*b*) to provide for secret voting,

(*c*) to describe clearly the mode of voting by members of joint families,

(*d*) to exclude cart registration fees from the rates which qualify persons to vote.

First election of Commissioners.

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

On failure of election, Commissioners to be appointed by Government.

If the persons entitled to elect Commissioners for any Municipality fail, within the time appointed for the first election under this Act, or for every subsequent election within the time prescribed by the rules mentioned in the last preceding section, to elect the whole number of Commissioners allotted for election to such Municipality, the Local Government may appoint one or more Commissioners to complete the number so allotted as aforesaid.

Certain Municipalities excluded from elective system.

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

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

The proviso in the third clause of s. 14 restricts the number of Commissioners holding salaried offices under Government to one-fourth.

The only cases in which the Local Government can make additions to the Schedule in question are, in the case of new Municipalities created under s. 8, and of Municipalities in which the Commissioners have been superseded under s. 65. Compare ss. 8 and 66.

Formerly Government required two alternative names to be submitted for any appointment to be made of a nominated Commissioner. This being proved inconvenient it was ordered that in future only one name should be sent up for each vacancy, and that it should be stated whether the person nominated was willing to serve. (Cir. No. 38-M., dated 5th August 1896, to Commissioners.)

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By Circular No. 13-T. M., dated 23rd June 1910 certain Municipalities were removed from the first Schedule. The names of the Municipalities in which the Commissioners and Chairmen are still appointed by Government will be found appended to Schedules 1 and 2 *post*.

18. *Repealed by Bengal Act IV of* 1894.

Under ss. 8 and 9 of the Bengal General Clause Act of 1899 when an Act repealing a previous Act is itself repealed, such repeal does no revive the original Act unless such revival is expressly stated. The provision applies with retrospective effect to all acts created since 1867. This is also the English Law since the passing of 52 & 53 Vic. c. 63 (s. 11).

Removal of Commissioner.

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

The term "disgraceful conduct" has been often objected to as being too vague. It is difficult to see, however, how any more precise term could be used. The following extract from the Proceedings of the Council, when Act V was under consideration, bears upon the point:—

"The Hon'ble the Advocate-General thought that the term 'disgraceful conduct' was not in any way vague or indefinite. . . . It was conduct unbecoming the position of a Commissioner." (February 19th, 1876.) It would seem desirable to make incompetence as well as misconduct a ground for removal.

It is obvious that at present the Local Government has no power of removing the Commissioner unless it is proved that he has been guilty of misconduct or disgraceful conduct. Section 9 of the Town's Improvement Act (Madras Act III of 1871) provides that the Governor in Council may remove an elected Municipal Commissioner for misconduct. In a suit for damages brought against the Secretary of State by a Municipal Commissioner for wrongful removal from office:—*Held*, that the defendant not having proved misconduct, the plaintiff was entitled to damages.—*Vijaya Ragava* v. *The Secretary of State for India*, 7 Mad., 466.

By s. 22 a Commissioner removed under this section cannot be elected or re-elected without the sanction of the Local Government.

The section is probably not intended to have retrospective effect. Compare notes to next section.

It is the desire of Government that local executive officers should bring to their notice good work done by individual Commissioners. See Cir. No. 7-T.—M., dated 4th May 1904.

Power to remove commissioners.

"20. (22) (1). The Commissioner of the Division may remove any Commissioner—

(*a*) if he refuses to act or becomes incapable of acting or is declared insolvent, or is convicted of any non-bailable offence; or

(*b*) if he has been declared by notification to be disqualified for employment in the public service; or

(*c*) if he absents himself from six consecutive meetings of the Commissioners without having obtained permission from the Commissioners at a meeting; or

(*d*) if, in the judgement of the Commissioner of the Division to be recorded in writing, he has become disqualified to continue in office under section fifty-seven: Provided that any Commissioner so removed may appeal to the Local Government.

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

The section is not meant to have retrospective effect, and the conviction or insolvency must, therefore, have occurred subsequently to the election, or appointment, of the Commissioner. (L. R.)

The six consecutive meetings must have all been held under the present Act. (L. R.)

By s. 22, no Commissioner who has been removed under clauses (*a*) and (*b*) of the above can be elected or re-elected without the consent of the Local Government.

English Law.—Under the Municipal Corporations Act of 1835, an uncertificated bankrupt was held not disqualified from being elected a councillor or alderman, although by that Act should any person, while holding the office of mayor, alderman, or councillor, be declared a bankrupt, he would immediately be disqualified.—*Rex* v. *Chetly*, 5 A. & E., 609.

A transfer of a Commissioner does not *ipso facto* create a vacancy. But if the absence is more than temporary, the absentee should resign. See s. 27A. Cir. No. 11. dated 22nd February 1895. C. and O., Vol. III, p. 996.

Tenure of office of Commissioner.

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

This section is subject to the provisions of ss. 26, 27 and 27A.

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

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

It is, no doubt, intended that a Commissioner, who has vacated his office under s. 21 or under s. 27A may be again appointed or elected.

"23. (1) The Local Government shall appoint, either by name or by official designation, the chairman of every Municipality mentioned in the second Schedule of this Act.

Appointment of Chairman.

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

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

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

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

1. It is clear that the constitution of the Municipal Corporation is not legally complete, and that *the Commissioners* can, therefore, *have no legal power* and can transact no other business of any kind, *until a Chairman has been appointed or elected.* The saving clause at the end of s. 13 has reference only to the number of Commissioners, and not to the corporate officer. Compare s. 20, from which it appears that the Commissioners without a Chairman do not constitute a body corporate. The election of a Chairman is, therefore, a statutory duty which must be performed without any avoidable delay.

2. It has been held under the English Municipal Corporations Act that no other business can be discussed before the Mayor and Aldermen have been elected.—*Rex* v. *Parkyns*, 3 B. & A., 658.

3. *An appointed Chairman need not be a resident of the Municipality. An elected Chairman must*, however, be a resident, unless he is a nominated Commissioner, as an elected Commissioner is necessarily a resident. (See note to s. 15).

The question has more than once arisen as to *who ought to preside at a meeting of the Commissioners called to elect a Chairman*. If it is the first meeting of the Commissioners, or in other cases if the former Chairman is not present, it is clear that they should elect one of their number to preside. But supposing the former Chairman is present, should he preside, and can he insist on presiding as a matter of right?

If the Chairman is a candidate for re-election, it is clear that it is not desirable that he should preside, for, by so doing, he may have to decide questions in which he has a direct and personal interest. It further seems clear that he cannot claim the right to preside. For s. 26A now provides that the Chairman shall resign at the first meeting of the newly appointed and elected Commissioners at which a quorum is present, and before the meeting proceeds to the election of a new Chairman. The meeting must therefore clearly elect one of their number to preside, the former Chairman not being necessarily excluded.

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Another question which arises is as to whether the Chairman at such a meeting has a second or casting vote. As s. 41 applies to all questions which may come before the Commissioners at a meeting, it seems clear that he has. The importance of choosing a President, who is not a candidate, is therefore all the more obvious. By 10 Vict., c. 16, s. 38, it is provided that if a tie happens at the election of a Chairman, the question shall be settled by lot, and the provision seems a salutary one.

By s. 59, the election of a Chairman is subject to the sanction of the Local Government.

It is not necessary that a candidate for the office of Chairman should have a majority in his favour of the votes of the whole number of members present and voting. *It is sufficient that he should have more votes than any other candidate.* In an English case—*Oldknow* v. *Wainright*, 1, W. Bl., 229 ; 2 Burr., 1017, decided in 1760, and still cited as an authority on the subject, it was held by Lord Mansfield that in an election to a corporate office, where out of twenty-one electors present nine voted for the election of a particular candidate, eleven protested against his election, but did not vote for any one else, and one declined to express an opinion at all, the candidate in question was duly elected.

The only cases in which the Local Government can make additions to the Schedule, are in the case of new municipalities formed under s. 8, and of Municipalities in which the Commissioners have been superseded under s. 65.

Circular No. 4 L. S. G., dated the 27th January 1893, directs that Assistant Surgeons and Civil Hospital Assistants are not to be appointed as Chairmen or Vice-Chairmen of Municipalities. As Commissioners, however, they can render valuable assistance by advising and superintending in matters relating to the conservancy and sanitary arrangements of the Municipality in which they reside.—(But see note to s. 57, *post*.)

His status and tenure of office.

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

"Except as is otherwise provided in this Act," every Chairman, whether appointed or elected, shall hold office for three years from the date of his appointment or election, and shall be eligible for re-appointment or re-election.

A Chairman elected under the last preceding section may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of

the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose.

An appointed Chairman, if not already a Commissioner, does not become one by his appointment. He, however, enjoys all the rights and privileges of a Commissioner during his term of office.

An officer appointed *ex-officio* holds his appointment until the date of the reconstitution of the body of Commissioners irrespective of the intermediate changes of the personnel of the officer appointed *ex-officio*. Therefore the resignation of such officer on the occasion of transfers is unnecessary. See para. 2, s. 24 and para. 1, s. 26A. Cir. No. 26-M., dated 20th December 1901.

The removal under this section of a Chairman from office is by s. 59, subject to the approval of the Local Government.

Semble, that the "whole number of the Commissioners" means the number as fixed by the notification issued under s. 13, and not the number of those who may happen to be holding office at the time. This is the construction which has been placed upon a corresponding provision in the English Act.

"Except as is otherwise provided in this Act." Compare ss. 27, 27A, and s. 23, clause (5).

Election of Vice-Chairman.

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

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

The Vice-Chairman must now be a Commissioner before he can be elected.

The election of a Vice-Chairman is no longer subject to the approval of Government.

Term of office of Commissioners.

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

Tenure of office under sections 21, 24 and 25.

26. The term of three years mentioned in sections twenty-one, twenty-four and twenty five shall be held to include any period which may elapse between the expiration of the said three years and the date of the "first meeting of the body of Commissioners newly-appointed and elected, at which a quorum shall be present, and any Chairman elected

under sections twenty-three or twenty-seven shall be competent to discharge the duties of his office after his election and pending the orders of the Local Government approving of his election."

Under this section it is clear that the whole body of the Commissioners whether appointed or elected, as well as the Chairman and Vice-Chairman, will continue in office until the date on which the newly-appointed body of Commissioners hold their first meeting. There is consequently nothing to prevent the old body of Commissioners from holding meetings and transacting business, if necessary, after the date of election of the new body of elected Commissioners. For their term of office does not expire until the newly-appointed and elected body of Commissioners hold a meeting at which a quorum is present.

It would clearly be the duty of the Chairman of the old body of Commissioners to call a meeting of the new body, as soon as the names of the newly-elected and appointed members have been gazetted. Under the provisions of the next section the old Chairman and Vice-Chairman should attend and resign at such meeting.

It seems desirable to amend ss. 14, 21 and 26 in order to regulate the term of office of Commissioners added during the existence of a body of Commissioners elected or appointed under s. 14.

Resignation of Chairman and Vice-Chairman.

"26A. Notwithstanding anything contained in sections twenty-four, twenty-five and twenty-seven A, the Chairman and Vice-Chairman of every Municipality shall resign office at the first meeting of the Commissioners newly-appointed and elected at which a quorum shall be present. The meeting shall thereupon proceed—

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

(*b*) to elect a Vice-Chairman :

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

It would seem to be safer to enact that the Chairman and Vice-Chairman shall vacate office. They should not be left to resign.

By the preceding section a Chairman elected under this section shall be competent to perform the duties of his office pending the orders of the Local Government approving of his election. For a Chairman elected under this section is also elected under s. 23.

The old Chairman having resigned as soon as the meeting is formed, obviously he cannot preside at it, as of right. The meeting should therefore proceed to elect a member thereof to preside, the former Chairman not being necessarily excluded. The question has been raised as to what should be done if a tie happens at the election of a chairman of a meeting held under this section. Obviously the rules framed by the Commissioners under s. 361A should provide for such a case. Compare note to s. 23.

It is clear, however, that there may often be no rule under s. 351A and party factions may lead to the postponement of the meeting without the election of a Chairman. On the existence of a Chairman depends the existence of the body corporate (s. 29). What is the position during the interregnum ? These sections should be so amended as to obviate the possibility of a deadlock.

Leave may be granted to Chairman or Vice-Chairman.

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

Section 28 authorizes the grant of leave allowances in the case of a salaried Chairman or Vice-Chairman.

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

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

The words "or during term of leave of absence" were added to the marginal note in consequence of the amendment of the section by Act IV of 1894. Under the English and Indian Law marginal notes form no part of an Act. See *Birtwhistle* v. *Sandell*, 7 Ch., 8 F., 929 ; *A. G.* v. *G. E. Ry.*, 11 Ch. D., 460, 461, 465 ; *Duke of Devonshire* v. *O'Conor*, 24 Q. B. D., 479 ; *Punardeo Narain Sing* v. *Ram Sarup Roy* (1898,) 25 Cal., 858 : 2 C.W.N., 577 ; and the Privy Council Ruling in All., 393 ; *Balraj Munwar* v. *Jagat Pal Singh*. Previous to 1850 in England and before the passing of Act XV of 1854 in India, Bills were passed into law without marginal notes. In *Cloyden* v. *Green*, 37 L. J. C. P., Willes, J. said "at the most the marginal notes and slips could have but a slight effect." In *Bashell* v. *Hammond*, Collins, M. R., said—"the side-note, though it forms no part of the section, is of some assistance, inasmuch as it shows the drift of the section." Side-notes are generally found in draft bills, and are retained even when the bills are under discussion in the legislature, but the legislature leaves them severely alone, and no one ever moves an amendment of them.

Resignation of Chairman, Vice-Chairman, or Commissioner.

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

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

See ss. 24, 25, 25A and 27. The law should make it quite clear that when a Chairmanship or Vice-Chairmanship is held by one of the Commissioners, the termination (in whatever way) of his office of Commissioner, shall operate as also terminating his office of Chairman or Vice-Chairman. The sections call for amendment.

Allowances of Chairman and Vice-Chairman.

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

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

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

By s. 59 any resolution passed under this section is subject to the approval of the Local Government.

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

Under s. 57 the holding by a Commissioner of any office of profit under the Commissioners amounts to a disqualification, and subjects the holder to a fine of Rs. 500. But as the Act itself permits the Chairman and Vice-Chairman to receive allowances, it is evidently not its intention that the receipt of such allowances should entail disqualification and a penalty.

Commissioners incorporated.

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

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

" *Definition of a body corporate.*"—" We have already remarked that there is a species of lay corporation which is erected for the good government of a town. An institution of this kind has, in modern times, been termed a *Municipal Corporation* ; and may be defined generally

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as a body politic or corporate, established in some town to protect the interests of its inhabitants as such, and the maintenance of order therein: and consisting of the burgesses or freemen, that is, such persons as are duly and legally admitted as members of the corporate body."—(3 *Steph. Com.*, 31.)

It will be noticed that under this section, the body corporate is formed by the incorporation of the Commissioners only.

By s. 7 of the English Municipal Corporations Act, 1882, a Municipal Corporation is defined as "the body corporate constituted by the incorporation of the inhabitants of a borough."

In the name of their Chairman, etc.—"When a corporation is erected a name is always given to it, or, supposing none to be given, will attach to it by implication, and by that name alone it must sue and be sued and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation in other respects. But some name is the very being of its constitution, and though it is the will of the Sovereign that erects the corporation, yet the name is the knot of its combination, without which it cannot perform its corporate functions."—(1 *Steph. Com.*, 11.)

Perpetual succession.—"Corporation or body politic, artificial persons established, for preserving in perpetual succession, certain rights which being conferred on natural persons only, would fail in process of time. . . . . It has power to make bye-laws for its own government and transacts its business under the authority of a common seal—its hand and mouthpiece; it has neither soul, nor tangible form, so that it can neither be outlawed or arrested; it only enjoys a legal entity, sues and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law."—(*Wharton's Law Lexicon.*)

Common seal.—"It is a general rule that a corporation must contract by its common seal, but wherever the observance of this rule would occasion great inconvenience or tend to defeat the very purpose of the business, it is not observed."—(*Ibid.*) A contract not made under seal is liable to be set aside (*Young* v. *Mayor of Lemington*, 1883, 3 App. case. 517).

Civil and Criminal liabilities of a Corporation.—A corporation, "as the general rule, can be guilty of no crime in its corporate capacity. Yet it is liable in certain cases to an indictment, as where it allows a bridge, the repair of which belongs to it by law, to fall into decay. And it is capable of suing or being sued for breach of contract, and for many other kinds of civil injury, as for example a libel."—(3 *Steph. Com.*, 13.) "It must always appear in Court by attorney, for it cannot appear in person being, as Sir E. Coke remarks, invisible and existing only in intendment and consideration of law."—(*Ibid.*)

English Law.—"A corporation may (*i.e.*, in certain cases) be proceeded against criminally as well for a misfeasance as a nonfeasance.—*Reg.* v. *The Birmingham and Gloucester Railway Company*, 3 Q. B. Rep., 223; *Reg.* v. *Scott*, 3 Q. B. Rep., 547; *Reg.* v. *The Great North of England Railway Company*, 9 Q. B. Rep., 315."—*Empress* v. *Municipal Corporation of Calcutta*, 3 Cal., 762.

Per Lord Bramwell, a corporation aggregate is not capable of being actuated by a malicious motive such as would render it liable to an action for malicious prosecution.—*Abrath* v. *North Eastern Railway Company*, L. R., 11 App. Case, 247.

Indian Law.—A Corporation may be criminally prosecuted like an ordinary individual. Though a Municipal Commissioner is a public servant under s. 21, I. P. C., it is doubtful whether the Corporation as distinct from its individual members is a public servant. It is certainly not a public servant nor removable from office without the sanction of Government, and such sanction is not necessary for its prosecution. *Empress* v. *Municipal Corporation of Calcutta*, 3 Cal., 758. In *Chairman of the Serampur Municipality* v. *Inspector of Factories*, 25 Cal.. 454, the lower court found that the Municipality and a Mill Manager were jointly responsible for keeping the Mill free of nuisances. The Mill Manager had been acquitted of a charge of nuisance in a previous case. The High Court held that the Municipality could not be convicted. The question whether the Municipality was responsible for any nuisance on the ground that it was levying fees for the removal of filth was left undecided. 33 All., 540, (1911). A member of a Municipal Board as such member made a report to the Board which resulted in the prosecution of certain persons for a Municipal offence. The persons prosecuted were acquitted and filed a suit for malicious prosecution. *Held* that the defendants were entitled to notice under s. 49 of the Act of 1900. The principle on which notice can be claimed was explained in *Shahebzadi Begum* v. *Ferguson*, 7 Cal., 499. See *Jogendra Nath Roy* v. *J. C. Price*, 24 Cal., 584.

Jurisdiction of the Civil Court.—The Calcutta High Court in the year 1893 had broadly laid down the law that Municipal and other public bodies are included within the restraining and regulative jurisdiction of the Civil Courts which are competent to inquire into and control the action of public bodies where they have acted in excess of or in contravention of the powers conferred on them. *Brindaban Chandra Ray* v. *Municipal Commissioner of Serampur*, 19 W. R., 309. In 1876 in a suit to set aside an order made on an appeal under s. 33 of Bengal Act III of 1864 to the Commissioners against a rate assessment and to reduce the tax levied by them on the ground that they had tried the appeal in an improper way and acted contrary to the provisions of the Act, Garth, C. J., held that the decision of the Commissioners was absolutely final. This was also the view of the Madras High Court (*Namajja* v. *Leman*, 2 Mad., 37), distinguishing the case from *Leman* v. *Damodoraya*, 1 Mad., 158, decided by it in the previous year.

In 1893 the Calcutta High Court held that it was entirely within the discretion of the Municipality under the provisions of s. 339 to grant or refuse a license for a market, and the Courts had no longer any jurisdiction to contest such power however arbitrarily used (*Empress* v. *Mahendra Chandra Chatterjee*, 20 Cal., 654).

A suit would lie in the Civil Court for a declaration of a plaintiff's right to vote and stand as a candidate. *Sabhapat Singh* v. *Abdul Guffur* (1896), 24 Cal., 107.

The High Court has jurisdiction by proceeding in the nature of a *quo warranto* to restrain a person who has not been duly elected from exercising the functions of an elected Commissioner. *Corkhill (w), In the matter of*, s. 45 of Sp. Relf. Act, In re *Ben. Act II of* 1888, (1895) 22 Cal., 717.

In 1894 the Bombay High Court ruled that the Civil Law should not interfere with Corporate Bodies "unless they were manifestly abusing their powers" quoting with approval the passage quoted from *Duke of*

Bedford v. *Dawson*. L. R., 20 Exch., 383; *Ahmedabad Municipality* v. *Manilal*, 19 Bom., 212. The same view was expressed in *Bhawanishankar* v. *The Surat Municipality*, 21 Bom., 187.

In 1899 the Calcutta High Court held in *Duke* v. *Rameswar Malia* (26 Cal., 811) in connection with the proceedings of a Municipality under s. 245 and s. 246, that the question of necessity or otherwise was left by the legislature to the discretion of the Municipality, and their conclusions in the absence of *mala fides* or fraud or considerations of that nature could not be challenged in the Civil Courts. In the same year the Court in *Narayan Chandra Pal* v. *Ramanand Shah* (3 C. W. N., 73) held that a suit to set aside an illegal assessment was maintainable in the Civil Court. In that case the plaintiff was the owner of a granary and a threshing floor which were both assessed as one holding at Rs. 12 in the year 1890, which was the time at which the last triennial assessment was made. Afterwards in the year 1894 the Municipality treated the granary and the threshing floor as separate holdings, assessing the former at Rs. 12 and the lattor at annas 9. This ruling was followed in *Rameswar Pershad* v. *Chairman, Bhabhua Municipality* (1900). 27 Cal., 849. The Madras ruling, (2 Mad. 37) does not appear to have been brought to the notice of the High Court, though the facts in support of an illegal assessment appear to have been much stronger in that case. In the same year, 1900, the Bombay High Court, held that a Civil Court has no power to revise the valuation of houses of a Municipality [*Merar* v. *Bonad Town Municipality*, 24 Bom., 507. See also *Municipality of Wai* v. *Krishnaji Gangadhar* (1898), 23 Bom., 446.]

In 1908 in the case of *Chairman, Giridi Municipality* v. *Shiris Chandra Mazumdar* in which the Municipality had assessed the defendant on his gross salary of Rs. 300 per mensem, had rejected his objection, and had brought a suit for the recovery of the tax due, it was held that the defendant could impugn the finality of the decision of the Commissioners. The High Court ultimately held that the Municipality had correctly made the assessment.

Delegation of certain powers and functions of Local Government.

"29A. (1) The powers and functions of the Local Government under sections thirty, two hundred and fifty-five, two hundred and fifty-nine and three hundred and thirty-one, may be delegated by the Local Government to Commissioners of Divisions.

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

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

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

Section 30 empowers the Local Government to exclude by notification any road, drain, or bridge from the operation of this Act, or of any specified section thereof. Section 255 refers to the re-opening of disused burial and burning grounds. Section 259 requires the sanction of the Local Government to the provision of burial and burning grounds by the Commissioners. Section 331 requires the sanction of the Local Government to rules defining the duties of persons employed in the removal of sewage. Powers under ss. 30, 255, and 259 have been so delegated to all Commissioners of Divisions by Municipal Dept. Notification 1095-T.—M., dated 12th June 1903.

Of the Property of the Commissioners.

Public roads, &c., vested in the Commissioners.

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

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

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

Old Law.—The Commissioners were vested with roads, etc., but not with proprietary rights over the soil. (*The Chairman, Naihati Municipality* v. *Kishori Lal Goswami*, 13 Cal., 171; *Madhu Sudan Kundu* v. *Promoda Nath Ray*, 20 Cal., 733; *Nihal Chand* v. *Azmat Ali Khan*, 7 All., 362.)

Present Law.—The above rulings have been put out of date by the insertion in the present Act of the words "including" to "soil."

A road once vested in the Commissioners cannot be closed or diverted or otherwise disposed of by them, nor *à fortiori* by the Vice-Chairman alone. (*Jadunath Ghose* v. *Brojonath Dey* [1877], 2 Cal., 425. See also 7 All., 362.) It appears that the Commissioners cannot even exchange a portion of a road for another strip of land even though the new land would straighten or otherwise improve the road. Instances have occurred

in which this limitation of the power of disposal has been a hindrance rather than a blessing.

Private and Government drains, though not vested in the Commissioners, are subject to their inspection and control under s. 190.

'*Soil*' means soil down to the centre of the earth. (*Micklethwaite* v. *Winter*, 20 L. J., Ex. 313; *Townley* v. *Gibson*, 2 T. R., 704.) As the Act stands, there is nothing to prevent an owner having two houses on opposite sides of a street from joining them by means of a bridge, but the bridge must be at a reasonable height above the road level as the vesting of a street does not reach *ad cælum*. Only so much height over the street passes as is required for the preservation of an ordinary user (*Wandsworth* v. *United Telephone Coy.*, 53 L. J., Q. B., 449; *Fairban* v. *Smith*, 7 Times Report, 443).

A section of an Act which vests streets in a Municipality, though it gives perhaps only to a limited estate, yet gives not merely the bare surface of the ground, but so much above and below it as is requisite or appropriate for the preservation of the street for the usual and intended purposes. Consequently, the Municipality was justified in refusing permission to the plaintiff to occupy the column of space over the street with a balcony and no suit would lie in respect of such refusal.—*Nagar Valab Narsi* v. *Municipality of Dhandhuka*, 12 Bom., 490.

The powers of the Local Government under this section are now vested in Divisional Commissioners (*see* note to s. 29A).

Ghât.—The word ghât ordinarily means a flight of steps made of stone or other material giving access to the water of a tank or river. It also means the place on the bank of a river or tank where people ordinarily bathe or where boats are moored for the purpose of a ferry or otherwise or which is used for the purpose of loading or unloading goods. It does not include a tract of land used as a burning ground. *Chairman of Howrah Municipality* v. *Khettra Krishna Mitter* (1906), 4 C. L. J., 256. If land is dedicated for the purposes of a cemetery or burial ground, and there is subsequently an abandonment, the property reverts to the dedicator or his heirs. "Not being private property and not being Government property" and=or.—*Ibid.*

The term 'burning ground' is used in ss. 87, 98, 254 and 256. Ss. 347, and 348 use the term 'burning ghât.' *Monmotho Nath* v. *Secretary of State*, 25 Cal., 194 (1897), distinguished.

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

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

Thereupon the property therein, or the control thereof as the case may be), shall vest in the Commissioners and such

road, bridge, tank, ghât, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

Mr. Collier remarked that the word "road" here apparently means a private road, and the section seems to overlook the definition of the term given in clause (13) of s. 6. There is, however, no conflict with the definition which is headed, "unless there be something repugnant in the subject or context."

This section is no longer necessary in consequence of the changes made in s. 69 of this Act by Act II of 1896 (B. C.).

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

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

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

As to mode of publication, see s. 354.

Transfer to be conditional in certain cases.

*33. (35) If the Commissioners at a meeting shall, after publication of the notice mentioned in the last preceding section, object to the transfer to themselves of any hospital, dispensary, school, rest-house, ghât or market, on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

Power to purchase, lease, and sell lands.

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

By s. 6, clause (5), "land" includes houses and things attached to the earth.

This provision for the sale of land must be held to be subject to any public or private rights which may exist with regard to the land in question. For instance, the Commissioners would have no power to sell a public road and thereby deprive the public of their right of way over it.

"While certain land formed part of a certain public thoroughfare, F had immediate access to such thoroughfare and the use of a certain drain. The Municipal Committee sold such land to M, and constructed a new thoroughfare. M used and occupied such land so as to obstruct F's access to the new thoroughfare and his use of the drain. F therefore, sued him to establish a right of access to the new thoroughfare over such land and a right to the use of such drain—*Held*, that having suffered special damage from M's acts, F had a right of action against him, and that such right was not affected by the circumstance that M had acquired his title to the land from the Municipal Committee, inasmuch as the Municipal Committee could not have dealt with the old thoroughfare to the special injury of F, and, had it closed the same would have been bound to provide adequately for his access to the new thoroughfare and for his drainage."—*Fazal Hak* v. *Maha Chand and another*, 1 All., 557.

Under this section the Municipality may buy a holding which is put up for sale under s. 361 provided it is required for the purposes of the Act. Section 34 must be read with s. 37. In a suit by the Chairman to set aside a permanent lease executed by the defendant, it was found that the contract was sanctioned by the Commissioners at a meeting, and that it involved a value exceeding Rs. 500, but that the *kabulya* was signed only by the Chairman, and although two of the Commissioners witnessed it, they did not sign it as contracting parties, and it was not sealed with the seal of the Commissioners. It was held that the contract was not binding on the Commissioners. *Chairman, South Barrackpur Municipality* v. *Amulya Nath Chatterjee* (1907), 34 Cal. p. 1030.

Land may be taken up under Land Acquisition Act, 1870.

35. (37) The Local Government, on the application of the Commissioners at a meeting that any land be acquired for the purposes of this Act, may, on being satisfied that the Commissioners are in a position to pay for such land either at once or in such instalments as the Local Government may think proper, notify under the provisions of the Land Acquisition Act, 1870, or any similar Act for the time being in force for the acquisition of land for public purposes, that such land is required for a public purpose, and may cause such land to be acquired under the provisions of such Act; and on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

Act X of 1870 has been superseded by Act I of 1894, and the reference in the section and the side-note should now be taken as a reference to the latter Act. The Commissioners are the sole judges of the necessity of acquisition, and no suit lies to restrain them from making such acquisition *Shastri Ram Chandra* v. *The Ahmedabad Municipality*, 24 Bom., 600.

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

Commissioners to pay cost of such land.

The Corporation for whose benefit any land may be acquired is not a necessary party in a land acquisition proceeding. It may appear simply for the purpose of watching the proceedings or of assisting the Secretary of State in determining the amount of compensation. *Municipal Corporation of Patna* v. *J. N. Raihat*, 13 C. W. N., 116. The Corporation may adduce evidence. The High Court refused an application made by a Municipality for permission to present an appeal from a decree made on a reference under s. 18 of the L. A. Act. In re *Chairman Howrah Municipality*, 9 C. W. N., xxvi.

With reference to the maintenance of verified plans, schedules, and Register of title of lands acquired *vide* Bengal Govt. Order No. 2780-T. R., dated 15th October 1904.

For recovery of costs in appeal to the High Court in Land Acquisition cases undertaken by Government on behalf of or at the instance of a Municipality, *See* Govt. Order No. 1733—36T. M., dated 17th Oerbotc 1901 *vide* C. and O., Vol. III, p. 994.

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

Mode of executing contracts.

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

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

(1) As to what is a contract *see* Indian Contract Act IX of 1872.

(2) The section authorises the Commissioners to enter into contracts necessary for the purposes of this Act, and therefore implies that they are prohibited from entering into any contracts not necessary for such purposes. Such other contracts, though duly executed, would not be binding on the Corporation.

(3) "'Corporations,' said Baron Parke in an oft-quoted passage, 'which are creatures of law, are, when their seal is properly affixed, bound just as individuals are by their own contracts, and as much as all the members of a partnership would be by a contract in which all concurred. But where a corporation is created by an Act of Parliament *for particular purposes* with special powers, then indeed another question arises. Their deed, though under their corporate seal, and that regularly affixed, does

not bind them, if it appears by the express provisions of the Statute creating the Corporation, or by reasonable inference from its enactments, that the deed was *ultra vires*, that is, that the Legislature meant that such a deed should not be made.' "—*Smith's Leading Cases*, 1, 351.

(4) A contract entered into by a municipal subordinate, in respect of a sum below five hundred rupees, would be binding on the Commissioners if such subordinate had authority to make it, or the Commissioners subsequently ratified it, but not otherwise. In such a case the agent could not be sued on the contract unless he had contracted personally or pledged his own credit. He might be liable, however, to an action in *tort*.—*Mohendro Nath Mukerjee, Defendant*, 9 W. R. C. R., 206.

(5) The contract can only be varied by the Commissioners at a meeting. Government has been advised that the Chairman has no power to grant an extension of time to a contractor in respect of a contract above the limit laid down in this section. (L. R.)

(6) "*Shall not be binding on the Commissioners.*"—If not binding on the Commissioners it follows that it is not binding on the other parties to the contract. When a Corporation is not bound by a contract by reason of their common seal not being affixed, the other party to the contract is equally free from obligation. Thus a Municipal Corporation and Local Board caused certain tolls to be put up for auction, and the highest bidder was declared to be the purchaser. He subsequently, however, declined to carry out the conditions of sale, and on an action being brought against him for breach of his agreement to take the tolls, it was held that the contract was one which required the common seal, and not having been sealed by the Corporation or signed by any person authorised under their seal to sign it, he was not bound by it.—*Kidderminster* (*Mayor, &c.*) v. *Hardwick*, L. R., 9 Ex., 13.

(7) Contracts below Rs. 500 can ordinarily be made by the Chairman or Vice-Chairman under ss. 44 and 45. Sealing is not necessary in such cases. "If the legislature in making a body corporate invest any member of it either expressly or implicitly with authority to bind the whole body by his mere signature or otherwise then undoubtedly the adding of a seal would be a matter purely of form and not of substance." *Mayor of Tudlow* v. *Charlton*, 1840 (6 M. and W., 815).

Formation of Joint-Committees.

"37A. The Commissioners of any Municipality may join with the Commissioners of any other one or more Municipalities, or with any District Board or with any Cantonment authority, or with more than one such Board or Cantonment authority, in constituting out of their respective bodies a Joint-Committee consisting of not more than two members from each of such bodies for any purpose in which they are jointly interested, and in delegating to any such Joint-Committee any power which might be exercised by either or any of the Municipal Bodies or District Boards or Cantonment authorities concerned, and such Joint-Committee may from time to time frame rules as to the proceedings of any such Joint-Committee, and as to the

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conduct of correspondence relating to the purpose for which such Joint-Committee is constituted."

The powers referred to in s. 37A to s. 37L shall be exercised by the Commissioners at a meeting (*vide* s. 37M) and not by the Chairman.

There is nothing in the Act which lays down any special procedure for settling disputes between a Municipality and the rate-payers. Provision might well be made for the appointment of an umpire to settle petty disputes.

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

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

Government has issued instructions for the Collection of Statistics by its officers showing the effect of drainage works on Malaria. See Cir. No. 3—4, dated 3rd May 1906. C. & O. Vol. III, p. 1073.

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

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

Sanitary Board is defined by s. 6, clause (14A). For constitution and rules, see *post*.

See ss. 69 and 69B. See also Government of India, letter No. 2934, dated the 12th May 1904, and Bengal Government Notfn.- No. 818 T. —M., dated the 13th September 1910. In Bengal the latest rules for the preparation, submission and execution of projects for water supply, sewerage or drainage were published in Notification. No. 129-M., dated

13th January 1914. The rules regulating the duties of the Sanitary Board and the Sanitary Engineer given in G. O. No. 2520, dated the 25th November 1913 as amended by G. O. No. 155-San., dated 21st February 1914 should also be read.

Local Government to sanction, modify or refer scheme.

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

(*a*) sanction the scheme, or

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

(*c*) add to, alter or modify the scheme and refer the same so added to, altered or modified,

together with the plans, specifications and estimates to the Sanitary Board, who, in consultation with the said Committee, shall further consider the scheme so added to, altered or modified, and report thereon to the Local Government."

Distribution of costs of scheme.

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

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

Approved scheme to be published.

"37F. (1) When the scheme has been approved by the Local Government, there shall be published in the *Calcutta Gazette*, and locally in accordance with the provisions of section three hundred and fifty-four, the following particulars :—

(*a*) a general description of the scheme ;

(*b*) an estimate of the cost of carrying it out ;

(*c*) an estimate of the cost of maintaining it ;

(*d*) the source from which the cost will be met ;

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(*e*) the amount of the loan, if any, the annual instalments by which it will be repayable, and the number of years required to repay it ;

and where several local authorities are concerned ;

(*f*) the distribution of the loan ;

and

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

(*a*) the total annual charge to be incurred by reason of the water-supply, and to be met by a water-rate ;

(*b*) the percentage of such water-rate on the annual value of holdings ;

(*c*) the average incidence of such water-rate per head of the population.

"As to mode of publication see s. 354."

Sanction of scheme.

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

Sanitary Board is defined by s. 6, clause (14A).

Scheme to be carried out by Municipalities.

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

"37I. The Local Government may order the works specified in any scheme, plans, specifications and estimates, or any portion thereof, to be executed by an officer to be appointed by it, and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded): and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

Local Government may appoint an officer to execute the work.

For Government rules as to supervision, see Cir. No. 27-M., dated 27th February 1909, amending Cir. No. 9-T.—M., dated 13th May 1904. See also note to s. 37C.

In connection with the fees charged by the Sanitary Board, see Notification No. 1712-M., dated 7th July 1906 and 819-M., dated 10th April 1908 and Cir. No. 30-M., dated 21st April 1908.

For the relationship of the District Engineer to Municipalities, see Resn. No. 165, dated 26th January 1912, amending Resn. No. 193-M., dated 15th January 1901.

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

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

For the rules regulating the grant of loans, see Cir. No. 4-F., dated the 6th February 1911; India's letter No. 6106-A., dated the 11th October 1911; Bengal Cir. No. 2-M., dated the 10th January 1912 and Cir. No. 15-L. S. G., dated the 25th June 1914.

* See now Act IX of 1914

"37K. (1) When it appears to the Local Government that the Commissioners of any Municipality acting conjointly with the Commissioners of any other Municipality or Municipalities or with one or more of any other local authorities specified in section thirty-seven A, should be required to provide a supply of water for domestic purposes or to introduce a system of drainage, it may call upon such Commissioners to show cause within a specified time why they should not be

Compulsory introduction of water-supply or system of drainage.

so required, and the Local Government shall consider any objections which may be submitted by the Commissioners, and if it considers such objections insufficient, it may, after publishing in the *Calcutta Gazette* a full statement of the reasons which have led to action being taken, by an order in writing, fix a time within which the Commissioners shall submit such a scheme, plans, specifications and estimates as are referred to in section thirty-seven B, in the manner therein provided :

Provided that when the Commissioners of one Municipality are required to show cause, as aforesaid, a resolution against the introduction of such scheme passed at a meeting specially convened for the purpose, in favour of which a majority of not less than two-thirds of the whole number of Commissioners shall have voted, or when the Commissioners of two or more Municipalities are required to act conjointly with each other for that purpose, a similar resolution passed by the Joint-Committee constituted under section thirty-seven B, in favour of which a majority of not less than two-thirds of the total number of votes allotted to such Municipalities and apportioned to each of them, according to their respective incomes shall have been recorded shall be final, and in either case no further action shall be taken by the Local Government under the provisions of this section.

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

(3) If default is made in complying with the said order, the provisions of section sixty-four shall apply : Provided that in the case of a Municipality mentioned in the first Schedule and not required to act conjointly with any other Municipality or local authority, if within two months from the date of the publication of the particulars of any such scheme in the *Calcutta Gazette* under section thirty-seven F, a petition is presented to the Local Government by a majority of not less than two-thirds of the registered rate-payers of a Municipality objecting to the compulsory introduction of such scheme into such Municipality, the Commissioners thereof shall not be compelled to carry out such scheme.

It is hoped that recourse will be fully and frequently had to these sections in the larger Municipalities which have not yet been supplied with a wholesome water-supply, and that they will facilitate the execution of a much needed reform with the least possible risk of discord and extravagance. It will be noticed, *first*, that compulsion will not be employed by Government except in the last resort (37H) and not until the local authorities have had ample opportunity afforded them of taking action

spontaneously; and *secondly* that even then the representation of a substantial and undisputed majority will suffice to procure the abandonment of the scheme. Paragraph 1st of Government letter No. 34-M. dated 27th August 1894.

Under s. 64 the Local Government may in case of default have the work done by the District Magistrate and realize the cost from the Municipality.

"37L. The provisions of Part VII shall, notwithstanding anything in sections 86, 220, 221, 222, 223, 279 or 287, apply to every Municipality in which a water-supply is provided under section 37 K."

Application of Part VII.

"37M. The powers conferred on the Commissioners by sections thirty-seven A to thirty-seven L inclusive shall not be exercised by the Chairman under section forty-four."

Chairman not to exercise powers of Commissioners.

Of the Mode of transacting the Business of the Municipality.

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

Commissioners to meet ordinarily once a month.

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

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

Meeting not invalidated by non-service of notice.

The addition made to this section is very necessary, as according to the English and Indian cases even accidental omission to serve notice on any Commissioner would invalidate the proceedings. Now only an intentional omission will have that effect. This clause was added by s. 24, Bengal Act IV of 1894, to provide against irregularities such as were noticed in *Joshi Kalidas* v. *Dakor Municipality* (1883), 7 Bom., 399. *Held*, when there is a question whether due notice was given to all the Commissioners of a meeting at which a tax is imposed and therefore whether the tax is legal, the burden of proving the irregularity in the notice is on the person who alleges it. In the absence of evidence to the contrary

the presumption is that the procedure adopted by the Municipality was regular. *Sholapur Municipality* v. *Sholapur Spinning Weaving Co.* (1895), 20 Bom., 732.

Vestries Act, 1818, *s.* 1.—A meeting of the public body is not a legal meeting unless a notice to attend is served on all the members.—*Dobson* v. *Fussy*, 9 L. J. (O. S.) C. P., 72 : 7 Bing., 305.

A public body entrusted with the performance of a public duty cannot hold a valid extraordinary meeting except all the members be summoned who can be summoned, unless the unsummoned members are actually present at the meeting. The proceedings,at a meeting at which any individual is not present, who might have been summoned, and was not, are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned.—*Rex* v. *Langhorne*, 6 N. and M., 203 ; 4 A. and E., 538.

Where certain acts of a Corporation are to be performed at a special meeting, all the persons entitled to be present must be summoned if within summoning distance. The omission to summon any one so entitled renders invalid the proceedings at such meetings in his absence. On the party who supports the validity of such proceedings in the absence of a person who ought to have been summoned rests the *onus* of shewing a sufficient cause why such person was not summoned. With one person absent, who ought to have been summoned, even a unanimous decision of those present would be void.—*Smyth* v. *Darley*, 2 H. L. C., 789.

In his absence.—The absence of the Chairman from the Municipality and not from his ordinary place of residence is here referred to.

And at other times on special requisition.

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

"If the Chairman or Vice-Chairman fails to call a special meeting within 30 days after any such requisition has been made, the meeting may be called by the persons who signed the requisition."

This section does not mean that special meetings can only be called in this manner and in no other. The Chairman, or, in his absence, the Vice-Chairman, can call a special meeting at any time. The object of the section is to compel the Chairman or Vice-Chairman to call a special meeting when three or more Commissioners require him to do so, and not to limit his power of doing so at other times. The distinction between an ordinary and a special meeting is, that any business can, subject to such rules as may be in force as regards notice, be taken up at the one, while the other is called to consider certain specified subjects and no others. An extra meeting held for the transaction of ordinary business, and at which, subject to the provisions in force for giving notice, propositions of any kind can be brought forward, is not a special meeting.

"Meetings are of two kinds, ordinary or general, and extraordinary or special. The former are held periodically at appointed times, and for the consideration of matters in general. The latter are called upon emergencies, and for the transaction of particular business.

"Extraordinary meetings being thus summoned unexpectedly, the notice to them ought to specify very carefully and exactly the occasion of the summons, and all the business proposed to be transacted thereat, so as to call the attention of each member to the circumstances."—*Brice on Ultra Vires*, 840.

When a special meeting is requisite to do an act which is beyond the competence of an ordinary meeting, the Court will require proof that a full and clear intimation was given that the special meeting would be called to consider such matter. In the absence of adequate notice to the parties entitled to attend, the decision of those present will be deemed invalid—*Vale of Neath Brewery Company, in re*, 21 L. J., Ch., 688 : 1 De Gex M. and G., 421.

Under the provisions of this and other Acts, the following subjects must be dealt with at special meetings only :—

(1) Removal of Chairman, s. 24.
(2) Removal of Vice-Chairman, s. 25.
(3) Protesting against the introduction of a water-supply or drainage scheme under s. 37K.
(4) Framing rules for pensions or annuities, or for Provident or Annuity Fund, s. 47.
(5) Imposing tax upon persons or holdings, s. 85.
(6) Imposing additional taxes, s. 86.
(7) Extension of special regulations, s. 221.
(8) Framing of bye-laws, s. 350.
(9) Arranging for registration of births and deaths, s. 11, B. C. Act IV of 1873.
(10) Applying to Local Government for sanction to the construction of a tramway, s. 3, B. C. Act III of 1883.

By s. 69 grants for schools, hospitals, dispensaries, or the promotion of vaccination must be made either at a special meeting, or after special notice, that such matters will be considered at an ordinary meeting.

Who to preside at meetings of the Commissioners.

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

"*Absence of appointed Chairman.*—The absence of the appointed Chairman cannot withhold a meeting from the transaction of the business for which it has been convened. The meeting save in case of express provision to the contrary, as a matter of course, proceeds to the election of one of its members as Chairman. Nor is any time limit usually placed on the exercise of this power when a meeting, composed of a definite number of members, is duly assembled. If the appointed Chairman be not present at the hour fixed for the meeting, the election of his substitute may be effected at once as is provided by the statutory rules for the conduct of local and school boards and boards of directors, and unless otherwise ordered, he retains the chair during that sitting, although the appointed Chairman may subsequently join the meeting. The moment to be taken for the election of an occasional Chairman may accordingly be left to the discretion of the meeting.

"It is undesirable, however, that a meeting where attendance is large, and the occasion of special importance, should be called upon forthwith to fill up the vacancy caused by the absence of an appointed Chairman and the rule prescribed by the Companies Act, 1862, to meet such an emergency might generally be followed. This rule enacts that if there is no regular Chairman of a shareholders' meeting or 'if he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be Chairman.' "—*Palgrave's Chairman's Handbook*, p. 12.

The most important duty of the Chairman of a meeting is to maintain order, or, in other words, to see that the proceedings and discussions are regularly and properly conducted. He must take care that there is a distinct motion before the meeting and should allow no speeches to be made which are not strictly relevant to that motion. His decision on all points of order is virtually final. The duty of deciding all questions as to the admissibility of motions and amendments under the rules in force as to notice or in regard to the terms of the notice convening the meeting in question, is especially imposed upon him. He should insist upon the use of decorous and temperate language, and call any person to order who indulges in unwarrantable personalities, or imputations, Where two members rise at the same time, it is for the Chairman to decide which is entitled to speak. When a motion or amendment is made, and the mover resumes his seat, the Chairman should allow no member to speak unless such member declares that he rises to second the motion or amendment. The Chairman is entitled to insist that all speeches should be addressed to him, and that members should not speak on the same motion more often than the rules permit. The general rule is, that, except in the case of a mover summing up by way of reply, no speaker is entitled to speak twice. "Perhaps it will be safe in a general way to allow a man to speak a second time, if he does so in good faith, for the purpose of commenting on some new point that has arisen since his first speech, or of making some new suggestion of his own, it being clearly understood both by him and by the meeting that he speaks by favour, and not of right."—*Chamber's Handbook for Public Meetings*, p. 25.

Where business involving many details has to be transacted it is better that the meeting should resolve itself into committee, thereby suspending the ordinary rules of debate, and permitting a general discussion unfettered by them.

"According to the procedure generally followed in England, only one amendment can be before the meeting at the same time, that is to say, that the Chairman must not accept a second amendment until the first has either been negatived, or accepted as the main question. In this country, however, a different practice prevails, and several amendments are commonly before a meeting at the same time, the last one made being put to the vote first. It must be remembered that an amendment, as its name implies, professes to improve by alteration the original motion. An amendment cannot merely negative the original motion. A person objecting to a motion *in toto* must be content to vote 'No' when the question is put from the Chair." When once a motion or amendment has been duly made and seconded, it becomes the property of the meeting, and cannot be withdrawn unless the meeting consents.

For full information as to the powers and duties of Chairmen in regard to meetings, reference may be made to *Palgrave's Chairman's Handbook* and *Chamber's Handbook of Public Meetings*.

Questions to be decided by majority.

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

Casting vote.

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

The words " unless otherwise provided by this Act " are obviously necessary. In certain cases a majority of two-thirds of the whole number of the Commissioners is necessary, *see* s. 37 K. and s. 70.

For making rules under section 47, a majority of two-thirds of the Commissioners present at a meeting is required.

Second or casting vote.—" By common right the Chairman of a meeting has, if the number of votes is equal, no second or casting vote. The House of Lords, in this respect, follows 'ancient rule' and the 'non-content' lords 'have it' in case of an equality of votes. In the House of Commons, if the number should happen to be equal, the Speaker (and in Committee the Chairman of Ways and Means), who otherwise never votes, must give the casting vote. A third mode of solving this difficulty is established by the Legislature. A Chairman of municipal councils, local and school boards, vestries, and of board or general meetings of companies is empowered to give, in the first instance, his vote as a member, and then, as Chairman a second or casting vote in case of an equality of votes. *But when a Chairman votes as a member, he should give that vote before declaring the number of voters for and against the motion.*"—*Palgrave's Chairman's Handbook*, p. 13.

The case of the election of the Chairman or Vice-Chairman is an exception to the principle laid down in this section. It is not necessary that there should be an absolute majority of the Commissioners present and voting, in favour of a particular candidate for the office of Chairman or Vice-Chairman, to render him duly elected. The term 'election' implies that the vote for each candidate should be counted, and that the candidate who has most votes should be returned as duly elected.

Quorum.

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

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

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

Adjourned meeting.

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

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such adjourned meeting shall form a quorum, whatever their number may be.

For certain purposes a quorum is practically two-thirds of the whole number of Commissioners. Thus by section 23 a resolution requesting the Local Government to appoint a Chairman cannot be passed unless the meeting is attended by two-thirds of the whole number of Commissioners. Certain resolutions (sections 24 and 25) requires a vote of at least two-thirds of the whole number of Commissioners *in their favour*. It is therefore obviously a waste of time to discuss them unless there is at least that proportion present.

By section 3 of B. C. Act III of 1883, the quorum for a meeting to pass a resolution in favour of applying to the Local Government for sanction to the construction of a tramway is two-thirds of the number of Commissioners.

"The maintenance of a quorum during the holding of a meeting in the first instance devolves upon the Chairman. He is bound to ascertain that a quorum is present before he permits the meeting to proceed to business; but custom, after the sitting has commenced, lays that duty on the members of the meeting at large. This is the practice of the House of Commons itself though for Select Committees the House adopts a stricter method. The Clerk of the Committee is specially charged, whenever a quorum is not present, to bring that fact to the attention of the Chairman, who is thereupon to suspend the proceedings of the Committee until a quorum be present, or to adjourn the Committee to some future day. This regulation might be generally adopted, coupled with the limitation provided for the School Board for London, which sanctions an interval of five minutes as a period of grace for the possible re-assembly of a quorum before its presence is officially declared."—*Palgrave's Chairman's Hand-book*, p. 17.

For the purposes of this section the number of Commissioners must always be taken to be the entire number as fixed by the notification issued under section 13. This is the construction which has been placed on the corresponding provision of the English Act.

Except in the case provided for by this section, notice is not required of any adjourned meeting, as such a meeting is held to be a continuation of the original meeting, and is not competent to transact any business save that which the adjourned meeting left unfinished. The adjournment must be to some day certain, which, if the Chairman and Vice-Chairman are both absent, must be fixed by a president chosen under s. 40.

Minutes of Proceedings.

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

The proceedings of a Municipal Committee can be proved in any Court by a copy certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body.—*Evidence Act* (Act I of 1872), section 78, clause (5).

Minutes of proceedings.—"The precise form in which the minutes of a board should be kept, and whether letters and other documents should be placed thereon, or entered upon detached appendices, are matters which may be left to individual experience, so long as an adequate method of arrangement and of cross reference be provided. The entries essential to a due record of procedure are as follows:—Resolutions in the precise form in which they were put from the chair; every question proposed or put from the Chair, whether withdrawn, negatived, or superseded; the names of those who voted, together with the number of the votes given upon each division; the names also of those present at each division, who, if usage so permit, took part in the debate, but abstained from voting; Chairmen's decision upon matters of order and statements of their opinion regarding practice or procedure; the day and hour upon which a postponed or adjourned proceeding is to be considered. If a special form of notice of business involving the appointment or dismissal of officers, or other important matter is prescribed, the fact that such notice has been given should be recorded. Indices also to the minutes and appendices should be kept up systematically, so as to form a complete annual register to the proceedings."—*Palgrave's Chairman's Handbook*, p. 97.

It is provided by section 60 that a copy of the minutes of the proceedings is to be "forthwith" forwarded to the Magistrate of the district. It appears probable, therefore, that it is not necessary that the minutes should have been confirmed before a copy is despatched. For, by the usual practice of boards, committees, and councils of all kinds, the minutes are confirmed at the next meeting. This would usually be about a month later and to send a copy after a delay of more than a month would hardly be to do so "forthwith." It will be observed that the section does not enact that the minutes are to be signed at the meeting. This procedure was prescribed by the English Municipal Corporations Act, 1835, which provided that the minutes of each council should be "signed by the Chairman at such meeting." As this provision has, however, since been repealed, it would appear not to have worked satisfactorily in practice.

"When a statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly' it would probably be understood as allowing a reasonable time for doing it."—*Maxwell on the Interpretation of Statutes.* It has been held in several English cases that a statutory provision that minutes are to be signed by the Chairman of the meeting to which they relate, is complied with by the same Chairman signing them at the following meeting.—*West London Railway Company* v. *Bernard*, 13 L. J., Q. B., 68; 3 Q. B., 873; or at a subsequent time.—*Miles* v. *Bough*, 12 L. J., Q. B., 74.

There can be little question as to the truth of the following remarks in Mr. Palgrave's excellent work:—"The verification of minutes, it is needless to suggest, would be avoided if, according to the Parliamentary system, the record of each sitting was issued without delay under the authority of the presiding officer. If printed forms were prepared to be filled up as occasion required, a prompt and methodical issue of the minutes might be obtained, and verbal inaccuracies might be corrected under direction from the Chairman of the next meeting, if his attention be called thereto, either at the commencement or the close of the sitting."—*The Chairman's Handbook*, p. 19.

In the case of large and important Municipalities, the best plan to adopt is to print the minutes as soon after the meeting as possible, and to furnish each Commissioner with a copy, sending at the same time copies to the Magistrate of the district. At the ensuing meeting any inaccuracies can be pointed out, and if it is admitted that there are none, and that the minutes are accurate, they can be taken as read and confirmed at once.

Confirmation of minutes.—"The confirmation of minutes is, it must be remembered, a formal proceeding, designed solely for the ratification of the record. No discussion can accordingly be made thereon regarding the policy enforced by the minutes; far less can general debate be allowed; nor can any amendment be moved to that motion."—*Palgrave's Chairman's Handbook*, p. 17.

Reg. v. *York, Mayor* (1 E. & B., 588, at p. 514.) In the case of meeting of public bodies, 'confirm' is commonly used in the sense of to 'verify.' *Per* Lord Campbell, C. J. :—"To confirm the minutes of a meeting means not to give them force, but to declare them accurate."

It is sometimes supposed that the resolutions are inoperative or invalid unless and until this "confirmation" has taken place, but this supposition is incorrect. The object is that the minutes, which are the permanent record and the *primâ facie* evidence of the acts of the authority, shall be as accurate as possible; they are read in order that the members may have the opportunity of calling attention to inaccuracies in them, and when these have, if necessary, been corrected, may declare them to be accurate; and the Chairman then signs them by way of attestation.—(*Ibid.*)

Powers of Chairman.

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

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

The Commissioners cannot set aside any act of the Chairman which he had authority at the time to perform. They can, however, pass a resolution, that he should not perform similar acts in future. After such a resolution such acts would be invalid. The resolution, however, could only have prospective and not retrospective effect.

The proviso to this section and the above note only apply to the case stated in the first paragraph of the section, *i.e.*, where the Chairman exercises powers vested by this Act in the Commissioners. When he exercises powers directly and definitely vested by this Act in the Chairman, the proviso does not apply. Compare note to section 46.

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

Under this and the following section, the Chairman or the Vice-Chairman may sanction a prosecution under s. 353. See *Powell* v. *Municipal Board of Missoori* [(1899), 22 All., 123] on the construction of the corresponding section (69) of the N. W. P. & Oudh Municipal Act, 1883.

Chairman may delegate his duties to Vice-Chairman.

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

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

The Vice-Chairman has no independent or original powers under the Act except in certain specified cases, in the absence of the Chairman. When the Chairman is absent, the Vice-Chairman can call meetings, and preside at meetings, whether ordinary or special. When the Chairman is present, the duties and powers of the Vice-Chairman are precisely what the Chairman may choose to delegate to him.

It is hardly necessary to note that the Vice-Chairman cannot delegate any of his duties or powers to another Commissioner. *Delegatus delegare non potest.*

In regard to the delegation by the Chairman of his power to direct or sanction prosecutions, see note to section 353.

"The delegation must be in writing." The proviso cannot altogether override the body of the section. It relates only to *specific acts* in which an express or implied consent may have been given. It cannot be held to apply to a *general authority* verbally given, as such power can only be delegated by a written order. *Khirod Prosad Pal* v. *Chairman of the Howrah Municipality*, 20 Cal., 448.

Appointment of subordinate officers.

46. (48) The Commissioners at a meeting shall, from time to time, decide whether a paid Secretary, Engineer, Health Officer "or Assessor" is required or not, and what number of subordinate officers, servants, and collectors of taxes or tolls may be necessary for the Municipality, and shall, from time to time, fix the salaries to be paid to such persons respectively out of the Municipal Fund, and the allowances to be granted to such persons during absence on leave.

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

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

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

This section is controlled by section 61, which must therefore be read with it. Compare ss. 15 and 16 of the General Clauses Act X of 1897.

The question has been more than once raised as to whether the Commissioners at a meeting have the power to pass a resolution directing the dismissal of a subordinate drawing more than twenty rupees per mensem, and whether the Chairman is bound to carry such a resolution into effect. Contradictory opinions on these points have been given by two different Advocates-General. The correct view appears to be that this section leaves the matter to the discretion of the Chairman. If a subordinate is drawing less than twenty rupees per mensem, the Chairman has an absolute power of dismissal. If he is drawing more than twenty rupees per mensem, the order of dismissal must be sanctioned by the Commissioners at a meeting on a reference by the Chairman. But the initiative must be taken by the Chairman and not by the Commissioners at a meeting. It does not appear that the proviso to section 44 has any application to this section. That proviso only applies to the case stated in the first paragraph of the section, *i.e.*, when the Chairman is exercising powers vested by the Act in the Commissioners. It does not apply to powers which, as in the present section, are definitely conferred by the Act on the Chairman, independently of the Commissioners.

By section 111A, the Local Government can only appoint an assessor in cases where one has not been appointed under this section.

Commissioners may frame rules for pensions and gratuities or for the creation of a Provident or Annuity Fund.

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

(*a*) the granting of pensions and gratuities out of the Municipal Fund ; or

(*b*) the creation and management of a Provident or Annuity Fund, for compelling contribution thereto on the part of their officers and servants, and for supplementing such contribution out of the Municipal Fund.

And may repeal or alter such rules.

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

No other business can be transacted at a meeting called under the first clause of this section. This is obviously implied by the words "specially convened for the purpose."

Two-thirds of the Commissioners present,—that is to say, two-thirds of the whole number of Commissioners present, whether voting or not.

Where a Statute requires a vote of a definite proportion of those present to render valid an act, those who, being present, refuse to vote cannot be deemed absent.—*Eynsham Ratepayers, In re*, (Lighting Act, 1833), 18 L. J., Q. B., 210.

By section 59 any resolutions passed by the Commissioners under this section for the making, repeal, or alteration of the rules referred to are subject to the approval of the Local Government.

Model Provident Fund Rules will be found *post*,

These rules for Bengal were published with Municipal Cir. No. 2104-05 dated the 28th November 1913 and supersede the old model rules.

Municipal Circular No. 34M. of the 16th December 1893, is as follows :—

"It has long been a well-established and well-known rule that service under a Municipality does not carry with it a claim to pension or gratuity, and although Government in the notification dated the 9th February 1877, published at page 211 of the *Calcutta Gazette* of the 14th idem, made an exception in favour of such employés as may have special claims, the integrity of the general principle has always been maintained.

2. When the present Municipal Act became law, section 47 provided that the Commissioners of a Municipality might, subject to certain restrictions, make rules for the granting of pensions and gratuities out of the Municipal Fund ; but lest that power should be exercised injudiciously, section 59 further provided that any Resolution passed under section 47 should be subject to the approval of the Local Government. Several municipal bodies have taken advantage of the powers given by section 47 ; but the Lieutenant-Governor, as has been stated in paragraph 4 of Government Order No. L. 59, of the 25th July 1890, has decided that such rules, when sanctioned, are to be prospective only, and are not to confer on persons in the service of the Municipality, when the rules were sanctioned, any claim for pension or gratuity on account of service rendered before that date.

3. Notwithstanding these orders, however, special representations are not unfrequently made to Government by Municipalities, the rejection of which is considered a hardship ; and the Lieutenant-Governor therefore thinks it well to draw the attention of Municipal Commissioners to Article 867 of the Civil Service Regulations, in order that, when special representations for the grant of a pension are considered appropriate, they may be based upon the provisions of that Article and submitted for the orders of Government with reference thereto. Full particulars of the rules of the Postal Department relating to the purchase of pensions or annuities may be obtained from that Department ; but, for the present information of

Municipalities in your division, I am to append a table showing the sums payable for the purchase of a fixed monthly allowance, the amount of purchase-money varying with the age of the pensioner."

Winter clothing may be supplied to the *orderlies* of the Chairman, Vice-Chairman, Secretary, and Engineer only, *vide* Circular No. 54, L. G., dated 12th Feb., 1906. Bonuses may be given to Tax Darogas and Collecting Sircars as rewards for good collections. Circular No. 41-M., dated 30th Sept., 1908. The Govt. of B. & O. in its letter No. 9148-52M., dated the 1st Aug. 1913, has revised the scale of percentages.

Pensions, &c., to Government officials.

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

(1) If his services are wholly lent to them, contribute to his pension, gratuities and leave allowances in accordance with the rules of the Government Civil Pension and Leave Codes for the time being in force; and

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

Security from officers or servants.

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

It is obvious that the nature and amount of security to be taken rests entirely with the Commissioners, and that the rules in force as to the securities of Government Ministerial officers do not apply to municipal subordinates.

Though not provided by the section, it is obviously desirable that the Commissioners should determine at a meeting the nature and amount of security to be taken from each class of municipal subordinates, and not leave the matter to the sole discretion of the Chairman.

By Rule 7 of the Account Rules, the secretary, accountant, tax darogah, cashier, and tax-collecting sircars must furnish security. *See* Account Rules.

Of Ward Committees.

Power to appoint Ward Committees.

*50. (50) The Commissioners at a meeting may divide any Municipality into Wards and thereupon appoint, or cause to be elected, for each Ward not less than three proper persons, whether such persons be or be not Commissioners for the time being, to be members of the Ward Committee; and the Commissioners at a meeting may define the limits of the Ward for which any Ward Committee may be appointed or elected.

See s. 51 as to rules of election. A person who is not a Commissioner may be a member of the Ward Committee.

It has been held that the Commissioners have no power of making rules for the appointment and constitution of Ward Committees their powers in the matter being clearly defined and limited by this section. (L. R.)

Section 15 authorises the Local Government to lay down rules "in respect of the division, where necessary, of each Municipality into Wards" for electoral purposes. No such rules have been laid down. Apparently the Wards for electoral purposes may be altogether independent of the Wards defined under this section.

Commissioners may lay down rules for election.

51. (51) The Commissioners at a meeting may lay down rules, not being inconsistent with the provisions of this Act, in respect of the qualifications required to entitle any person who is not a Commissioner to stand as a candidate for such election, and to entitle any person to vote for any candidate, and in respect of the mode of election.

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

Election of Chairman and Vice-Chairman of Ward Committee.

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

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

Commissioners may delegate powers to Ward Committee.

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

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

It has been held that the Commissioners have no power of framing rules for the guidance of Ward Committees, as their powers are limited by this section to defining the powers which they may wish to delegate to such Ward Committees. (L. R.)

Certain sections applicable to transaction of business by Ward Committees.

54. (54) The provisions of sections thirty-eight to forty-five (both inclusive) shall, as far as possible, be applicable to the transaction of business by Ward Committees, and the Commissioners shall sanction the establishment of Ward Committees in accordance with the provisions of section forty-six.

Removal, resignation, and appointment of members.

*55. (55) All questions regarding the removal, resignation, and appointment of members of Ward Committees shall be settled by the Commissioners at a meeting.

It does not appear that much use has been made of these sections in Municipalities generally.

Liability of Commissioners and Ward Committees.

Personal liability of Commissioner or Member of Ward Committee.

*56. (56) No Commissioner or Member of a Ward Committee shall be personally liable for any contract made, or expense incurred, by or on behalf of the Commissioners.

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

The personal liability of Municipal Commissioners is discussed in *Sewdas Lall* v. *Dr. N. B. Baillie and another*, 24 W. R., C. R., 287 in which case Macpherson, J., remarked as follows:—

"The Judge speaks of the protection offered by the Act, which he says must be taken to extend to cases where the defendant *bonâ fide*, though erroneously, exceeds the powers given him by the Act. We are not aware of there being any special protection afforded by the Act (III B. C. of 1864), excepting that, under section 22, relating to contracts made on behalf of the Commissioners for which no Municipal Commissioner is to be personally liable. Municipal Commissioners under this Act and their servants incur no personal responsibility for what they do, so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable for an action. That is the law in England as to the Trustees and Commissioners of Public Works and the like, and it is equally the law here. There is no special law extending to members of Municipalities which protects them so long as they act *bonâ fide*."

The law of England as to Trustees and Commissioners of Public Works referred to has been thus stated: "And generally, as with all other corporations, their powers, duties and liabilities will be determined directly or impliedly by the statutes and other instruments appointing them. The jurisdiction, the rights and the responsibilities

imposed upon them will belong to them, but no others. For the due and careful carrying out of their authorities they must provide; and in default of this—if anything be done, directed or concurred in negligently by them, or through negligence omitted to be so done or directed—they will be answerable in damages for injury resulting, even if they have no funds to pay such damages; and even though they are purely a public body, and deriving personally no profit or advantage whatever from their position." (*Brice on the Doctrine of Ultra Vires*, p. 234.)

"We shall briefly repeat here a most important principle of corporation law which has before been adverted to, namely, that a Corporation is not responsible as a corporation for acts which, though colourably corporate acts, are not within the competency of the corporation to perform; in such case the individuals who take part in the pretended corporate acts are personally responsible. Thus, when the majority concurred in placing on the corporation books a resolution libelling a Court of Justice, the individuals comprising the majority were held liable to a criminal information; and so in cases of contracts." (*Grant on the Law of Corporations*, p. 281.)

The contract referred to in the first clause of the section must obviously be one which the Commissioners were legally empowered to make.

The only contracts which the Commissioners are empowered to make are those which are necessary for the purposes of this Act. If they enter into any contracts not necessary for the purposes of this Act, such contracts will be void as against the corporation on the ground of *ultra vires*; and the Commissioners may incur personal liability. Compare section 37 and note.

Disqualification of Commissioners having share or interest in contracts.

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

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

(*a*) A contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or shareholder; or

(*b*) any lease, sale, or purchase of land, or any agreement for the same; or

(*c*) any agreement for the loan of money, or any security for the payment of money only; or

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

But no such Commissioner shall act as Commissioner or Member of a Ward Committee or take part in any proceedings relating to any matter in which he is so interested.

A person who had entered into an existing contract for profit with the Council was held to be disqualified, even though, by reason of its not being under seal, he could not have sued the corporation on the contract. —*Reg.* v. *Francis*, 18 Q. B., 526 ; s. c., 21 L. J. Q. B., 304.

"The word 'contract,' if the above view is correct, would extend to all cases of supplies of goods to the use of the borough, corporation. buildings, etc., when ordered by the Council ; and this, though the order be a single one of small or large amount, or relate to the supply of a year, or for a longer or shorter period."

Formerly the Act contained no provision as to the authority which should decide when a Commissioner had become disqualified under this section. Section 20 now empowers the Commissioner of the Division to do so, by an order in writing.

Section 12 of the English Act excepts the Mayor and Sheriff from disqualification on account of holding any office or place of profit in the gift or disposal of the Council. Under section 28 the Chairman and Vice-Chairman may receive allowances, and in such a case would hold an office of profit, under the Commissioners. But it seems evidently the intention of the Act, that they should not thereby become disqualified or liable to a penalty under this section.

No Assistant-Surgeon or Civil Hospital Assistant should be nominated for appointment as a Commissioner of a Municipality from which he draws emolument. (This term includes Dispensary Charge Allowance.)—Government Circular No. 5-M., dated 31st January 1901, to Commissioners.

A person who, in the ordinary course of his business, sold goods required for the execution of public works to the contractor who was executing the works for the Town Council, was held not to be disqualified under the Municipal Corporations Act, 1835, as having "directly or indirectly, by himself or his partner, any share or interest in any contract or employment, with or by or on behalf of such Council."—*Le Feuvre* v. *Lankester*, 3 E. & B., 530; 23 L. J. Q. B., 254. A sub-contractor, however, who performed part of the contract work for the contractor was, under the Act of 1882, held by Field, J., to be disqualified.—*Tomkins* v. *Jolliffe*, 51 J. P., 247.

Act as Commissioner.—Where, by a Local Paving and Lighting Act, a penalty was imposed upon any Commissioner "acting as such" in any matter in which he might be personally interested, one of the Commissioners, being personally interested in a foot-path, attended a meeting of the Commissioners, and spoke upon the mode of constructing such foot-path, *held*, that this was sufficient evidence to go to the jury of his acting as a Commissioner.—*Charlesworth* v. *Rudgard*, 1. C. M. & R., 498.

The wording of this section might, with advantage, be made more precise and the word 'contract' should be defined.

"58. (58) No Commissioner or Member of a Ward Committee shall vote on any matter affecting his own conduct or pecuniary interest, or on any question which regards exclusively the assessment of himself, or the valuation of any property in respect of which he is directly or indirectly in any way interested, or of any property of or for which he is manager or agent, or his liability to any tax."

Commissioners disqualified from voting on certain questions.

Control.

The following extract from the report of the Select Committee explains the object of these sections :—

"We imagine that the principle will generally be accepted, that it is desirable to leave the Municipalities the greatest possible freedom of action so long as precautions are taken to ensure that liberty accorded to them will be rightly used. It is in the application of the principle that differences of opinion will be found. In our view the necessary precautions do not lie in the direction of restraining the power of the rate-payers to elect their own representatives or of the Commissioners to elect their own Chairman. We should prefer to attain our object by providing—*first*, that the Magistrate shall have full opportunities of knowing what the Municipality is doing or resolving to do ; *secondly*, that power shall be reserved to restrain the Municipality from doing any specific act which may be dangerous to the public peace or injurious to the common interest ; *thirdly*, that measures shall be possible by which a Municipality may be compelled to perform any specific duty which it may have neglected to fulfil ; and *fourthly*, that a Municipality which may show persistent neglect or incapacity shall be liable to be suspended for such time as the Government may direct. To these safeguards we are disposed to attach much importance, and we have not only included them in the Bill, but have emphasised them by classing them together under a sub-head of '*Control*' in that part of the Bill which describes the constitution of the Municipality."

"For Corporations, being composed of individuals subject to human frailties, are liable as well as private persons to deviate from the end of their institution. And for that reason the law has provided proper persons to visit, inquire into and correct all irregularities that arise in such Corporations, either sole or aggregate, and whether ecclesiastical, civil or eleemosynary." (1 Bl. Com., 480.)

59. All resolutions passed by the Commissioners under the following sections, that is to say—

Certain resolutions subject to approval of Government.

(*a*) under section twenty-three "or twenty-seven" for the election of a Chairman ;

(*b*) under section twenty-four for the removal of a Chairman from office ;

(*c*) under section twenty-eight for the grant of allowances to a Chairman or Vice-Chairman ;

(*d*) under section forty-seven for the making, repeal, or alteration of rules for the grant of pensions or gratuities or for the creation and management of Provident or Annuity Funds,

shall be subject to the approval of the Local Government.

Copy of minutes to be sent to Magistrate.

60. A copy of the minutes of the proceedings of all meetings of the Commissioners referred to in section forty-three, shall be forthwith forwarded by the Commissioners to the Magistrate of the District.

The word "forthwith" appears clearly to imply that confirmation of the minutes at the following meeting should not be waited for. Possibly the Act contemplated that the minutes should be confirmed at the close of the meeting to which they relate. There is no objection to such a practice, except the difficulty of carrying it out, and it was expressly prescribed by the English Municipal Corporations Act, 1835, which provided that the minutes should be "signed by the Chairman at such meeting." The provision in question has, however, since been repealed, which appears to shew that it did not work satisfactorily. Compare s. 43 and note.

"When a Statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly,' it would probably be understood as allowing a reasonable time for doing it."—*Maxwell on the Interpretation of Statutes.*

Circular No. 10, dated Calcutta, the 11th April 1891, has reference to this section and is as follows :—

"Under s. 60 of the Bengal Municipal Act, III (B. C.) of 1884, a copy of the minutes of the proceedings of the Commissioners in meeting must be forwarded forthwith to the Magistrate of the district. The object of this provision of the law is to ensure that the Magistrate shall be in a position to watch over and control the proceedings of the Commissioners on behalf of Government ; and while it is incumbent on Magistrates to be careful not to exercise unnecessary or hasty interference, especially in matters of detail, it is equally their duty to draw attention to any questionable action, especially as regards the expenditure of public money in any doubtful fashion, or any serious departure from accepted principles on the part of the Commissioners. The Lieutenant-Governor has some reason to believe, from cases which have come to his notice, that there is a tendency to overlook the responsibility which is imposed on Magistrates by this section, and he desires therefore to remind them that the proceedings of Municipal Commissioners in their districts should be carefully perused and considered in all cases. It is desirable that copies of important proceedings should be forwarded by the District Magistrate for the information of the Commissioner of the Division, but a discretion in such cases must rest with the Magistrate."

"2. I am to request that these orders may be communicated to all District Magistrates in your Division."

Sanction to appointment of subordinate officers.

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

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

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

These restrictions seem to be out of date and they might be modified or abolished.

Magistrate's power of inspection.

62. The Magistrate of the District, or the Magistrate in charge of the Division of the district in which a Municipality is situate, may enter on and inspect, or cause to be entered on and inspected, any immoveable property occupied by the Commissioners, or any work in progress under their direction; and may call for and inspect any document which may be, for the purposes of this Act, in the possession or under the control of the Commissioners.

By this section the District and Sub-divisional Magistrates are appointed Visitors of the Corporation. "A statutory power to inspect documents includes generally a right to take copies." *Miller* v. *Eastern Midland Ry.*, 57 L. J. Ch., 665.

Power to suspend action under Act.

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

When a Commissioner or Magistrate makes any order under this section, he shall forthwith forward a copy thereof with a statement of his reasons for making it, to the Local

Government, which may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

Bengal Govt. Municipal Circular No. 9 T.-M. of the 6th July 1885 has reference to this section, and is as follows :—

"An instance has lately occurred, in which a District Officer was compelled, in the interests of the public, to suspend, under section 63 of the Bengal Municipal Act, 1884, the execution of an order of the commissioners of a Municipality. To avoid delay, the Magistrate submitted a copy of the proceedings direct to Government for orders, instead of transmitting it through the usual official channel. As, however, a question of such a delicate nature could not be disposed of by Government without obtaining the views of the Commissioner of the Division on the subject, a reference had to be made to that officer. Thus, the object for which the Magistrate's report had been submitted to Government direct was frustrated, and greater delay was eventually occasioned in the disposal of the question. As the law does not distinctly lay down the channels of communication in such cases, and as the submission of the reports direct to Government involves unnecessary labour and delay, the Lieutenant-Governor directs that the attention of District Officers may be invited to the matter, and that they may be instructed on all occasions when the necessity arises for them to take action under section 63 of the Act to invariably submit their proceedings for confirmation through the Commissioner of the Division, who should forward these papers promptly to Government, with such reports and remarks of his own as may be necessary for a complete comprehension of the facts. In the event, however, of the case being one of extreme urgency the Magistrate may submit direct to Government a copy of his report to the Commissioner; but it seems to the Lieutenant-Governor unlikely that cases of this nature will be of frequent occurrence."

As the section gives concurrent jurisdiction to the Commissioner and the Magistrate, cases have arisen where both these officers have passed orders simultaneously and possibly in contradiction with each other. Accordingly Govt. in Circular No. 53-M., dated 8th May 1898, directed that "a District Magistrate shall ordinarily only take action under section 63 when there is a likelihood of a breach of the peace, or of serious injury or annoyance being caused to the public or to any class or body of persons. When a resolution, order, or act of any Municipal Commissioners is in excess of the powers conferred on them by law, any order that is passed under section 63 shall ordinarily be passed by the Commissioner of the Division. . . . . On the other hand, . . ., save in cases of exceptional urgency, a Commissioner should not exercise his power under section 63 without previous reference to the District Magistrate."

Powers of Local Government in case of default.

64. If at any time it appears to the Local Government, on the report of the Magistrate of the District, or of the Commissioner of the Division, that the Commissioners of any Municipality have made default in performing any duty imposed on them by or under this or any other Act, the Local

Government may, by an order in writing, fix a time for the performance of that duty.

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

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

The procedure prescribed in this section is only applicable to cases where there has been a distinct default in performing, or an omission to perform, a statutory duty. The procedure could not properly be applied to any case in which there was room for difference of opinion as to whether there had been any default or not.

Power to supersede Commissioners in case of incompetency, default or abuse of powers.

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

The words "in the opinion of the Local Government" have been inserted in order to check litigation, as without them, legal proof might possibly have been required that the Commissioners were not competent or persistently made default, &c.

Consequences of supersession.

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

(*a*) All the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners.

(*b*) All the powers and duties of the Commissioners shall, during the period of supersession, be exercised and performed by such person or persons as the Local Government may direct.

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

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

"66A. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more Municipalities constituted under this Act, or between the Commissioners of any such Municipality and a District Board, or Cantonment authority, the matter shall be referred:— Disputes.

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

(*b*) to the Commissioner or Commissioners of the Division or Divisions, if the local authorities concerned are in different districts; or

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

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

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

Under the election rules election disputes are to be decided by the Magistrate as defined in section 6, sub-section 8.

GSL

PART III.

Of the Municipal Fund.

What shall constitute the Municipal Fund.

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

This section provides that all sums received by the Commissioners shall constitute a general "Municipal Fund." The following two sections specify upon what purposes the "Municipal Fund" may be expended, and the first of them enumerates certain purposes which have prior claims on the Fund.

It is clear, however, that the general provisions contained in these sections must be held to be overridden by the special provisions contained in other parts of the Act. Thus it is provided by section 307 that the water-rate levied under Part VII can only be expended on purposes connected with the supply of water. Again, section 318-A provides that the lighting-rate shall be spent in lighting purposes. As regards the house-service fees, their application is expressly limited by section 322 to the purposes of Part IX. It appears obvious therefore that each of these rates must be credited to what is for all practical purposes a separate fund, and that none of them are available for the other general purposes specified in sections 68 and 69.

Fees and fines levied under the Hackney Carriage Act (II B. C. of 1891), should be made over to the Municipality for credit to the Hackney Carriage Fund. Government cannot order such fines and fees to be credited to the general Municipal Fund. The Legal Remembrancer's opinion was that fines and fees realized under the Hackney Carriage Act should not be credited to the Municipal Fund nor appropriated for the purposes specified in sections 68 & 69 of the Municipal Act. Under section 60 of the former Act (II B. C. of 1891) all fines and fees must be credited to a Hackney Carriage Fund which should be employed only in carrying out the purposes of that Act and not the general purposes of the Municipality. The accounts of this Fund should be kept distinct and separate. The Commissioners are the administrators of the Hackney Carriage Act and of the Fund and for this no Government order is necessary. Under section 67 of the Municipal Act Government can only sanction the transfer of such sums as may be legally so transferred. That section does not authorize the contravention of the express provisions of any enactment.

May be transferred to the Commissioners.—Government has ordered that fines imposed under section 34 of Act V of 1861 for nuisances committed within the Municipalities shall be credited to the Municipality. See Cir. No. 1 T. M., dated 6th April 1885. (C. & O. Vol. III, p. 1030).

Fines realized under Act I (B. C.) of 1869 and Act XI of 1890 are now made over to Municipalities (in Howrah to a special committee). Sections 67 and 69 should be amended so as to provide for this and for the expenditure of the sums received on the prevention of cruelty to animals.

Payment on account of interest on loans and establishment.

68. (60) "Except as is otherwise provided in this Act," the Commissioners shall set apart and apply annually out of the Municipal Fund,—

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

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

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

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

(1) It is curious that clause (*a*) makes no mention of the payment of the principal of Government loans. Such principal also should be a first charge on the Fund.

(2) India Act XI of 1879 enacts in what manner loans may be raised by Municipal Committees and other local authorities. It has been repeated by Act IX of 1914.

(3) For rules regulating the grant of loans *see* post. *Vide* also note to section 37 J.

(4) This section, it will be noticed, no longer provides for the payment of Municipal establishments entertained in the offices of the Magistrate and Commissioner of the Division ; on the other hand, the provision as to the cost of establishments in any office of account or in any treasury, is new. The cost of audit was debitable to the Commissioners under section 73 of the former Act.

(5) The provision for the maintenance of the Municipal Police force in the corresponding section has been omitted.

(6) Audit fees which were formerly charged by Government for the Audit of Municipal accounts have now been abolished and Municipal Department No. M. $\frac{21\text{-A.}}{9}$-2 dated the 14th February 1889 now has no force. The relevant correspondence will be found in India's letter

No. 554A. dated the 29th January 1908, to Bengal, India's Despatch to the Secretary of State No. 208 dated the 30th June 1907, the Secretary of State's Despatch No. 129 dated the 20th September 1907 and Bengal Financial Department Circular No. 10F. dated the 3rd March 1908. The Government of India said:—

"The levy of an audit fee, especially in the case of District Boards, Municipalities and Cantonments, appears to us to be a survival from the time when it was the prevalent view (with which we can in no way concur) that these bodies had no claim to any financial assistance from the State. It is now generally recognized that they are definite links in the machinery of Government, and that it is legitimate and often necessary to supplement their ordinary resources by contributions from the general exchequer. Holding this view, we are of opinion that one of the most obvious methods of assisting them, and one which is free from most of the objections attaching to a system of occasional contributions, is to forego the charges on account of services which must in practice necessarily be rendered to them by Government.

(7) Advances for the purpose of building houses cannot legally be granted to municipal employés from the Municipal Fund. (Cir. No. 38 T. M., dated 6th October 1904). The Legal Remembrancer held that "in my opinion such advances are outside the scope of the Municipal Act and are not authorised by section 68 & section 69 of Act III of 1884 or by any other section of the Act." The Municipal Fund cannot be applied to the purchase of silver caskets to contain complimentary addresses nor to meet the cost of local coronation celebrations. Cir. (Muncpl.) No. 14-M., dated 30th March 1892 and Cir. (Political), No. 2353-P. dated 27th November 1902.

Purposes to which municipal fund is applicable.

69. (1) After the said sums have been set apart under section 68, the Commissioners at a meeting shall, as far as the Municipal Fund permits, from time to time cause roads, bridges, tanks, ghâts, wells, channels, drains and privies, being the property of the Commissioners, to be maintained and repaired and the municipality to be cleansed; and may, except as is otherwise provided in this Act, and subject to such rules and restrictions as the Local Government may from time to time prescribe, apply the Municipal Fund to any of the following purposes within the municipality, that is to say,—

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

(ii) the supply of water, and the lighting and watering of roads;

(iii) the erection and maintenance of offices and other buildings required for Municipal purposes;

(iv) the construction and repair of school-houses, either wholly or by means of grants-in-aid;

(v) the establishment and maintenance of schools either wholly or by means of grants-in-aid ;

(vi) the establishment and maintenance of hospitals and dispensaries ;

(vii) the promotion of vaccination ;

(viii) the acquiring and keeping of open spaces for the promotion of physical exercise and education ;

(ix) the training and employment of female medical practitioners and of veterinary practitioners ;

(x) the establishment and maintenance of veterinary dispensaries for the reception and treatment of horses, cattle and other animals ;

(xi) the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals ;

(xii) the improvement of the breed of horses, cattle and asses, and the breeding of mules ;

(xiii) the establishment and maintenance of free libraries ;

(xiv) the maintenance of a fire-brigade ;

(xv) other works of public utility calculated to promote the health, comfort or convenience of the inhabitants ;

(xvi) the establishment and maintenance of benches for the trial of offences under this Act or any bye-laws made thereunder ; and

(xvii) generally, to carrying out the purposes of this Act :

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

(2) The Municipal Fund shall also be applicable to the payment, at such rates as the Local Government may from time to time direct, of travelling expenses incurred by any of the Commissioners in attending meetings convened under the rules made by the Local Government in pursuance of sub-section (4) of section 1 of the Indian Councils Act, 1892, for the purpose of recommending a person to be nominated as a member of the Lieutenant-Governor's Council.

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

(1) The note to section 67 explains the necessity of the addition "except as is otherwise provided in this Act." For example, the application of the water rate and lighting rate is otherwise provided for in the Act; and those rates cannot be applied to the other purposes specified in this section.

(2) B. C. Act III of 1883 provides for the construction of tramways by Municipal Corporations and other local authorities. By section 3 a resolution in favour of an application to the Local Government for sanction to the construction of a tramway must be passed at a special meeting of which at least a month's notice must be given, and at which at least two-thirds of the Commissioners must attend and vote.

(3) The following extract will explain the object of the amendments made in this section. On a proposal to include a clause for the construction and maintenance of *serais*, "The Hon'ble Mr. Reynolds thought the words unnecessary, as clause (4), which mentioned generally other works of public utility, was sufficient to cover *serais*. He might explain that some of the works especially mentioned in the existing Act had been advisedly omitted by the Committee. Embankments, for instance, were not considered proper objects for municipal expenditure, and 'jetties and urinals,' the mention of which was also omitted, were covered by clause (4); nor did it appear why they had been inserted in the Act of 1876. Urinals, moreover, were covered by 'latrines.' The only subject of expenditure which was intentionally omitted was embankments; the other omissions were merely meant to be verbal improvements of the section." (*P. C., February 20th*, 1884.)

(4) It has been held that section 61 of Act V did not enable the Commissioners to spend any portion of their funds in carrying out a census, as it is not one of the purposes of the Act. (L. R.)

(5) It is obvious that the Municipal Fund cannot legally be expended upon any purposes not specified in this and the preceding section. "Many difficult questions continually arise as to what may and what may not be paid out of the fund. A Municipality cannot spend its funds on bringing an action for libel in respect of a letter charging it with corruption, for the Corporation in its corporate capacity cannot be guilty of such an offence (*Mayor of Manchester* v. *Williams* (1891, 1 Q. B., 94), but it may do so if the statement reflects on its character in the conduct of its business without proof of special damage (*South Holton Coal Co.* v. *North Eastern News Association* (1894), 1 Q. B., 133. A corporation though lord of the manor cannot entertain juries of the manor and charge the expenses to its fund (*R.* v. *Mayor* of *Bideford*, 1883, 47 J. P., 756; it cannot purchase a gold chain for the Mayor (*A. G.* v. *Bathy*, 1872, 26 L. J. (N. S.) 392) or pay the costs of an officer of its own who has incurred a penalty under section 193 of the Public Health Act (*R.* v. *Mayor of Ramsgate*. 1889, 24 Q. B. D., 66) or pay interest on a fund which the Corporation is authorised to contribute for the endowment of a college (*A. G.* v. *Mayor of Cardiff*, 1894, 2 Ch., 337, or carry on the business of carriers (*A. G.* v. *Manchester Corporation*, 1906, 1 Ch., 643). On the other hand a corporation was held to be entitled to pay for the due celebration of Her late Majesty's Jubilee (*A. G.* v. *Black*

Heath Corporation, 1885, 57 L. J., 385). A corporation may also pay the expenses of defending any attack made by a Bill in Parliament on its property, powers or privileges. Obtaining a free passage over a foot bridge for the use of the inhabitants of a borough is a public benefit on which funds may be spent. (*A. G.* v. *Newcastle-on-Tyne*, 1892, A. C., 568). Encyclopaedia of the laws of England, Vol. 9."

In *Vaman Tatyaji* v. *Municipality of Sholapur* (1897, 22 Bom., 646,) it was held that 3 tax-payers who objected to the purchase of musical instruments could bring a suit to try the question whether the proposed expenditure on the establishment of a band was legal or illegal.

(6) 69v. A specific proportion of the Municipal income need not be set aside for education though Government think 3·2 per cent. a desirable standard to aim at. Cir. No. 20-M., dated 1st April 1910.

It will be noticed that sections 69 and 70 make no mention of the possibility of utilizing the Municipal Funds for educational purposes other than the construction and repair of school houses and the maintenance of schools. The sections might with advantage be amended so as to legalize the grant of scholarships.

(7) 69(xii) The Government of India will procure and sell to Municipalities for stud purposes horse and donkey stallions at stated prices, Cir. 25 T. M., dated 21st October 1901.

(8) 69(2) The Government has declared that Municipalities may pay travelling expenses at the rates admissible under the Civil Service Regulations to officers of the second class to delegates who attend meetings held for the purpose of recommending members for the Bengal Legislative Council. Cir. No. 22-T. M., dated 13th June 1905.

(9) "In connection with a recent case of embezzlement in a Municipality, the question whether the cost of prosecuting a Municipal servant for defalcations should be borne by the Municipality or the Government has been reconsidered. The Lieutenant-Governor considers that the enforcement of honesty and probity on the part of Municipal servants is an important step in carrying out the purposes of the Bengal Municipal Act as laid down in section 69, and that the Government cannot, therefore, be equitably called upon to meet the cost of such prosecutions. The point was referred to the Hon'ble the Advocate-General, and he holds that such expenditure may under the law be incurred out of Municipal Funds. This opinion is, therefore, circulated for communication to all District Officers and Chairmen of Municipalities in your Division. Expenditure on prosecutions of their servants must in future be met by Municipal Commissioners. The Government orders contained in Circular No. 10 T. M., dated the 30th June, 1884, are cancelled."

OPINION.

I AM of opinion that the costs incurred in prosecuting a Municipal servant guilty of defalcations can legally be charged to the Municipal Fund. Under section 69 (9) of Act III (B. C.) of 1884, the Municipal Fund can be applied "generally to carry out the purposes of that Act." The question I have to consider is whether the costs incurred in prosecuting a Municipal servant guilty of defalcations are covered by the word "purposes" as mentioned in the Act. I am of opinion that they are. As pointed out by Sir George Jessel, the late Master of the Rolls, in the case of the *Attorney-*

General v. The Mayor of Bracon (L. R., 10 Ch. Div., 204) Municipal Corporations are not in the position of owners of property, but are trustees of property, and as such are not free to dispose of their property in any way they thought fit. They are empowered to devote their income towards expenses "which shall be necessarily incurred in carrying into effect the provisions of the Act, and in case the borough fund shall be more than sufficient for the purposes aforesaid, &c., &c." Sir George Jessel at p. 215 states as follows:—"Now it is manifest, the moment you read the Act, that if you read 'purposes' as meaning merely 'express purposes,' a Corporation would be left in this position—that they could not even defend their property or their very existence against attack. If, therefore, the word 'purposes' is to be read in the narrowest sense, that is, as meaning the purposes expressed by name in the Act, this would follow—that if an action of ejectment, or what is now called an action for recovery of land, were brought against the Corporation to get from them the whole of their landed property, they would not be justified, under the Municipal Corporations Act, in incurring the costs of defending that action. That, of course, is too extravagant, and it must therefore be assumed that there is to be found somewhere, either under the word 'purposes' as mentioned in the 92nd section or under the general law, a provision for such a case as that." Again at p. 216 he says:—"Here, again, if you read the word 'purposes' in the narrow and restricted view, it would be difficult to find any such purpose expressed in the Act; but you must either read it in the larger way, or else you must assume that the Legislature intended that the ordinary rights of Corporations in defending themselves against attack, whether by action at law or by Bill in Parliament, or otherwise, should be reserved to them." It appears to me that the Municipality has every right to protect its funds from the likelihood of any future defalcations, by prosecuting one of their servants guilty of defalcations, and that, according to the decision of Sir George Jessel, the expenses incurred in that behalf would be considered to be for the "purposes" of the Municipal Acts. Furthermore, as I have said the position of the Municipal Commissioners is that of trustees of Municipal Funds; and, under the general law, I should say that they would be entitled to pay for these expenses.

Section 352 of Act III (B. C.) of 1884 has been relied upon as being exhaustive, and giving colour to the opposite view, but in point of fact it only sets out and defines a part of the purposes under sections 69 (9), and does not exhaust them. If section 352 had been omitted, the expenses of the prosecutions and proceedings mentioned in it would have been met under the powers conferred by section 69 (9).

C. C. PAUL.

The 3rd August 1894.

Receipts and expenditure on account of hospitals and dispensaries.

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

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

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

(*c*) all expenditure incurred by them.

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

For rules, *see* post.

Power to make rules.

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

(i) prescribing the qualifications of candidates for employment under clause (xi) of section 69 ; and

(ii) generally, for the guidance of the Commissioners in all matters connected with the carrying out of the purposes of sections 69 and 69A.

(1) For rules, *see* post.

(2) For conditions on which the Commissioners may make contributions towards the repairs of private tanks and wells, see Notification No. 2260-M., dated 7th November 1905. The rule as given in this Notification runs as follows—"Contributions made by the Commissioners out of the Municipal Fund towards the re-excavation, repair, improvement or maintenance of any private tank or well, shall, if the amount of the contribution exceeds 100 rupees, be subject to confirmation by the District Magistrate and shall in every case be subject to the conditions that the water of such tank or well shall be available for use by the public for domestic purposes and for watering cattle."

(3) 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 the 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.

Expenditure outside Municipality.

70. With the consent of two-thirds of the Commissioners obtained in writing, and with the sanction of the Local Government, the Commissioners may contribute a portion of the Municipal Fund towards the expenses incurred in any other Municipality, or elsewhere, for any of the purposes mentioned in section 69, sub-section (1) ; or towards the salary of any officer under another authority whose services are employed by them ; and

also towards the expenses of making, maintaining and repairing any work for the improvement of a river or harbour (by whomsoever such work may be done).

But no contribution shall be made under this section to any work, unless the same is calculated to benefit the inhabitants of the contributing Municipality.

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

(1) The words "*or elsewhere*" do not mean anywhere else in the world. Fay, L. J., in *Colquhoun* v. *Brooke* (57 L. J. Q. B., 443) held that the words "The United Kingdom or elsewhere" (section 2, Sch. D., Income Tax Act, 1853) included the whole world. The majority of the Court of Appeal (59 L. J. Q. B., 53) held otherwise. Esher, M. R. said "elsewhere" cannot mean every other part of the inhabited globe—and cannot include colonies which have their own Parliaments and all foreign countries.

(2) "*Inhabitants*" means inhabitants generally as distinguished from only a portion of them (Lord Herschell in *Inland Revenue* v. *Scott*. See section 11 of Customs and Inland Revenue Act 1883).

(3) "The Hon'ble the Advocate-General said that he considered this section to be a very salutary provision, as it provided for those cases in which one Municipality might not alone be able to undertake a particular work. The object of the section was to enable two or three Municipalities to club together to achieve a common object."—(*P. C., February* 26th, 1876).

(4) Under this section, read with clauses vi and xv of section 69, a moderate contribution may be made towards the Pasteur Institute: provided that

(1) the Institute is calculated to benefit the inhabitants of the contributing Municipality;

(2) that the consent of two-thirds of the Municipal Commissioners in writing is obtained; and

(3) that the sanction of the Local Government is previously obtained.

The first condition may be obtained by requiring an undertaking that all inhabitants of the Municipality who may be bitten by rabid animals shall be received for treatment in the Institute free of charge [Cir. No. 10, Med. (25th March, 1901)].

Account books to be kept open and quarterly statement published.

71. (63) The account books of the Municipality shall be open to the inspection of any tax-payer at the office of the Commissioners on a day or days to be fixed in each month.

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

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

The former section provided that copies of the quarterly and yearly statements in question should be forwarded to the Magistrate of the District.

Rules 75-78 of the Account Rules refer to the quarterly and annual accounts.

Annual estimates to be prepared.

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

The Legal Remembrancer has pointed out that the fact of estimates having been prepared under the corresponding section of Act V in no way prohibits the subsequent levy of a tax not estimated for. The estimates are merely intended to shew what the probable receipts and expenditure will be during the year, and there is nothing in the Act which prevents their being increased by the levy of other taxes. Compare sections 85 and 86, which enact that the Commissioners may, from time to time, levy taxes, &c.

The estimates should be carefully prepared, after a thorough consideration of the probable wants of the Municipality, within the year. The more carefully they are prepared, the less difficulty will be experienced in carrying on the Municipal work, without supplementary budgets and transfers.

Rules 10 and 11 of the Account Rules relate to the budget estimates.

Estimates to be published.

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

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

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

Estimate to be transmitted to Magistrate.

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

Magistrate may record remarks.

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

Powers of Commissioner as to estimates.

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

Provided that the Commissioner of the Division shall not raise the total of the proposed expenditure above the sum shown by the estimate to be at the disposal of the Commissioners.

Certain Municipalities have been granted a free hand in framing their budgets according to their discretion (Cir. No. 2-T. M., dated 20th April 1910). This privilage has now been made general in Bengal by Circular No. 5-M dated the 19th January 1916 which runs as follows :—

2. As a result of the recommendations of the Decentralization Commission, the Government of Bengal, in circular No. 2 T.—M. of 20th April 1910, instituted the experiment of giving four municipalities with an income of over Rs. 1,00,000 a free hand with their budget, subject to certain specified restrictions, and at the same time enjoined generally a policy of non-interference by Commissioners, with the details of the budgets of all other municipalities. These instructions were subsequently given effect to in the Divisions of Eastern Bengal by Circular Nos. 1160-62 T.—M. of 23rd October 1912. In Resolution No. 55-71 of 28th April 1915, on the local self-government policy, the Government of India refer to the recommendations of the Decentralization Commission for the relaxation of financial control over municipalities as "expressing a policy to be kept steadily in view, and gradually realised." The Governmen..

of Bengal have for the last five years had under careful observation the results of the experiment made in the year 1910, and of the general orders with which it was accompanied. The Governor in Council is satisfied that the experiment has on the whole justified itself, while at the same time he notices in the affairs of municipalities a growing sense of responsibility and capacity for self-management, which encourage him to believe that further confidence in their powers of financial administration would not be misplaced.

3. Under section 76 and section 77 of the Bengal Municipal Act, municipal budgets and re-appropriations have in all cases to receive the sanction of the Commissioner; and the orders contained in the circulars above quoted have defined the principles on which Commissioners should exercise their powers under these sections. It is the intention of Government that municipalities in general should now enjoy the fullest measure of financial independence allowable under law. I am accordingly directed to say that the instructions contained in circular No. 2 T.—M. of 20th April 1910, for giving a free hand in framing their budget to the municipalities of Burdwan, Howrah, Cossipore-Chitpur and Maniktollah, should be held applicable to the supervision exercised by Commissioners over municipal budgets, not only in the case of these four municipaliteis, but as a general rule. Municipalities will be left a free hand in framing their budgets according to their discretion and Commissioners will be ordinarily required only to see—

(*i*) That the necessary minimum closing balance is retained.

(*ii*) That due provision is made for the service of all municipal loans.

(*iii*) That the provisions of the Act and any statutory rules and standing orders of Government are complied with.

4. While convinced that municipalities in general are now ripe for this concession, the Governor in Council recognises the possibility that there may be definite reasons for believing some particular municipality unfit for this degree of freedom from control. The Governor in Council would be prepared to consider the advisability of excepting such a municipality from the effect of these orders, but it is to be understood that such denial to any municipality of the general concession now made would be a disability imposed only on adequate grounds, which must be specific. I am directed accordingly to request that you will examine the position of the municipalities in your Division in this light, and should there be any to which you are of opinion that these orders should not apply, report in detail to Government the circumstances on which such an opinion is based. I am further to say that with the exception of any municipality the case of which it is thought desirable to submit to Government for this reason, the instructions for giving municipalities a free hand with their budget contained in paragraph 3 of this letter should be followed in respect of all municipal budgets now under consideration or subsequently received.

Estimate of expenditure may be revised.

77. (68) The Commissioners at a meeting may, from time to time, revise any estimate of expenditure with the view of providing for any modifications which they may deem it advisable to make in the appropriation of the amount at

their disposal, and such revised estimate shall be published and forwarded in the manner hereinfore prescribed; and the Magistrate and the Commissioner of the Division may deal with such revised estimate in the manner provided above.

Disbursement of expenditure sanctioned in estimate.

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

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

(1) Rule 107 of the Account Rules refers to this section.

(2) The provisions of the first clause of this section were until recently rarely observed. The Accountant-General has stated that "the fact that the budget estimates have been approved by the Commissioners and by the Commissioner of the Division is universally accepted as sufficient authority for the disbursement of the items entered in the estimates." General as the practice was, it is, however, undoubtedly illegal. The sanction of the Commissioners at a meeting ought to be taken beforehand for all expenditure. Compare section 84, the second clause of which distinctly enacts that no order for the payment of money shall be issued unless the expenditure *has been* authorized by the Commissioners at a meeting as provided in section 78.

(3) Cases have occurred in which, when a Commissioner has refused sanction to an item in the Municipal Budget, the Municipality has nevertheless continued to employ the establishment or incur the expenditure which has been disallowed, and has disputed or resisted the orders given by him. In such cases the Commissioner has sometimes been forced eventually to sanction expenditure of which he disapproved because the money had been actually disbursed and there was no practicable means of enforcing its recovery, Government accordingly laid down a Rule which will enable the Commissioner in certain cases of repeated contumacy, to require the countersignature of the Magistrate or sub-divisional officer, as the case may be, before a cheque drawn on the Municipal Account can be cashed at the District or Sub-divisional Treasury. When such an order is issued by the Commissioner he should communicate to the District Officer, the scale of establishment sanctioned by him, and the latter should refuse to countersign any cheque drawn by the Municipality concerned, unless the amount drawn is in accordance with the sanctioned scale. If the Municipality is one that banks at a private bank, this privilege will be withdrawn simultaneously with the issue of the order. (Municipal Department Circular No. 6-M., dated 8th February 1899, to Commissioners.) This procedure is now out of date having regard to the terms of Circular No. 5-M quoted in the note to sec. 76.

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

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

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

"Five thousand" has been substituted for "three thousand" in this section.

The Account Rules suggest that a Sanction Register should be kept up, see Rule 9, *post*.

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

Disbursement of excess expenditure.

The practice of transferring and expending such amount in anticipation of sanction is illegal, and should be avoided. If application for sanction be made in due time, it cannot be necessary.

The amount of an estimate sanctioned for a given year for expenditure on any object must, of course, be expended within that year, or it lapses. The practice of drawing out such unexpended balances before the close of the year and keeping them in deposit, in order that they may appear in the accounts as disbursed in that year, is quite illegal and improper and an evasion of the budget system. It is not, however, an altogether unknown practice.

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

An annual report of proceedings, etc., to be submitted.

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

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

The Commissioners should obviously have an opportunity of considering and amending the report at a meeting before it is submitted.

Municipal Cir. No. I. T.—M. of the 29th April 1886 prescribes what the annual report should contain, and the date of its submission.

The Bengal Government has revised the procedure for the preparation and submission of Municipal Reports, *vide* Resolution No. 442-T.M., dated the 11th June 1913, *post*.

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

Keeping of registers and submission of returns.

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

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

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

The Accountant-General, Bengal, issues reports (for the 3rd and 4th quarters of the year) of the transactions of Municipalities, to Treasury Officers for communication to the Municipalities concerned (Govt. Letter No. 43-M., dated 8th January 1910). With regard to the Register of lands *see* Rules 91-A., 91-B., and 91-C. published with Notification No. 794-M., dated 10th February 1905. These are in addition to the rules published with Notification No. 5472-M., dated 13th December 1897, at pp. 297—368, Part IB of the *Calcutta Gazette* of the 15th idem.

83. (75) Unless the Local Government shall otherwise direct, all sums received on account of the Municipal Fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the Municipal-

Custody of the Municipal Fund.

ity, and shall be credited to an account, to be called the account of the Municipality to which they belong :

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

As to matters relating to cheques and transaction with Banks and Government Treasuries, *see* Account Rules. All moneys received must be remitted to the Municipal banker, and no claims can be liquidated out of them.

Orders for payment of money.

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

No such order shall be issued otherwise than for the payment of money of which the expenditure has been authorized by the Commissioners at a meeting, as provided in section seventy-eight.

(1) " Commissioner of the Division " has been substituted for " Lieutenant-Governor " at the beginning of the section. The other changes in the section are in consequence of the abolition of the distinction between first and second class Municipalities.

(2) The second clause is important, though its provisions were until recently commonly disregarded or misunderstood. The authorization here referred to is required *in additiom* to a provision in the sanctioned budget estimates, though the two things were commonly confounded. The Chairman or Vice-Chairman is not justified in signing the order for payment unless there had been a distinct resolution passed at a meeting, authorizing the expenditure for the purpose in question. Such a resolution cannot be legally passed at a meeting, unless there is a provision in the sanctioned budget estimates of a sum for the purpose in question, covering the proposed expenditure. Compare section 78 and note.

(3) Rules 27-38 of the Account Rules deal with the payment of claims.

(4) Circular No. 15 T.—M., of the 28th July 1885, in the Municipal Department has reference to this section, and is as follows :—

" It has been brought to the notice of Government that differences exist in regard to the interpretation put upon the words 'orders for the payment of money from the Municipal Fund,' which occur in section 84 of Act III (B. C.) of 1884. In most cases these

words are understood to refer to orders on the treasury, *i.e.*, cheques on the treasury issued by the administrators of the Fund. This interpretation, however, is not only incorrect, but gives rise to considerable difficulty in the keeping and checking of the accounts of Municipalities, which might otherwise be obviated, for when a cheque has once been signed, the amount for which it is drawn must be immediately entered in the cash-book of the Municipality as a payment from the Fund, even though the cheque be not immediately made over to the payee. It frequently happens that the Chairman and Vice-Chairman of a Municipality are absent when a creditor presents his claim. The creditor goes away leaving his bill, and does not return again perhaps for a month or more. Meanwhile a cheque is drawn for the amount of the bill, and then charged off in the cash-book as a payment, although no payment has actually been made, and no voucher is forthcoming. Added to this, there is a danger, in such a case, of the signed cheque being abstracted, since it is always made payable to 'bearer' and represents so much actual cash. These difficulties would disappear if the correct interpretation were applied to the words above quoted, and that is the orders made upon bills or other forms of demand directing the same to be paid. It is these orders which are the authority for the payment, whether the payment is made from cash in a cash-chest kept in the Municipal Office, or by a cheque on the treasury. The mere order does not constitute actual payment, and cheques should only be drawn on presentation of the order by the payee. The signing of the cheques may, in the discretion of the Municipal Commissioners, be left either to the Chairman, the Vice-Chairman, or the Secretary."

PART IV.

Of Municipal Taxation.

Alternative tax upon persons or holdings.

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

(*a*) a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality :

Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum ; or

(*b*) a rate on the annual value of holdings situated within the Municipality :

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

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

A. *Procedure to be followed when introducing taxation.*

(1) The various kinds of taxes, rates, tolls, and fees leviable under the Act are prescribed in sections 85 and 86. When the Commissioners of any Municipality wish to impose any of these forms of taxation within the limits of the Municipality they should convene a meeting of which due notice shall have been given and record a resolution deciding, subject to the sanction of Government, to levy the particular form of tax intended. This resolution should be submitted with the application for the specific sanction of Government to the introduction of the particular mode of taxation in question.

On receipt of such sanction the Commissioners may proceed to fix the amount at which the particular taxes, rates, tolls or fees, as the case may be, should be levied in accordance with the provisions of the Act specified below against the various classes of taxes:—

Tax on persons.—Sections 85, 87 to 95 and 111A to 130.

Rate on the annual value of holdings.—Sections 85 and 96 to 130.

Tax on carriages, horses and other animals.—Sections 86 and 131 to 141B.

Fee on the registration of carts.—Sections 86 and 142 to 147-B.

Tolls on ferries, bridges and metalled roads.—Sections 86 and 148 to 172.

Water-rate.—Sections 86 and 279 to 307.

Lighting-rate.—Sections 86 and 308 to 319.

Fee for the cleansing of latrines.—Sections 86 and 320 to 334-A.

(2) In the case of water-rate, lighting-rate or latrine fees further preliminary action will be required. The Commissioners should first of all apply to the Local Government under section, 221 of the Bengal Municipal Act to extend to the municipality the provisions of the corresponding special Parts of the Act, *viz.*, Parts VII, VIII or IX, as the case may be, and it is only when the necessary Part has been brought in force in the Municipality in the manner prescribed in section 222 that the Commissioners may avail themselves of the procedure detailed in the foregoing paragraph. Should it be desired to levy a differential water-rate under section 279 (1) (*a*) it should be borne in mind that the special sanction of Government will be necessary.

(3) The same procedure should be repeated whenever, on the inclusion of a local area within a Municipality under sections 9 (*c*) and 9A of the Act, it is intended to impose taxation within the said area. It should be clearly understood that the orders relating to taxation passed

originally have operation only within the area comprised within the Municipality on the date of such orders.

(4) In cases in which the special regulations of Parts VII, VIII or IX have been extended to a portion only of a Municipality and the allied taxation has been sanctioned for that portion only, fresh orders will be needed to authorise similar taxation in another portion of the same Municipality to which the particular Part may be subsequently extended. The wording of section 6 contemplates that the sanction of Government to new taxation should be obtained from time to time as fresh taxation is ordered. The sanction given in connection with the extension of Parts VII to IX to a portion only of a Municipality cannot be held to be general in regard to the particular form of taxation for the whole community and to authorise, irrespective of fresh sanction, similar taxation in another portion when the requisite Part is subsequently extended to that portion.

(5) The special provisions of the Act contained in parts Parts VI to X and also the provisions of special Acts such as the Vaccination Act, Cattle Trespass Act, etc., and the orders, by-laws or rules made under the Municipal Act, which are in force in a particular Municipality do not *ipso facto* come into force in a local area subsequently added under section. 9C. and section 9A. Fresh orders similar to those required in bringing the special provisions, Acts, orders, etc., into operation in the main area will be necessary to validate the enforcing of the said enactments and orders within the added area. [Cir. No. 6 M., dated 28th January 1913].

B. *What is property?*

Property includes both movable and immovable property "Property is the most comprehensive of all terms which can be used inasmuch as it is indicative and descriptive of every possible interest which the party can have" (*Per* Langdale, M. R., *Jones* v. *Skinners*, 5 L. J., Ch. 90.) Property includes both real and personal property or estate and tangible as well as intangible rights of value. See *Chairman of Giridih Municipality* v. *Sirish Ch. Mazumdar*, 1908, C. L. J., 638.

Arable lands are holdings within the meaning of section 85 and are not exempt from taxation. *Mohideb Sen* v. *Chairman of Howrah Municipality*, 14 C. W. N., 857.

The changes made in this section provide that the two taxes referred to are not necessarily alternative, but that both may be in force at the same time in the same Municipality, though not in the same ward. The difficulties in regard to introducing both taxes at the same time, and the theoretical objections to such a procedure, are stated further on in this note.

C. *History of the Tax on Persons in Bengal.*

The following extract from a note compiled by Sir H Risley gives the history of the tax :—

The earliest mention of the tax on circumstances and property that I can find is in section 10 of Act XX of 1856, an Act 'to make better

provision for the appointment and maintenance of Police chaukidars in cities, towns, stations, suburbs and bazars in the Presidency of Fort William in Bengal.' This section says: 'The tax to be levied in any city, town or other place as aforesaid, for the purposes of this Act may be either an assessment according to the circumstances and the property to be protected of the persons liable to the same, or a rate on houses and grounds according to the annual value thereof.' Section 11 limits the former tax to an average of two annas per mensem for each house, and provides that the amount assessed on any one house shall not be more than the pay of a chaukidar of the lowest grade. It next appears in a slightly modified form in Bengal Act VI of 1868, an Act for the better regulation of the Police in towns, and for the conservancy and improvement thereof. Section 44 of this Act runs thus:—

"The tax to be levied in any town for the purposes of this Act shall be an assessment according to the circumstances and the property to be protected of the persons liable to the same: Provided that the total sum to be raised by such tax in any year shall not exceed the sum which would be produced by an average rate of two rupees and four annas per annum for each holding, and the amount assessed in respect to any one holding shall not be more than seven rupees per mensem."

"Bengal Act VI of 1868 was intended for the large class of town which were then considered not sufficiently advanced for the introduction of the Bengal District Municipal Improvement Act III of 1864. In such towns Act XX of 1856 was in force, or the corresponding regulations which preceded it (*vide* section 1, Act XX of 1856), but funds were required for conservancy as well as for Police, and legal difficulties had arisen in raising them. For this reason Act VI of 1868, while retaining the mode of taxation in force under Act XX of 1856, to which the people were accustomed, *viz.*, 'an assessment according to the known circumstances and property to be protected of the tax-payer,' raised the maximum leviable per house from an average of two annas to an average of three, the difference between the cost of Police and the total amount raised being devoted to conservancy and local improvements. As the Bill originally stood, the power to impose a rate for an annual value conferred by Act XX of 1856 was retained for cantonments, but this provision was afterwards struck out in Committee.

"Bengal Act VI of 1868 was repealed by Act V of 1876 under which every place where Act VI was in force became a second class Municipality and every place where Act III of 1864 had been in force a first class Municipality. In first class Municipalities the rate on annual value was levied: in second class Municipalities the tax on circumstances and property. Both forms of tax were recognized by Act XX of 1856. Act III of 1864 adopted one form for large towns: Act VI of 1868 took the other form for small towns. In Act V of 1876, the tax on circumstances and property was maintained by section 77 (*a*), which authorizes the levy of 'a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality.' The proviso contained in the last sentence of section 44, Act VI of 1868, was re-enacted in the same words.

"This brings us down to Act III of 1884, which re-enacted the provisions of 77 (*a*) of Act V of 1876, omitting the portion relating to an average rate of Rs. 2-4 for each holding.

"Without then going back to the earlier Regulations repealed by section 1 of Act XX of 1856, it seems that this tax may fairly be described as a tax originally levied for the purpose of maintaining a town Police, and limited by the condition that no house should be required to pay more than the salary of a chaukidar of the lowest grade. After the Police had been paid, and charges for supervision, collection of the tax, uniforms, badges, weapons, and contingencies had been met, the Magistrate was empowered by section 36, with the sanction of the Commissioner of Circuit, to 'appropriate any sum which may be available to the purpose of cleansing the city, town or place, or of lighting or otherwise improving the same.' He was authorised, in fact, to apply to Municipal purposes the unexpended balance of a Police tax. As time went on, the Municipal element became more prominent, while the Police element dropped out of sight, so that at the present time, where Municipalities have been wholly relieved of Police charges, the tax is commonly believed to have been originally devised for Municipal purposes.

"Judged by modern English practice in respect of Municipal taxation, the tax on circumstances and property is open to objection; but the English system is a peculiar one, and has a curious history which does not concern us here. In Prussia and, I believe, throughout the German Empire, the chief Municipal tax is an income-tax pure and simple, levied in the form of a varying rate, added to the Provincial income-tax and collected with it. As usually administered in Bengal the tax on circumstances and property is in effect an income-tax. That is to say, the Municipality fixes a percentage, say one per cent.: a valuation is made of the assessee's 'circumstances and property', and the tax payable is arrived at by applying the percentage to this valuation. By whatever name this procedure is described, it evidently approaches closely to that adopted in levying an income-tax."

D. *What is meant by "circumstances?"*

An opinion of the Legal Remembrancer, given in 1892, is as follows:—

"I have the honor to say that the Balasore Municipality appears to imagine itself empowered to levy a second income-tax, because it is allowed to consider the 'circumstances' of residents in making its assessment. This view is clearly wrong. The 'circumstances' they may consider are not the sources of profit which a resident may have, but his style and mode of living, expenditure on servants, houses, etc., size of house, value of furniture and other contents of the house which, lying within the Municipality, are protected by the Municipal officers."

In *Syed Shah Hamid Husain* v. *Patna Municipality* (17 C. W. N., 812), it was held that "holding" means land held by an occupier under one title or agreement and surrounded by one set of boundaries. The rates assessed under section 101 are payable by the owner, *i.e.* the person above the occupier if the occupier is not the owner (sec. 103); where there is an intermediate interest between the owner and occupier such intermediate holder is the person liable to pay rates.

"Persons living with a particular individual occupying a holding by reason of some connection with or relation to him—such as sons or servants—are not separately assessable because they possess separate incomes. The right to obtain a declaration that one is not liable to assess-

ment 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. A refund of money paid under protest can be claimed without giving a notice under section 363. *Ambica Ch. Mozumdar* v. *Satis Ch. Sen* (1898), 2 C. W. N., 689.

The proviso attached to the definition of "holding" in clause (3), section 6, must be borne in mind as regards clause (*a*) of this section. Where two or more adjoining holdings form part of the site or premises of certain classes of buildings, they shall be deemed to be one holding, except for the purposes of the Act mentioned in clause (*a*) of section 85. If, therefore, a dwelling-house, manufactory, or other building of the kinds specified, is built upon several holdings, the owner thereof can be separately assessed in respect of each of such holdings up to the limit of Rs. 84 per annum. If, on the contrary, such building is built on one holding only, the amount assessed cannot exceed Rs. 84 per annum, whatever may be the annual value of the building. In the case of a large manufactory or warehouse, it is, therefore, very much a matter of mere accident whether it can be adequately assessed or not in a Municipality where a tax on persons is in force. The tax in question appears to be quite unsuitable to any very advanced Municipalities. It is admittedly illogical and arbitrary, though it may work well enough as a rough-and-ready mode of assessment in small Municipalities, where the incidence of taxation is very light. The most serious objections to it are that it is practically an income-tax without any machinery for ascertaining income, and that the low maximum laid down enables wealthy persons to escape due assessment.

With Cir. No. 13-M., dated 11th February 1905, the following opinion of the L. R. with regard to the interpretation of section 85 was circulated :—

"I think all persons occupying holdings are liable to the tax on persons under section 85. This includes persons occupying independently and singly as well as those holding jointly, and the circumstances of each person are to be separately considered. The initial condition of liability to taxation is occupation of a holding, but the measure of taxation is not the value of that holding but 'the circumstances and property within the municipality' of that person. The difficulty arises as to what 'occupation' means. If A and B jointly rent a holding both paying parts of the rent, they are both liable to tax. But if A is the sole owner or tenant and B his relation or friend is permitted by A to share the house with him, *i.e.*, live in it without payment of rent, A retaining full control of the premises, then B is not liable to taxation. Joint proprietors or joint tenants are separately liable to taxation each according to the circumstances and his properties (or shares of properties) within the Municipality. In my opinion the maximum of Rs. 84 per annum may be applied separately to each person holding jointly, so that if A and B jointly occupy a holding, each may be taxed Rs. 84 for his joint occupation of that holding. To hold otherwise would be to construe the tax on persons as if it was a tax on holdings and to nullify the words 'according to his circumstances.'"

This opinion of the Legal Remembrancer has not received judicial support. The word "circumstances" has not been defined but in section 92 the word used is "means." See *Chairman, Giridih Municipality* v. *Siris Ch. Mazumdar* (1908), 35 Cal., 859; and *Kameshwar Pershad* v.

The Bhabua Municipality (1900), 27 Cal., 849—858. In the former case it was held that the addition of the word "circumstances" was made in order to widen and not to restrict the term "property." The intention was to widen the scope of the section so as to make taxable what might perhaps be not properly comprised under the term property and at the same time ought not to escape taxation. It was held that "circumstances" means "means." Property does not include all of a man's wealth and this section aims at nothing less than his total wealth.

In *Deb Narain Dutt* v. *The Baruipur Municipality* (19 Cal., 205), where again "circumstances" has been given the same interpretation, it was held that it is not open to the court to assess the value for the purposes of section 85. "That must be done by the machinery for which the Act makes provision. This is made clear by section 116." The Court cannot interfere merely because the tax is increased provided the action of the Commissioners is not *ultra vires*.—*Chairman, Chupra Municipality* v. *Basudeo Narain Singh*, 37 Cal., 374 & section 116.

In *Deb Narain Dutt* v. *Chairman, Baruipore Municipality* (41 Cal., 168), it was held "circumstances" is equivalent to "means." The burden of proving the value of the "circumstances and property within the Municipality" is on the Municipality

An assessment under this section made in consideration of the assessee's "circumstances and property" (altogether or partly) outside the Municipality is *ultra vires* and illegal; and the Civil Court has jurisdiction to set it aside. *Kameswar Prasad* v. *The Chairman of the Bhabua Municipality*, 27 Cal., 849.

E. *The principle of the tax on persons is that of an apportionment.*

It will be observed that no percentage is fixed for the tax, and that the Act contains no provision to limit the amount to be assessed on one person, except the limit of the maximum of 84 rupees. What the limits the amount of assessment on any person not liable to pay the maximum tax?

The answer is "two different things;" one is the total amount of tax required to be raised, and the other the provision that such amount is to be levied rateably from the assessees according to their circumstances and property. The principle is, therefore, clearly that of an apportionment, unless we are to suppose that, except for the limit of Rs. 84 as a maximum, the scale of taxation is a perfectly arbitrary one. Moreover, the provisions of Act XX of 1856 and Bengal Act VI of 1868, already referred to, appear to indicate that the principle of the tax is apportionment. Under the former Act the total amount to be levied is limited to an average of two annas per mensem for each house, and under the latter to an average of two rupees and four annas per annum for each holding. Assuming that the principle of the tax is that of an apportionment, and we at once get the ratio which fixes the amount of tax to be paid by each assessee. The amount of tax which each assessee has to pay must bear the same proportion to the total amount of tax required to be raised, as his circumstances and property in the Municipality bear to the total circumstances and property of all the assessees in the Municipality. Assuming that the principle is not that of an apportionment, there is obviously no standard on which an average income should be assessed, and the tax is an illogical and arbitrary one. It must therefore be taken for granted that the principle of the tax is that of an apportionment among persons

occupying holdings within the Municipality according to their circumstances and property. The theory of the tax being that of an apportionment amongst all the occupiers of holdings in the Municipality, the difficulties in the way of applying it to certain wards only in a Municipality, in accordance with the changes made in this section by the amending Act, are obvious. They are referred to in the following speech, which also points out the objections to introducing two different modes of taxation in the same town.

"It is interesting to note that the proposition that two different modes of assessment may properly be employed in the same assessable area was condemned by English Judges as long ago as 1633, in what is known as *Sir Anthony Earby's case*. It was then held that assessments of rates must be one and equal, that is to say, in proportion to the property of the assessees; and that in order to be so they must be made in an equal manner. The latter proposition is simply a logical consequence of the former. As Rosher remarks in his *Treatise on the Principles of the Law of Rating*: 'In order to rate in accordance with the principle of equality, a method of assessment is required that will affect all occupiers fairly and equally.' The ruling in *Sir Anthony Earby's case* has been settled law ever since. Two and-a-half centuries of English law look down on the rash innovator, who would propose that two different modes of assessment should be in force at the same time in the same town.

"I have said that the proposed provision would be liable to the grossest abuse, and I submit that this is tolerably obvious. To allow the Commissioners of a Municipality the option of assessing any person, either on his real property, or on both his real and personal property, for this is what it comes to, is obviously to allow them a dangerous amount of latitude in making assessments. The proposal appears to me to open a very wide door to jobbery and partiality. The inconsistency of such a proposal, with the remarks made on the subject of unfairness and partiality in Municipal assessments in the Government letter, and with certain provisions of the Bill seems to me to be somewhat striking."—(*P. C., April 14th*, 1894.)

F. *Annual value.*

Annual value means the annual letting value. The section must evidently be read with section 101. See *Nando Lal Bose* v. *The Corporation for the Town of Calcutta*, 11 Cal., 275, and compare section 101 and note.

Under the Municipal Taxation Act, 1881 (Act XI of 1881) section 3, the Governor-General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax payable by persons residing, on military duty, within the limits of a Municipality, or by Government itself.

By section 4 as long as such an order is in force, the amount of tax incurred by such person on military duty shall be paid by Government: Provided that Government shall not be liable to pay any tax in respect of a horse which such person is bound by the regulations of the service to which he belongs to keep.

By section 5 as long as such order is in force, the amount of tax due on account of Government in its own behalf shall be such as an officer appointed for that purpose by the Local Government shall decide to be fair and reasonable.

By section 135 (1) of the Indian Railways Act (IX of 1890) a Railway Administration is not liable to pay any tax in aid of the funds of any local authority unless the Governor-General in Council has, by notification in the official Gazette, declared the railway administration to be liable to pay the tax.

Government may prohibit the levy of any specific tax payable by (*a*) any person subject to the Army Discipline Act, 1879, or the Indian Articles of War, residing within a Municipality; or (*b*) the Secretary of State (Municipal Taxation Act). Government however in actual practice has not issued any notification to this effect.

Additional.

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

(*a*) a tax on carriages, horses, and other animals named in the fifth Schedule ;

(*b*) a fee on the registration of carts ;

(*c*) tolls on ferries and (subject to the provisions of sections one hundred and fifty-eight and one hundred and fifty-nine) tolls upon bridges and metalled roads ;

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

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

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

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

The fact that any of the taxes specified in this and the preceding section have not been included in the estimates does not preclude the Commissioners from levying them in the manner prescribed. Compare section 72.

Section 86 (*a*). It would be conducive to public interests if the section were so amended as to permit the levy of a tax on dogs.

(*a*) See section 131 to section 141B.

(*b*) See section 142 to section 147B.

(c) See section 148 to section 156 and section 157 to section 163. The metalled road must be constructed after 1884 and the tolls may be levied for such time as may be required to recoup the cost of the construction of the road or bridge and of their repairs for 5 years after the construction.

(d) See Part VII, section 279 to section 307.

(e) See Part VIII, section 308 to section 319. The rate can be levied only when Part VIII is put into force and a scheme of gas or electric lighting is introduced thereunder.

(f) See Part IX, section 320 to section 334A. Railway property is liable to pay the taxes mentioned in (d), (e), and (f).

Of the Tax on Persons.

Assessment list to be prepared.

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

(a) name of the street or road in which the holding is situated ;

(b) number of the holding on the register ;

(c) name of the person occupying the holding, whether such person be assessed or exempted from assessment ;

(d) description of the holding, and of the property, within the Municipality, and the profession or business of the person assessed ;

(e) amount of annual assessment ;

(f) amount of quarterly instalment ;

(g) if the occupier of the holding is exempted from assessment, a note to that effect.

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

Such tax shall not be assessed or levied on any person in respect of the occupation of any building which is used exclusively as a place of public worship

" or in respect of the occupation of any public burial or burning ground registered under section two hundred and fifty-four."

(1) *Person.*—In Bengal Act V of 1867 " person " is defined as including " any incorporated company or any incorporated association of persons."

(2) The holding may possibly not be situated near any street or road, and in such a case the omission of the particulars required by clause (*a*) could not reasonably be held to invalidate the assessment.

(3) "Shall be payable in quarterly instalments." This provision imposes on the Commissioners the duty of collecting the tax quarterly, and they are not justified in collecting it half-yearly. They have obviously no power of collecting it half-yearly in advance as the tax-payers are only bound to pay it quarterly in advance. There is nothing in the Act which compels the Commissioners to maintain a staff for collecting the tax from door to door, though there is also nothing to prevent their doing so. They may require payment at their office if they are so minded. (L. R.)

(4) *As a place of public worship.*—The feeding of Brahmins is not an act of public worship within the meaning of section 119 of the City of Madras Municipal Act of 1878. *Thambu Chetti Tubraya Chetti* v. *Arundel*, 7 Mad., 63.

In an unreported case the High Court upholding the decision of the Sub-Judge held that the Ram Krishna Mission temple in Howrah was not assessable though a deceased private person is worshipped there.

(5) A gomastah resided in a cutcherry situated within a Municipality, in which a tax upon persons was in force. The zemindar, his employer, was a non-resident. *Held*, that as the gomastah paid no rent, and resided in the building solely to carry on the business of the zemindar, whose representative he was, the zemindar must be considered to be the person occupying the holding under this section, and to be liable for the tax. (L. R.)

(6) *English Law.*—"Except in the case of a joint occupation, there cannot be two persons liable to be rated for the same thing." *Per* Field, J., in *Smith & Son* v. *Lambeth*, 9 Q. B. D., 585.

(7) "*Persons occupying holdings.*"—To constitute occupation in regard to rateability three elements are necessary, viz., possession, actual user and permanence. Title is immaterial if possession exists.

The following extract from the judgment of Lush, J., in *R.* v. *St. Pancras*, 2 Q. B. D., 581, refers to all these elements :—

"It is not easy to give an accurate and exhaustive definition of the word 'occupier.' Occupation includes possession as its primary element but it also includes something more. Legal possession does not of itself constitute an occupation. The owner of a vacant house is in possession and may maintain trespass against any one who invades it; but as long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year. On the other hand, a person, who, without having any title, takes actual possession of a house or a piece of land, whether by leave of the owner or against his will, is the occupier of it. Another element, however, besides actual possession of the land, is necessary to constitute the kind of occupation which the Act contemplates, and that is permanence. An itinerant showman who erects a temporary structure for his performances, may be in exclusive possession and may with strict grammatical propriety be said to occupy the ground on which his structure is placed, but it is clear that he is not such an occupier as the Statute intends."

Possession.

"A person who has only an easement, or license, or anything short of possession of the soil is not rateable. This is recognized in *Sir Anthony Earby's case*, in which it is specified that assessments are to be made according to 'visible estates.' The limitation of rateability to 'visible estates' excludes incorporeal hereditaments, such as easements and licenses in the nature of easements, and it proceeds apparently on the ground that there can be no occupier of property which is of such a nature that possession of it cannot be delivered, possession being essential to occupation."—*Rosher on Rating*, 38.

On this principle a ferry-farmer could not as such be held to occupy a holding, and therefore to be rateable, unless he had exclusive possession of plots of land used as landing places in connection with the ferry.

Tolls *per se* are not rateable hereditaments, though the right to take them may enhance the value of the occupation of land in respect of which the tolls are taken, (*Reg.* v. *Caswell*, L. R., 7 Q. B., 328), and stalls in a market-house not fixed to the soil, let to persons who have the use or occupation of them only on certain days, and between certain hours, and at other times are excluded from the market-house, are not rateable in the hands of the persons to whom they are let.—*Spear* v. *Bodmin Union*, 49 L. J., M. C., 69.

"To form an element of rateability, possession must be free from the control of paramount occupation in a superior, and must also be sole and exclusive. The original occupier may grant away something which appears like the occupation; but if he retains to himsef a right of (*a*) entry on, or (*b*) general control over, the property, he retains to himself a paramount occupation and is still rateable, or rather it would be more correct to say that, if he has made such a reservation, he has not parted with the possession, but has granted only the exclusive enjoyment of it. A grantee who has not the right of excluding the grantor is not in rateable occupation."—*Rosher on Rating*, 47.

On this principle it has been always held that the landlord of a lodger is the rateable occupier, if he retains dominion and control over the building as a whole.

"As a lodger is not rateable on account of the paramount occupation of the landlord, so one who resides in another's house as his servant is not rateable. The servant has the use of the rooms, but has no occupation distinct from, and independent of, that of his master, and the occupation of a servant, *as servant*, is in law the occupation of the master, and the master is the rateable occupier. In *R.* v. *Tynemouth* (12 East., 46) where it was attempted to rate a man who resided in a lighthouse as servant of the owner, his duty being to take care of the light, Lord Ellenborough, C. J., held, that the occupation was clearly that of the master, by his servant, and not that of the servant himself."—*Ibid*, 51,52. A familiar case for the application of this principle in India is the occupation of a cutcherry by a gomastah on behalf of a non-resident zemindar.

Actual User.

The second essential required to constitute rateable occupation is some amount at least of actual user. Legal possession of itself does not amount to occupation; but legal possession plus even a slight amount of actual user does. The case of an owner furnishing a house and keeping it ready for habitation is an example of this principle.

PERMANENCE.

Permanence in regard to rateable occupation refers to both time and place. In *R.* v. *St. Pancras* I above referred to, Lush, J., said: "As the poor rate is not made day by day or week by week, it would be as absurd to hold that a person who comes into a parish with the intention to remain there a few days or a week only, incurs a liability to maintain the poor for the next six months. Thus, a transient, temporary holding of land is not enough to make the holding rateable. It must be an occupation which has in it the character of permanence; a holding as a settler, not as a wayfarer."

Occupation does not, however, fail in permanence merely because the user is intermittent, nor on account of the shortness of the notice by which it may be determined.

Duration of assessment.

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

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

It follows that when the Act is first extended to any place, no tax upon persons can be raised during the current quarter. For the assessment cannot take effect until the beginning of the quarter following that in which the notice shall be published, so that even if the notice is published directly after the Act is extended, no tax can be raised until next quarter.

When under the former Act the Bally Municipality was formed out of a portion of the Howrah Municipality it was held that no tax could be collected during the current quarter. For the Act containing no provision for the Division of a Municipality, had to be extended to the place as if it had never been in force there, and the notice referred to had therefore to be published. Section 9 of the present Act authorizes the sub-division of a Municipality, and therefore provides against similar difficulties in future.

Assessment of public buildings.

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

shall be payable by Government "or the local authority concerned."

(1) Act XI of 1881, the Municipal Taxation Act, has reference to taxation of Government Property in Municipalities and will be found, *post.*

(2) Government property in Municipalities is not rateable in England where the law on the subject has been thus stated :—

"The law is *primâ facie* presumed to be made for subjects only, and it is a well-recognized rule that the Crown is not bound by a statute unless named in it."

"The Crown is not named in the 43 Eliz., c. 2, and, therefore, when property is occupied by the Crown there is not an occupier within the statute, and, therefore, no one who can be rated."

"The exemption from rateability which exists when the property is in the occupation of the Crown includes cases when the occupation is that of the servant of the Crown, occupying for the purposes of the Crown. The purposes of the Crown comprise the carrying on of the government of the country, the administration of justice, and the discharge of such other duties as are theoretically the prerogatives of the Crown. Accordingly it has been held that property is not rateable when occupied for the purposes of the Royal Army and Navy ; or of the Post Office ; for Assize Courts, or Judge's lodgings ; or for Prisons."—*Rosher on Rating*, 75.

(3) Government has the power under the Municipal Taxation Act to prohibit the levy of any specific tax payable by it and to appoint an officer to determine what is a fair and reasonable sum for it to pay. See section 101.

(4) *As no taxation can be levied on a Railway without the previous order of the Government of India* (section 135 (1) of the Railway Act), the section cannot apply to Railway buildings, but it is usual to follow the same principle when such consent has been notified (*see* Appendix).

With regard to the liability of Railways to pay taxes *see* India's Notification No. 136, dated the 5th April 1893, issued under section 135 of the Railway Act IX of 1890. *See* also B. Government Circular No. 4-M, dated 31st January 1901, pp. 1001—1003. Vol. III of Government Circulars and Orders.

All references made by the Railway authorities to Municipalities should be promptly disposed of. Government Cir. 6, dated the 23rd March 1904.

(5) On the subject of the *payment of Municipal taxes imposed on Government buildings which are occupied by Government servants for the purpose of residence* the Government of Bengal has issued the following orders :—

Circular No. 43F, dated the 9th August 1915.—The rules relating to the payment of municipal taxes are contained in paragraph 905, Public Works Department Code, Volume I. The portion of this rule relevant to the payment of occupier's taxes by officers who are obliged by the nature of their duties to occupy certain quarters reads thus :—

"Municipal taxes on Public Works buildings other than Military [*see* Army Regulations, India, Volume XII (edition 1904, paragraph 119)], building or buildings occupied as residencies, are payable by the department occupying them and are debitable to that department. In the case of buildings occupied as residencies, such taxes should be paid by the

tenant during the term of his occupancy, if this is the local rule or custom, even though he be entitled to quarters rent-free. If by local rule or custom the tax is chargeable to the owner, it will be payable by Government and will be ordinarily adjusted as part of the cost of maintenance [*see* paragraph 919, Rule I, clause (*e*) (*ii*)]."

The effects of this rule are :—

Rent-free quarters.

(*a*) The tenant pays all taxes direct to the municipality, where such is the local rule or custom.

(*b*) Where part of the taxes by local rule or custom is payable by the owner, the tenant pays the occupier's share of taxes only.

Quarters for which rent is charged.

(*c*) The tenant pays all taxes direct to the municipality where such is the local rule or custom.

(*d*) Where part of the taxes by local rule or custom is payable by the owner, the tenant pays the occupier's share of taxes direct to the municipality, and Government recover from him the owner's share of taxes through the rent.

Therefore, as a broad principle, the tenant is liable for payment of municipal taxes, and Government are liable for the payment of owners' taxes only in case (*b*). *while they may have to bear a small fraction of such taxes in case* (*d*) *owing to the operation of the* 10 *per cent. limit on rent.*

A table is appended showing the taxes and rates which, according to the provisions of the Calcutta Municipal Act and the Bengal Municipal Act, are ordinarily payable by the owners and occupiers of buildings situated within Calcutta or other municipalities in this Presidency. The Government buildings on which these rates are charged may be divided into four classes :—

(1) Residential buildings on which rent is charged.
(2) Rent-free residential buildings.
(3) Buildings which are used partly as residencies and partly as offices and the like.
(4) Non-residential buildings which are used wholly as offices and the like.

In the case of all these buildings the owner's share of taxes is paid by the Public Works Department to the municipality, whether the cost is actually recovered from the tenant or not. As regards the payment of occupiers' taxes, the following instructions in respect of each of the above classes of buildings will be observed :—

(1) *Residential buildings on which rents are charged.*—Under Rule 1 (*a*) of paragraph 919 of the Public Works Department Code, Volume I, the rentals for all buildings in Class I specified in the paragraph quoted, for which rents are charged from officers occupying them, are fixed at sums which cover interest at 3½ per cent. on the capital cost of the buildings *plus* the estimated average annual charges for maintenance and repairs and also the share of municipal taxes payable by Government (*vide* Rule I (*e*) (*ii*) of the same

paragraph, as amended by slip No. 414, dated the 6th November 1914). The same rule prescribes the payment of the occupier's share of taxes by the occupier. The position therefore of a resident tenant paying rent for a Government building whether in Calcutta or in the mufassal, is that he pays all municipal taxes—the owner's share through the rent paid to Government, and the occupier's share direct to the municipality. Section 281 of the Bengal Municipal Act allows a tenant to recover from the owner ¼th of the water-rate paid by him to the municipality. As, however, the occupier is liable for all the taxes on buildings of this class, a demand for the recovery of the ¼th share of the water-rate would merely result in an increase of the rental. It is not proposed therefore to allow demands of this nature, nor will they be allowed to officers who enjoy the benefit of the 10 per cent. limit on rent. These orders will apply also to officers for whose accommodation rents are fixed otherwise than in accordance with Rules I and II of paragraph 919.

(2) *Rent-free residential buildings.*—Government will pay the owner's share of taxes in full and the occupant the occupier's share of taxes in full, including the ¼th share of water-rate referred to in section 281 of the Bengal Municipal Act.

(3) *Buildings which are partly used as residences and partly as offices and the like.*—According as the officer occupying a portion of the building as a residence pays rent for his quarters or occupies them rent-free, his case will be regulated by the orders prescribed above for classes (1) and (2) respectively, subject to the condition that the owner's and occupier's share of taxes payable by him will be assessed only on that portion of the building in which he resides, the amount payable being settled by a reference to the Accountant-General through the head of the department concerned.

(4) *Non-residential buildings which are used as offices and the like.*—The Public Works Department will pay the owner's share and the departments or offices occupying them will pay the occupier's share of taxes, including the ¼th share of the water-rate specified in section 281 of the Bengal Municipal Act.

The above rules shall in future govern the relation between Government and all occupants of Government buildings as regards the payment of municipal taxes. They are applicable to every individual occupying a residential building which is the property of Government, or part thereof, and every such individual is responsible for his share of the occupier's taxes, whether he occupies the building singly or with others. In the case of Government hostels and buildings of like character, the occupier's share of taxes must be recovered from the boarders with their monthly boarding fees and rent in the shape of additional fees and rent. I am to observe, however, that quarters of inferior servants (including quarters of constables) are not treated as residential buildings. The occupier's taxes on these buildings will continue to be a charge on the departments concerned.

Municipal taxes levied on Government buildings.

	Provision of law under which the tax is levied.	Share payable to the owner, *i.e.*, by Government.	Share payable by the occupier.
A. In Calcutta—			
Consolidated rate (consisting of a general rate, a water-rate, a lighting rate and a sewage rate —section 147 of the Calcutta Municipal Act.)	Section 171 of the Calcutta Municipal Act, 1899.	One-half ..	One-half.
B. In mufassal towns where rate on holdings is imposed—			
Rate on the annual value of holdings ..	Sections 85, 103, 104 and 105 of the Bengal Municipal Act.	Entire amount ..	....
Water-rate	Sections 279 (3) and 281 of the Bengal Municipal Act.	One-fourth ..	Three-fourths.
Lighting rate	Section 310 of the Bengal Municipal Act.	....	Entire amount.
Latrine rate	Sections 322 and 324 of the Bengal Municipal Act.	(The entire amount is payable by the owner if there is no occupier.)	Ditto.
C. In Mufassal towns where tax on persons is imposed—			
Rate on annual value of holdings is levied in the case of Government buildings.	Section 89 of the Bengal Municipal Act.	Entire amount ..	....
Water-rate, Lighting rate and Latrine rate as in B.	....	....	....

6. Howrah and the other District Municipalities in Bengal have been relieved of the liabilities imposed on them by Act IV of 1884, for the supply of lanterns for the police employed in those towns and for police establishments and buildings. (India's letter No. 78, dated the 16th April 1908.)

Procedure if aggregate amount of rates assessed on any person exceeds Rs. 84 per annum.

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

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

Power of exemption.

*91. (83) The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax; but the name of the occupier of every holding shall be included in the assessment list, whether he be assessed or exempted from assessment.

Power to apply for reduction of assessment in altered circumstances.

92. (84) If any person mentioned in the assessment list shall, at any time after the publication thereof, have ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed shall have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct.

The application does not require any stamp.

The following extract bears upon this section :—

"The Hon'ble Mahomed Yusuf moved that the words 'the Commissioners shall,' in line 8 of section 91, be substituted for 'the Commissioners may,' in line 8 of section 91. The section gave power to apply for a reduc-

tion, in altered circumstances, but left it optional with the Commissioners to grant or refuse reduction of assessment in such cases. He contended that reduction of assessment should be imperative where the means and property of the assessee had been reduced, and notice of exemption should be given where a holding has ceased to be occupied."

"The Hon'ble Mr. Reynolds remarked that the amendment would require the Commissioners in these cases either to pass an order of exemption or to revise the assessment, but the clause did not apply only to the case of a man who ceased to occupy premises, but also to reduction of assessment. He, therefore, could not accept the amendment. He understood the object of the amendment to be, that when a man had ceased to occupy, the Commissioners must in that case exempt; but the fact of ceasing to occupy need not necessarily in every case give an absolute right to exemption. He should, therefore, prefer to give the Commissioners the discretion provided in the section. The words 'may exempt' *impose on the Commissioners the duty of exempting* if cause be shewn."—(*B. C., February 20th*, 1884.)

Power to alter assessment.

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

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

The following extract from the Proceedings of the Council when Act V was under discussion is important as clearly showing the object and effect of this section:—

"The Hon'ble Baboo Kristodass Pal moved the omission of the words 'to be inadequate and' in line 8. He said, that this section provided that the Commissioners might, at any time after the publication of the assessment list, assess any person who was without authority omitted therefrom, or whose liability to assessment had accrued thereafter: and might enhance any assessment which appeared to them to be inadequate, and to have been so made owing to mistake or fraud. He wished to be informed whether this enhancement might be made during the currency of the assessment, that was to say, within the three years for which the assessment was to remain undisturbed. [The Hon'ble Mr. Dampier said that it was so.] Then this section would override the other sections as to assessment. The ground of inadequacy was after all a very slender ground, and would be open to misconstruction. He submitted that where there had been mistake or fraud which could be proved, the assessment ought to be revised; but no assessment ought to be enhanced merely because it appeared to be inadequate; for if you allowed the assessments which were made for three years to be disturbed on so slight a ground, it would open a wide loophole for enhancement."

"The Hon'ble Mr. Dampier explained that the essence of the provision was that the assessment was made by mistake or fraud; according to the

wording it must have been inadequate *and* have been so made by mistake or fraud."—(*March* 2, 1876.)

It is clear from the above that the only cases in which assessments can be disturbed before the expiration of the three years, is where there has been mistake or fraud.

To split up one property which has been subject to one assessment into two properties and to impose two assessments thereon, is to make a new assessment and not to enhance an assessment. This section does not authorize such re-assessment which should be done at the next regular assessment. (*Navadwip Ch. Pal* v. *Purnananda Shaha* (1898), 3 C. W. N., 73.)

Procedure on change of occupation.

*94. (86) The Commissioners may at any time substitute for any name mentioned in the assessment list the name of any new occupier of a holding, and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced.

Assessment on vacant holdings when to cease.

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

Of the Rate on the value of Holdings.

Commissioners to determine the valuation of holdings.

*96. (88) When it has been determined that a rate shall be imposed on the annual value of holdings, the Commissioners, after making such inquiries as may be necessary, shall determine the valuation of all holdings within the Municipality as hereinafter provided.

Duration of assessment.

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

Effect of alteration of percentage.

"97 A. If within the period prescribed in the last preceding section the percentage on the valuation of holdings at which the rate is to be levied is altered by the Commissioners under the provisions of section one hundred and two, the amount of the rate and the amount of the quarterly instalments thereof pay-

able in each case shall be altered accordingly in the rating list, but the Commissioners shall not thereby be deemed to have made a new or revised assessment list."

Holdings exempted from tax.

98. (90) The rate on the value of holdings shall not be assessed or levied on any holding which is used exclusively as a place of public worship, or which is duly registered as a public burial or burning ground under section two hundred and fifty-four.

Exemption of charitable holdings from assessment.

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

"Public worship" has been substituted for "worship." The object of the alteration is obvious. Under the former section, places used for the purpose of private worship were exempted. The feeding of Brahmins is not an act of public worship.—*Thambu Chetti Subraya Chetti* v. *Arundel*, 7 Mad., 63.

The Madras High Court has ruled that, under the corresponding section of the Madras District Municipalities Act, a college or school actually conducted for the public benefit and not for profit, is not debarred from exemption merely because it receives a grant-in-aid or fees from the pupils.—*Fischer* v. *Twigg and others*, 21 Mad., 367.

The exemption of duly registered public burial or burning grounds is new.

It will be noticed that arable lands, which were formerly exempted from the tax on persons by section 87 are not exempted from the tax on holdings under this section. The ordinary and obvious inference appears to be that the intention of the Act is that they should not be exempted.

Public worship.—It is not necessary that the place should be used as a place of worship by the entire body of Hindus, Musulmans, Jews or Christians, etc. It is sufficient if it is so used by a considerable body of any of these communities (*Chairman of the Bali Municipality* v. *Ramkrishna Muth*; unreported case).

Exclusively.—The words "exclusively appropriated to Public Religious Worship" occur in section 1, Rating Exemptions Act, 1874. It was held that the section does not include separate though contiguous buildings used with and as part of the life of a Church, *e.g.*, a Hall used for a Mission school and for Evening service, Band of Hope and Temperance meetings, Local meetings and Literary and Musical entertainments (*College Street Church Trustees* v. *Edinburgh*, 3 Fraser, 414). A similar expression occurs in section 1 of the Poor Rate Exemption Act as to which *see North Manchester* v. *Waistanley* (1907, 1 L. B. 27.)

College Chapels are rateable (Oxford University rate case 1857, 8 Z. & B., 184).

Public Charity.—An institution for the charitable benefit of a large and important body of poor persons is a "public charity" for obtaining a statutory exemption from rating (*St. Thomas Hospital* v. *Lambeth* (1875), 45 L. J. M. C., 29), but there may be a public charity without any poverty,

e.g., a Mess library for the officers of a regiment, "it being a direct public benefit by increasing the efficiency of the Army (Re *Good*, 74 L. J., Ch., 512). Lord Hardwicke observed in *Attorney-General* v *Pearce* (1740—2 Atkin 87), "I am of opinion that the word "*public*" was meant only by way of description of the nature of them and not by way of distinguishing one charity from another; for it would be almost impossible to say which are public and which are private in their nature. The charter of the Crown cannot make a charity more or less public but only more permanent than it would otherwise be but it is the *extensiveness* which will constitute it a public one."

What returns may be required for ascertaining annual value.

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

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

Penalty for default in furnishing return.

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

A sentence by a Court inflicting a daily fine until such time as an accused person shall desist from commiting a continuous offence, is bad in law—In re *Sagur Dutt*, 1 B. L. R., O. Cr., 41; 25 W. R.; Cr. R., 6; 21 W. R. Cr., 31.

Annual value of holding how to be ascertained.

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

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

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

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

Ground-rent does not mean the rent of vacant or waste land. Its proper meaning is the rent at which land is let for the purposes of improvement by building, *i.e.*, rent of *basti* land. (See *Stewart* v. *Khiston*, 1 Mess., 26.)

As regards the construction to be placed upon the first paragraph, Government has been advised that, in a town where there are both hired and unhired houses, "the annual value of unhired houses should be derived from a comparison of them with the hired houses in the vicinity, making such deductions from, or additions to, the rent of the latter as circumstances require."

"This is the construction which has been put on the 6th and 7th of William IV, from which this section is taken."

"The law does not justify the Commissioners in going into calculations and determining what ought to be the rent from the capital expended on the holding; nor, on the other hand, to take into consideration the contingency of all the houses being thrown into the market. In the one case the Commissioners would be levying a tax not according to the actual or presumed letting value, but on the capital; on the other, they would levy the rate on a hypothetical condition of things which had no existence in fact. What they should say in connection with each holding is: 'other things being as they are now, what do we, from a comparison of this unhired holding with such and such a hired holding, consider a reasonable rent?'" (L. R.)

In *Nando Lal Bose* v. *The Corporation for the Town of Calcutta* (11 Cal., 275,) it was held that an assessment of rate upon a supposed annual rent calculated on the basis of the cost of the buildings and premises is illegal as being an arbitrary test which the law does not sanction. *Per* Garth, C. J.—"That section 104 of the Calcutta Act providing what shall be deemed to be the annual value of property must be taken as explanatory of the other section in which the term 'annual value' is used." *Per* Wilson, J.—"It seems doubtful as to whether such a provision is of the nature of an interpretation-clause, or merely directory as containing instruction to the Commissioners how to proceed."

As regards the present section, there seems little room for doubt that the first clause at all events, must be considered to furnish a general definition of annual value, though the remaining clauses would seem to be rather of a directory nature: the third and fourth are obviously so.

The main principles of the law of rating as stated in *Rosher on Rating* are as follows:—

(1) *Rating must be equal*, that is to say, that the method of assessment must be such as to affect all occupiers (owners in respect of the rate on holdings) fairly and equally in proportion to the value of the property.

(2) *Property must be rated "rebus sic stantibus,"* that is to say, (*a*) it must be assessed at the value it possesses at the time the assessment is made; if it increases or diminishes in value from time to time, there will be a corresponding increase or diminution in the rate, for that must be always proportional to the then existing value, and the value of the property in the past or the future is immaterial. Moreover (*b*) the hypothetical tenant must be assumed to use the property in the same way as the actual occupier, and to have the same facility for deriving profit from it, no more and no less. In *Staley* v. *Castleton* (33 L. J., M. C., 178; 5 B. & S., 505), Blackburn, J., said: "The Legislature intended that the rate should be made upon the rent which might be reasonably expected from a tenant who took the property from year to year *rebus sic stantibus*."

(3) *Property must be rated at its value "communibus annis."*—This principle is complementary to that of *rebus sic stantibus*.

Although by the principle of *rebus sic stantibus* property is to be rated at its present value, it must be added that its present value means, not the value shown by the balance-sheet of the particular year, but the value which under present circumstances, it would be worth to let *in an average year*, or taking one year with another. This is the principle of *communibus annis*.

(4) *Property must be rated in accordance with the principle of "enhanced value."*—Since the measure of the rateable value of a hereditament is the rent which it might reasonably be expected to fetch, and since that rent would be proportional to the benefits the tenant would derive from the occupation, it follows that any profits which the tenant would receive in virtue of the occupation must be taken into consideration in making the assessment.

It matters not that these profits are of such a nature as to be not rateable *per se*. If they are due to the occupation, they are to be taken into consideration in estimating the value of the occupation. The practical result of this is that trade-profits are indirectly brought under contribution to the rates; *when*, that is, the occupation of something that is rateable *per se* is the meritorious cause of their existence, *and so far as* their existence would influence the rent obtainable in the market for the occupation. Lord Denman, C. J., said in *R.* v. *The Grand Junction Ry. Co.*, 15 L. J., M. C., 94; 4 Q. B., 18:—"If the ability to carry on a gainful trade on land adds to the value of the land that value cannot be excluded on the ground that it is referable to the trade," and in *R.* v. *G. W. Ry. Co.*, 15 L. J., M. C. 80; 6 Q. B., 179, he says that, although the profits of trade carried on by the occupier of land upon it cannot be made directly the subject of the rate assessed in respect of such occupation, and the value of the occupation alone is the proper subject of rating, yet in that value is to be included whatever at the time forms part of it, whether permanently or not, and from whatever source derived, and, therefore, of course, not the less so

although derived in any proportion from the fact of the trade being so carried on upon it. It must be borne in mind that trade profits, however, directly arising out of the occupation, cannot be directly rated; the rate must be upon something which is *per se* rateable, but in assessing anything that is so rateable, regard may be had to the fact that it is enhanced in value by being available for earning profits. For instance, a railway company is practically rated on profits, but it is solely in the capacity of an occupier of land it is rateable at all.

Now, although a railway company is practically rated on its actual profits, the profits made by an ordinary tradesman, who could remove to another shop next door or in the next street, and still make the same profit as before, do not affect the amount of his assessment. His profits are not due to the occupation of a particular hereditament, but the profits of a railway company are attached to the particular hereditament they occupy.

The principles of the English law of rating as applied to Municipal assessments in this country have been discussed at considerable length in *The Secretary of State* v. *Madras Municipality*, 10 Mad., 38:—

"Under section 123 of the City of Madras Municipal Act, the gross annual rent at which a building might reasonably be expected to let from month to month or from year to year is for the purpose of assessment to house-tax under the Act, to be deemed the annual value of such building. The Lying-in Hospital at Madras, built and supported by Government, having been assessed by the President of the Municipality as on a rental of Rs. 1,000 a month, the Magistrates, on appeal, reduced the assessment, finding that Rs. 7,920 per annum would be a reasonable rent, having regard to the letting value of the buildings in the neighbourhood, but, at the request of the Municipality, referred the following questions to the High Court:

"Whether (as contended by Government) the property in question should be valued and assessed on the rent which, on the property being offered in the open market without reserve, a person desirous of securing it would have to pay; or whether (as contended by the Municipality) it should be valued and assessed on the highest reserve rent which an owner of the property offering it in the open market would reasonably demand, and below which sum he would not be willing to let:

"*Held*, that the standard value was what the hypothetical tenant requiring the building for use as a hospital would be willing to pay rather than rent a less suitable building and adapt it to his requirements at his own expense, and that in this sense the contention of the Municipality was correct."

As the questions involved are of very great importance, the following extract from the judgment in the above case is here given:—

"The standard of value is certainly, as observed by the Magistrates, the value of the property to the owner, which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant on the terms laid down by the Legislature. Having regard to the course of decisions under the English Statute, there are several matters which ought to be kept in view in fixing the rateable value. The standard value is the rent which the building would be worth to a hypothetical tenant on the terms laid down by the statute. The terms on which any particular property is in fact let, are, therefore, immaterial, and the tenancy from month to month or year to year is prescribed as the standard by which all buildings should

be valued in order that their assessments might be equal. Again, the standard value is the value which the building possesses at the time the assessment is made; hence, the value of the property in the past or future is immaterial. The present value is not the value of any exceptional year, but the value which, under present circumstances, the building would be worth to let in an average year or taking one year with another. Neither exceptional repairs nor exceptional profits made in a particular year are to be considered. In letting a building from year to year, the rent would ordinarily be regulated by two matters, as observed by Blackburn, J., in *Queen* v. *London and North-Western Railway Co.* (L. R., Q. B., 134), on the one hand by the benefit which the tenant could be likely to derive from the occupation, because he would not give more; on the other hand, by the nature of the property, such as local situation, or the number of persons there are who could supply him with an equally eligible building and be willing to let it to him; for while he would not be willing to give more than he expects to gain by the occupation, he would not give even that if he could get a similar building at a lower price. Further, in rating property it must generally be assumed that the hypothetical tenant would be in the same position, and use the building in the same way as the party rated, for the object is to ascertain its intrinsic value to the owner in its present condition.

In *The Queen* v. *The School Board for London* (55 L. J., Q. B. D., 53), it was contended, *inter alia*, for the respondent before a Divisional Court of Queen's Bench, that the rent which the School Board might be supposed to be willing to give for the school premises if the Board were in the market anxious to rent premises suitable for use as a school, was a fair test of rateable value. On the other hand, it was urged for the appellant: *1st*, that the School Board owning the premises should not be supposed to be in the market anxious to rent premises, but should be excluded from the number of hypothetical tenants who might be supposed to be willing to rent the school premises: and, *2ndly*, that the only true indication of rateable value was the rent for which the premises could in their present condition be let to a hypothetical tenant from year to year, supposing they were not used for Board Schools, but were applied to any other use or purpose for which they could be made available for a tenant. The respondent's contention was allowed, and the appellant's objections over-ruled. Cave, J., said: 'When you want to find what a hypothetical tenant will give, you must not take a man who does not want the premises for the purpose for which they were built, but wants to use them for some other purpose, unless you can first show that they cannot be let for the purpose for which they were built. If they cannot be let for the purpose for which they were built, then, no doubt, you may go and see what you can do with them for some other purpose, and the best subsidiary purpose you could put them to. But as long as they can be let for the purpose for which they were built, it seems to be idle to say, 'Well, if this man were not occupying them, they could not be let to anybody else'.

"The Court of Appeal confirmed the decision. Lord Esher, M. R., observed: 'In this case there was no tenant, as the Board were owners and occupiers. All possible tenants must be looked at. In estimating the rent, no tenant was excluded, and the actual occupier might be included and the owner, if he was the occupier, as to whom it might be considered what rent he might be reasonably expected to pay. The School Board might be tenants, and therefore the rent they would be willing to pay might be considered.'

"Lord Justice Brown says: 'The test of rateable value was the rent for which the premises might reasonably be expected to let to a tenant. In estimating that, in the present case, the rent for which the premises might be reasonably expected to be let to the Board themselves may be considered, for how could the only body likely to require the premises be excluded from the estimate, that is, why should the only body likely to require or use the premises be excluded from the estimate of rent payable?'

"Having these principles in view, we are of opinion that the Lying-in Hospital should not be valued at the rent which it would fetch if it were offered in the open market without reserve. Admittedly there is but one building in Madras specially eligible for use as a Lying-in Hospital, and it is occupied by the owner. If the owner, the only person likely to require the premises, were excluded from the market, then the hypothetical tenant would take advantage of the absence of demand for it, and pay no more than those who require it for use other than as a hospital would choose to pay. No prudent landlord, who is aware of the fact that only one person requires the building for use as a hospital, would offer it in the open market without reserve."

"Nor can any reserve rent which the landlord may arbitrarily demand be taken to represent the standard value. If such demand is far in excess of the special convenience or benefit which the hypothetical tenant can expect to derive from the occupation, the tenant would prefer to rent less suitable buildings and adapt them to his requirements, though at some expense, or to forego the special convenience if it is not indispensable."

The proviso that the annual value shall in no case be deemed to exceed 7½ per cent. on the cost of erection merely lays down a maximum. The gross annual rent which the hypothetical tenant might be presumed to pay is the annual value. Should such gross annual rent exceed 7½ per cent. on the cost of construction, then the proviso in question limits the annual value. If the gross annual rent payable by the hypothetical tenant fall below 7½ per cent. on the cost of construction, the proviso of course has no application. It obviously confers on the Commissioners no power of always estimating the annual value as high as 7½ per cent. on the cost of construction. The meaning of the section is that the annual value, for the purpose of rating shall be either the rent payable by the hypothetical tenant, or 7½ per cent. on the cost of construction, *whichever is less.*

The Darjeeling Municipality has been excepted from the proviso in question on account of the heavy expenses of that Municipality, and of the fact that while rents are very high there, the cost of construction is often low.

Determination of rate of tax on holdings.

102. (93) Subject to the provisions of section eighty-five the Commissioners, at a meeting to be held, before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which the rate shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and

until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year :

Provided that when this Act is first extended to any place, the first rate may be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting.

It follows that when the Act is first extended to any place no such rate can be levied during the quarter then current. Compare notes to sections 9 and 88.

Preparation of valuation and rating list.

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

(*a*) name of the street or road in which the holding is situated ;

(*b*) number of the holding on the register ;

(*c*) description of the holding ;

(*d*) annual value of the holding ;

(*e*) name of owner ;

(*f*) amount of rent payable for the year ;

(*g*) amount of quarterly instalment ;

(*h*) if the holding is exempted from assessment, a note to that effect.

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

As regards "owner" see section 6 and section 15.

It is obvious that the information required by clause (*a*) cannot always be forthcoming in Mofussil Municipalities, as the holding will often not be situated anywhere near a street or road. In such cases the law will be complied with if the remaining particulars are recorded.

Compare section 358, by which no assessment or rating shall be invalid for error or defect of form.

The tax being payable quarterly, it is obviously the duty of the Commissioners to take proper measures for having it paid quarterly, and they are not justified in collecting it half-yearly. Half-yearly collections in advance are illegal, as the rate-payers are only bound to pay quarterly in advance. The Commissioners are not bound by the Act to collect the tax from door to door, but there is nothing in it which prevents their doing so. (L. R.)

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

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

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

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

*105. (96) If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the Municipality, or the place of abode of such owner be unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him :

Tax due from non-resident owner may be recovered from occupier and deducted by him from his rent.

Provided that no arrear of rate, which has remained due from the owner of any holding for more than one year shall be so recovered from the occupier thereof.

As regards "owner" see sections 6, 15 and 103.

*106. (97) Whenever, from the circumstances of the case, the levy of the rate on any holding in the Municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same.

Power of Commissioners in cases of excessive hardship.

* The 'excessive hardship' here referred to must be caused by actual indigence. The words cannot reasonably be held to apply to the case of any person who can, without difficulty, afford to pay the rate.

*107. (98) If the value of any holding shall be diminished from any cause beyond the control of the owner thereof, the owner thereof may apply for reduction of the valuation of the same.

Application for reduction of assessment.

Power to revise valuation and assessment.

108. (99) The Commissioners may, at any time after the publication of the notice required by section one hundred and twelve, value and rate any holding which was, without authority, omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight, or fraud; and may re-value and re-assess any holding the value of which has been increased by additions or alterations to any building thereon.

Any rate imposed or enhancement made under this section shall take effect from the beginning of the quarter next following that in which the rate shall be imposed or enhancement made.

The note to section 93 may be taken into consideration with reference to this section. The only case in which the Commissioners can enhance an insufficient valuation during the time of its currency is where there has been mistake, oversight, or fraud. Where the value of a holding has been increased by building on it, they may at any time re-value and re-assess it. Where a holding has been omitted from the list without authority, they may at any time value and assess it.

The words "mistake" and "oversight" would appear to refer to mistake or oversight as to some existing fact, and not to errors of judgment. For instance, if two buildings were comprised in the same holding, and the assessor, unaware of this fact, and under the impression that one of them was comprised in some other holding, only valued one of them, the holding would have been insufficiently valued *by mistake*. If the assessor overlooked the existence of one of the buildings—as in the case of a range of stables in a remote part of a compound—the holding would be insufficiently valued *by oversight*. But in the case of a wrong valuation of the holding, simply from defective judgment on the part of the assessor, it does not appear that the Commissioners have any power of interference.

"The Hon'ble Mr. Dampier said:—Anybody who had an assessment imposed upon him for the first time, or whose assessment was enhanced in any manner whatever, might appeal according to the procedure laid down for the review of assessments. Now, when was this appeal to be made? Section 106 said within one of two periods, whichever should last expire—either within one month from the publication of the assessment-list (which would not apply to a single assessment made within the year), or 'within fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made:' so that practically, there were fifteen days given to apply for a review whenever an assessment was altered."—(*P. C., March* 2, 1876.)

Power to revise assessment-list.

*109. (100) The Commissioners may, at any time, substitute for any name mentioned in the valuation and rating list, the name of any

person to whom any holding mentioned therein shall have been transferred.

Such person shall be liable to pay the rate payable on such holding from the first day of the quarter next after the date of the transfer.

Remission or refund on account of vacant holding.

110. (101) When any holding has been vacant for sixty or more consecutive days during any year, the Commissioners shall remit, and, if the rate has been paid, shall refund, one-half of so much of the rate of that year as may be proportionate to the number of days the said holding has remained unoccupied:

Provided that the owner of such holding, or his agent, has given to the Commissioners notice in writing of the vacancy thereof, and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners.

The amount of tax to be remitted or refunded shall be calculated from the date of the delivery of such notice.

The Hon'ble Mr. Reynolds said: "He would take this opportunity of mentioning that a representation had been made by the Deputy Commissioner of Darjeeling with reference to the necessity for a definition of a vacant holding. The Deputy Commissioner said, it was a common thing for an unoccupied house in Darjeeling to be kept more or less furnished, and to be left in charge of a chowkidar or caretaker, and it was a question whether, as long as the owner received no rent, the holding should be treated as a vacant holding. Mr. Reynolds did not think that the holding should, under such circumstances, be considered a vacant holding, and he had not therefore brought forward any proposal for defining a vacant holding."—(*P. C., February 20th*, 1884.)

The law is clear that a holding under the circumstances stated cannot be held to be vacant; and has been thus stated: Lush, J., says (*R. v. St. Pancras*, 2 Q. B. D., 581): 'The owner of a vacant house is in possession, and may maintain trespass against any one who invades it; but so long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it, and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in the year;—if the owner did not keep the furniture in the house he would have to keep it somewhere else, and he may, therefore, be regarded as making use of the house, at least as a warehouse for the furniture. Slight as such user may be, it is enough when added to legal possession to constitute occupation.

"In *Staley* v. *Castleton* (33 L. J., M. C., 178; 5 B. & S., 505), the owner of a cotton mill which, through a temporary scarcity of cotton, was not kept at work, was held to be in rateable occupation, on the ground that he was

using the mill as a warehouse for the machinery that was in it. In such cases, the amount of the assessment should, of course, be calculated with reference to the nature of the occupation. A building found to be occupied as a warehouse should be assessed at its value as a warehouse, and not at what its value would be if used as a dwelling-house or for any other purpose."—*Rosher on Rating*, 60.

The term "any year" may cause hardship in certain cases and the section might usefully be amended so as to restrict the meaning of the expression to the definition of the word "year" given in section 6 (19).

Penalty.

*111. (102) Whoever, being the owner of any holding for which a remission or refund of the rate has been made under the last preceding section, fails to give notice of the re-occupation of such holding within ten days of such re-occupation, shall be liable to a fine not exceeding three times the amount of rate payable quarterly on such holding.

Of general provisions relating to the tax on persons and the rate on holdings, and to the recovery of the same.

Appointment of assessor of Municipal taxes.

"111A. If at any time it appears to the Local Government, on the report of the Commissioner of the Division, that the assessment in any Municipality is insufficient or inequitable, and if the Commissioners have not appointed an assessor under section forty-six, the Local Government may, by an order in writing, require the Commissioners of such Municipality to revise and amend such assessment, or to show cause against such order within a time to be specified therein, and if the Commissioners fail to comply with such order or if, in the opinion of the Local Government, the revised and amended assessment is insufficient or inequitable, the Local Government may, by an order in writing, require the Commissioners to appoint an assessor of Municipal taxes for such Municipality, within a time and for a period to be specified in such order, and such assessor shall exercise all the powers of assessment except under sections one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen, vested by this Act in the Commissioners. Such order shall fix the pay of the assessor and the cost of his establishment, and such pay and cost shall be paid monthly by the Commissioners."

A list of persons competent to act as assessors should be kept in the office of the Divisional Commissioner. (Cir. No. 37-M., dated 30th November 1905).

Publication of notice of assessment.

112. (103) When the assessment-list of the tax upon persons, or the valuation and rating list of the rate on the annual value of holdings shall have been prepared or revised, the Chairman shall sign the same, and shall cause it to be deposited in the office of the Commissioners, and shall cause the notice in Form (A) or the notice in Form (B) of the Third Schedule (as the case may be) to be published in the manner prescribed by section three hundred and fifty-four.

Application for review.

*113. (104) Any person who is dis-satisfied with the amount assessed upon him, or with the valuation or rating of any holding, or who disputes his occupation of any holding, or his liability to be assessed or rated,

may apply to the Commissioners to review the amount of assessment, valuation, or rating, or to exempt him from the assessment or rate.

"When an assessor has been appointed under section one hundred and eleven A, notice of every such application shall be given by the Commissioners to the assessor."

Such an application does not require any stamp (Act VII of 1870, s. 19, clause 21).

It is most important that applications under this section should be promptly inquired into and decided.

A form of petition is suggested by Rule 16, Appendix A, of the Account Rules.

The word 'liability' in the second paragraph of s. 113 of Bengal Act III of 1889 means liability apart from the question of occupation, and must be taken to refer to the liability to assessment or rating of a person who is the occupier of a holding.—*Dwarka Nath Dutt* v. *Adiya Sundari Mitra and others*, 21 Cal., 319. In that case the High Court held that an application for review might be presented by—

(1) a person dissatisfied with the amount assessed upon him or with the valuation or rating.

(2) a person who disputes his occupation of any holding.

(3) a person who being the occupier of a holding disputes his liability to be assessed.

Procedure upon review.

*114. (105) Every application presented under the last preceding section shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the "Commissioners at a meeting." The Commissioners so appointed, after "taking such evidence and" making such

inquiries as they may deem necessary, may pass such order as they shall think fit in respect of such application.

The decision of such Commissioners, or of a majority thereof, in such cases shall be final.

"*Shall be final*," "final that is to say, as between the applicant and the Commissioners, no further appeal being allowed to the entire body of Commissioners or to any other authority. It is not contended that this clause if it stood alone, would bar the interference of the Courts."—*Dwarka Nath Dutt* v. *Addya Sundari Mitra*, 21 Cal., 319. See also notes to Section 116 *post*.

The Commissioners should be appointed directly after the completion of a new assessment.

Limitation of time for application of review.

115. (106) Unless good cause shall be shown to the satisfaction of such Commissioners for extending the time allowed, and save as is otherwise expressly provided in this Act, no such application shall be received after the expiration of one month from the date of publication of the notice required by section one hundred and twelve relating to the list containing the assessment, valuation, or rating in respect of which the application is made, or after the expiration of fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire.

Assessment to be questioned only under Act.

*116. (107) No objection shall be taken to any assessment or rating in any other manner than in this Act is provided.

The words "nor shall the liability of any person to be assessed or rated be questioned" have been omitted by the amending Act after the words "rating," and also the words "or by any other authority" after the word manner. The alterations have been made with reference to the decision in *Dwarka Nath Dutt* v. *Addya Sundari Mitra and others* (21 Cal., 319), in which case it was held that the section has no application to a dispute as to whether a person assessed to a tax does or does not occupy a holding: and a suit brought to set aside an assessment on the ground that the person assessed does not occupy a holding, is not therefore barred. The object of the alterations is to make the meaning of the section more clearly in accordance with the view of the High Court. So that when the assessee simply disputes the amount of the rating the decision of the Commissioners under s. 114 is final but if he disputes his liability he can institute a suit in the Civil Courts. See notes to s. 15.

The right to bring a suit is a recurring one and the suit is maintainable even if brought more than 3 months after the assessment (s. 363) (*Ambica Ch. Mazumdar* v. *Satis Ch. Sen* (1898, 2 C. W. N., 689).

In *Chairman, Giridhi Municipality* v. *Suresh Ch. Mozumdar* (12 C. W. N., p. 709), the effect of s. 116 on the jurisdiction of the Civil Courts

was fully discussed and it was stated that this section does not take away the jurisdiction of the Civil Courts in a case in which it is alleged and established that the assessment is open to objection on the ground that it is *ultra vires*. Jurisdiction is only ousted when the Municipality has acted in conformity with the powers conferred on it by the Act.

The Civil Court cannot however interfere in matters regarding the amount of assessment of tax. The Court cannot interfere on the grounds that a proper valuation of the holding had not been made in that the Assessor had not inspected the holding and the plaintiff did not have a proper hearing before the objection Committee. *Chairman, Chapra Municipality* v. *Bamdeo Narain Singh* (14 C. W. N., 437).

In *Bates* v. *The Municipal Commissioners for the Town of Bellary* (7 Mad. H. C. R., 249), and *Leman* v. *Damodaraya* (1 Mad., 158), it was held that a similar provision in Madras Act III of 1871 was not a bar to a suit to recover money wrongfully levied as a tax, because such so-called tax had no legal existence. For the provision to apply at all, there must be a legally sanctioned tax in force at the period at which duties are to be performed by the tax-payer. Compare *Nundo Lal Bose* v. *Corporation of Calcutta* (11 Cal., 275). In *Manessur Dass* v. *The Collector and Municipal Commissioners of Chupra* (1 Cal., 409), it was somewhat too broadly and unreservedly ruled that the decision of the Commissioners on a rate appeal is absolutely final. *Semble*—that it will be absolutely final when the Commissioners have acted in good faith and in accordance with the directions of the Act, but not otherwise.

Office hours for payment of taxes.

117. (108) By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business.

Tax payable in advance.

118. (109) The amount due by any person on account of the tax on persons, or the rate on holdings, shall be deemed to be the amount entered in the lists the notice relating to which is published under section one hundred and twelve, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due.

Every instalment of such tax or rate shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

Receipts to be given.

*119. (110) For all sums paid on account of any tax or rate under this Act, a receipt stating the amount and the tax or rate on account of which it is paid, shall be given, signed by the

tax-collector, or by some other officer authorized by the Commissioners to grant such receipts.

The form of the receipt is prescribed by Rule 28, Appendix A, of the Account Rules.

A receipt for Municipal rates or taxes for an amount exceeding Rs. 20 requires a receipt stamp. *In re Karachi Municipality*, 12 Bom., 103.

Bill and notice of demand to be presented.

120. (111) At any time within six months after any sum has become due on account of any tax or rate, the Commissioners shall cause to be presented to the person liable to the payment thereof a bill for the said sum, which shall contain a statement of the period and of the tax or rate on account of which the charge is made.

If the amount mentioned in such bill be not paid on presentation thereof, a notice of demand in the form marked (A) in the fourth Schedule, with copy of the bill appended thereto, shall be served on the person liable to pay the same, and such notice of demand may be served at any subsequent time :

Provided that no charge shall be made in respect of the service of such notice.

Such notice shall be signed by the Chairman or an officer authorized in that behalf, and shall be served by a person authorized to receive payment.

It is obvious that the bill must be presented within six months of the amount falling due, but that if this has been duly performed, the notice of demand can (subject to the ordinary law of limitation) be served at any subsequent period. If due cause is not shown within fifteen days for the non-payment of the amount, and if it be not paid the Commissioners can distrain under the provisions of the next section.

If the bill has not been presented within six months, the Municipality can only recover by a regular suit under s. 129.

See Account Rules, Appendix, A.

The following opinion of the Advocate-General, forwarded with Government Circular No. 14-T. M., dated 14th September, 1902, sets at rest a point once much disputed.

OPINION.

I am of opinion and for the reasons given in letter No. 1291, to the Commissioner of the Patna Division by the Hon'ble Mr. B. L. Gupta, Legal Remembrancer, dated Calcutta, the 19th October 1901, that when a bill under s. 120 of the Bengal Municipal Act [Act III (B. C.) of 1884 as amended by Act III (B. C.) of 1886 and by Act IV (B. C.) of 1894] has been duly presented and a notice of demand in Form A, Schedule IV, has been served, the Municipal Commissioners cannot issue a second notice of demand.

J. T. WOODROFFE,
Advocate-General.

20th August 1902.

No. 1291.

Dated Calcutta, the 19th October 1901.

FROM THE HON'BLE B. L. GUPTA,

Supdt. and Remembrancer of Legal Affairs.

To The Commissioner of the Patna Division.

I have considered the points raised in your No.1625-C., dated the 20th September last, and in reply have the honour to state as follows :—

2. The notice of demand under s. 120 of the Bengal Municipal Act III (B. C.) of 1884, may be served as soon as the bill is presented and not paid. The presentation of the bill and service of notice (with copy of bill attached) may be effected on the same occasion or at the same time and interview, one immediately following the other.

3. Under s. 121, the amount if not paid within 15 days may be levied by distress and sale of movable property of the defaulter at any time within three months after the date of service of the said notice or of the order made on an application for review. I think this must be construed to mean that the limitation of three months is an absolute bar to the recovery of the same arrears by distress and sale after the expiry of three months, and that a fresh period of three months cannot be taken by including the same old arrears in any subsequent notice of demand. Were it otherwise the words three months after the date of the order made on an application for review would be rendered nugatory. Besides, wherever the law allows summary mode of realization of money and prescribes a limitation of time, the limitation is absolute.

4. In the present instance the first limitation of six months under s. 120 is clearly absolute, and there are no reasons for thinking that the second limitation of three months under s. 121 is not absolute. Although s. 120 says that such notice of demand may be served at any subsequent time, it does not imply that it may be served more than once. The language of s. 121 leads me to hold that the notice can be served only once.

If not paid in fifteen days process of distress may issue.

121. (112) If any person, after service upon him of such bill and notice, shall not, within fifteen days of the service of such notice or from the date of any order made on an application for review under section one hundred and fourteen, pay the sum due, either to the Commissioners at their office or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with cost on the scale shewn in the table of fees marked (B) in the fourth Schedule, may, at any time within three months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any movable property belonging to the defaulter, except ploughs, plough cattle, tools, or implements of agriculture or trade, wherever

found, or of any movable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax or rate:

"Provided that when the holding in respect of which the default is committed is a place of business, and the movable property distrained is shewn to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released:

Provided also that if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same."

No. M $\frac{6B}{1}$ 4, dated Calcutta, the 11th September 1889.

"I am directed to acknowledge the receipt of your letter No. 306-M. dated the 25th July 1889, submitting for the orders of Government the question whether counterfoils of Municipal house-rate bills may be destroyed after audit by the local Auditor of the accounts to which they relate.

"2. In reply, I am desired to say that, as cases not unfrequently occur in which tax collectors are prosecuted for embezzlement, the original entry made by the tax collector, showing the date on which he received money, may prove of importance as evidence. The counterfoils referred to should therefore be preserved for three years and then destroyed."

Distress how to be made.

122. (113) Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the form marked (C) in the fourth Schedule.

Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

Such officer shall make an inventory of all movable property seized under the warrant, and shall give not less than ten days' previous notice of the sale, and of the time and place thereof by beat of drum, in the Municipality or Ward in which the property is situated, and by serving on the defaulter a notice in the form marked (D) in the fourth Schedule:

Provided that, if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or

without such consent at any time after the expiry of six hours from the seizure.

Under the former section perishable property could only be sold with the consent of the defaulter, after the expiry of twenty-four hours from the seizure—

Huts are not movable property within the meaning of this section. For a hut is a house [s. 6, clause (4)], and a house is immovable property [s. 6, clause (5)]. The fact that the hut may, according to the custom of the country, be removable by the tenant, does not make it movable property. See *Mattu Miah* v. *Nand Rani* (8 B. L. R., 517), where the question as to what constitutes movable and immovable property is discussed very thoroughly.

The door of a house is not movable property and cannot be attached as such.—*Queen-Empress* v. *Shaik Ibrahim*, 13 Mad., 518. See also 14 Mad., 467, and *Peru Bepari* v. *Ronuo Maifarash*. (1885), 11 Cal., 164.

Officer may break open door.

*123. (114) The officer charged with the execution of the warrant may, under the special order of the Commissioners, between sunrise and sunset, break open any outer or inner door or window of a house in order to make the distress, if he has reasonable ground for believing that such house contains any movable property belonging to the defaulter, and if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that he shall not enter or break open the door of any room appropriated for the zanana, or residence of women, which by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

Sale how to be conducted.

124. (115) If the sum due be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Commissioners, the movable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and cost.

The surplus sale-proceeds (if any) shall be credited to the Municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners, or in a Court of competent jurisdiction.

Return of sales.

The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the form marked (E) in the fourth Schedule.

*125. (116) All officers and servants of the Commissioners, and all chaukidars, constables, and other officers of police are prohibited from purchasing any property at any such sale.

Certain persons prohibited from purchasing at sales.

"Whoever (not being a public servant within the meaning of section twenty-one of the Indian Penal Code) contravenes the provisions of this section shall be punished with simple imprisonment for a term which may extend to two months, or with fine, or with both."

Penalty.

In the case of public servants such an act, in face of the prohibition here enacted, would be punishable under s. 169, Indian Penal Code, with simple imprisonment for two years and fine. Constables and other officers of police are of course public servants. What classes of Municipal subordinates can be held to be public servants is a somewhat doubtful question. There is no doubt that, under clause (10) of s. 21, Municipal assessors and tax-collectors are public servants. Other Municipal subordinates whose duty it is to receive or expend money would also come within the terms of the clause in question. It is doubtful whether any other classes of Municipal servants would be considered to be public servants. Labourers and menial servants generally certainly would not. Such persons when employed by Government have been held not be public servants.—*Queen* v. *Nachimattu and others*, 7 Mad., 18).

*126. (117) The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes under this Act.

Commissioners to keep account of distresses and sales.

127. (118) If no sufficient "movable property" belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the Municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his Court for the distress and sale of any "movable" property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any "moveable" property belonging to the defaulter within the jurisdiction of any other Magistrate "exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal," and such other Magistrate shall endorse the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

Sale of property beyond limits of Municipality.

An application filed by a Municipal officer in a Criminal Court requires no stamp—Act VII of 1870, s. 19, clause (18). "The Magistrate" is

defined in s. 6, clause (8), as the District or Sub-Divisional Magistrate or any Subordinate Magistrate to whom the District Magistrate may have made over any duties under this Act.

"It will be noticed that distress warrants issued to other Governments have no force."

Distress or sale not unlawful for want of form.

*128. (119) No distress or sale made under this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any error, defect, or want of form in the bill, notice, summons, warrant of distress, inventory, or other proceeding relating thereto.

The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect the demand where the directions of the Act have been substantially complied with, the Commissioners being protected by this section against such mistake. See *Gopee Kishen Gosain* v. *W. H. Ryland* (1868), 9 W. R., C. R., 562. See also *Queen-Empress* v. *Poomalai Udayan*(1898), 21 Mad., 296.

Commissioners may bring suit instead of distraining or on failure of distress.

*129. (120) Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

The word 'Tax' is used. It probably includes "rates."

Irrecoverable taxes.

*130. (121) The Commissioners may order to be struck off the books the amount of any tax or rate which may appear to them to be irrecoverable.

It is most important that this should be done regularly and promptly.

Of the Tax on Carriages, Horses, and other Animals.

Tax on carriages, horses, and other animals.

131. (122) When it has been determined that a tax on carriages, horses, and other animals specified in the fifth Schedule shall be imposed, the Commissioners at a meeting shall make an order that every carriage, horse, and every other animal of the kind specified in the said Schedule, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the Municipality, and "is used in the ordinary course of business" within it, shall pay the tax, and shall cause such order to be published in the manner prescribed by section three hundred and fifty-four.

Such order shall be published at least one month before the beginning of the half-year in which such tax shall first take effect; and shall specify at what rates, not exceeding the rates given in the said Schedule, such tax shall be levied.

But such tax shall not be imposed on—

(*a*) horses or ponies belonging to officers doing regimental duty, at the rate of one animal for each officer;

(*b*) animals exempt from any Municipal tax under section twenty-five of the Indian Volunteers' Act, 1869;

(*c*) carriages or animals belonging to Government, or to the Commissioners, or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers;

(*d*) animals used by, or exclusively for the purposes of, any regiment;

(*e*) horses or ponies used by police-officers, at the rate of not more than one for each officer;

(*f*) carriages the wheels of which do not exceed twenty-four inches in diameter;

(*g*) carriages or animals kept for sale by any *bonâ fide* dealer in such carriages or animals, and not used for any other purpose.

Section 25 of the Indian Volunteers' Act (Act XX of 1869) is as follows:—

"Every mounted officer, and every mounted orderly of a Corps of Volunteers, and every member of such corps, while he belongs to a troop of cavalry in such corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any Municipal or other tax imposed upon horses."

It will be observed that carriages which are kept within the limits of a Municipality are liable to pay the tax, whether used or not. On a reference from the Dacca Municipality, an opinion to that effect was given by the Legal Remembrancer, who has also held that a carriage so damaged as to be unfit for use is not liable to the tax. For the definition of a carriage is a vehicle used for the conveyance of human beings, etc., and if it is unfit for use, it obviously cannot convey human beings.

Ordinary course of business is defined in s. 141B.

Carriage is defined in s. 6, clause. 1.

* 132. (123) Any order of the Commissioners imposing a tax under the last preceding section shall continue in force until rescinded, and the tax shall be levied at the rates specified in the order published as aforesaid; unless

Tax so fixed to continue in force until altered.

and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

Licenses how to be obtained.

133. (124) In any Municipality in which a tax has been imposed under section one hundred and thirty-one the owner of every carriage, horse, and other animal specified in the said Schedule shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him containing a description of the carriages, horses, and other animals liable to the tax, for which he is bound to take out a license.

Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses, and other animals specified in such statement, according to the rates specified in any order for the time being in force under the two last preceding sections.

No penalty seems to be attached by the Act to an omission to make a return and there is nothing to show that a false return would involve a penal offence. See however ss. 137 and 140 and *Chandi Pershad* v. *Abdur Rahman* (1894). 22 Cal., 131.

Rules 83 to 85 of the Account Rules refer to this section.

Proportionate tax on carriages, &c., acquired during half-year.

134. (125) If any person acquires possession, at any time after the commencement of any half-year, of any carriage, horse, or other animal specified in the Schedule in respect of which no license has been given for such half-year, he shall forward a statement as above required within one month of the date on which he may have acquired possession thereof and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

This section applies when a new carriage, &c., is acquired in place of an old one. See *Municipal Commissioner of Mannargadi* v. *Nallapa* (1885), 8 Mad., 327.

On payment of tax Commissioners to give a license.

* 135. (126) On receiving the amount of the tax due as aforesaid, the Commissioners, or some person authorised by them in that behalf, shall give to the person paying the same a license for the several carriages, horses,

and other animals for the period in respect of which the amount is received.

Such license shall be for the current half-year, and no longer.

Account Rule 84 refers to license forms.

Carriage, &c., liable to tax although the owner be absent.

* 136. (127) Whenever the owner of any carriage, horse, or other animal liable to pay the said tax is not resident within the limits of the Municipality to the Commissioners of which the tax is due, the person in whose immediate possession the carriage, horse, or other animal is for the time being kept shall take out a license for the same.

Penalty.

137. (128) Whoever keeps, or is in possession of any carriage, horse, or other animal, without the license required by any of the three last preceding sections, shall be liable to a fine not exceeding three times the amount payable by him in respect of such license, exclusive of the amount so payable.

See s. 353. Prosecution requires the consent of the Commissioners. See also s. 359 and s. 278.

Commissioners may compound with livery stable-keepers.

138. (129) The Commissioners, at their discretion, may compound, for any period not exceeding one year, with livery stable-keepers and other persons keeping carriages or animals for hire, for a certain sum to be paid for the carriages or animals so kept by such persons, in lieu of the tax at the rates specified in any order made by the Commissioners under sections one hundred and thirty-one and one hundred and thirty-two.

List of persons licensed to be prepared.

* 139. (130) The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom, during the then current half-year, a license has been given, and of the carriages, horses, and other animals in respect of which they have paid the tax.

The form of register is prescribed by Rule 83 of the Account Rules.

Power to inspect stable, &c., and to summon persons liable to the payment of the tax.

* 140. (131) The Commissioners, or any person authorized by them in that behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach-house, or any place wherein they may have reason to believe that there is any carriage, horse, or other animal liable to the tax, for which a license has not been duly taken out.

And the Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses, and other animals in respect of which such person is liable to be taxed.

Refund of tax in certain cases.

141. (132) On proof being given to the satisfaction of the Commissioners that a carriage, horse, or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the Municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse, or other animal has not been kept or used in the Municipality bears to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such use of such carriage, horse, or other animal ceased, and, except for special cause shewn, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

"Reason to believe." See s. 26 of the Indian Penal Code.

"*Has ceased to be kept or to be used.*" This must be read with s. 131, and the meaning becomes obvious. The word "kept" refers to carriages, horses, &c., kept *within* the Municipality; and the word "used" to those kept *outside*. If the carriage, horse, &c., kept outside the Municipality ceases to be used inside, a refund may be claimed. If kept inside, no refund can be claimed, whether it is used or not. See note to s. 131.

"*Within one month of the time when such use, &c.*" The word "use" here is probably meant to include keeping, and to have, therefore, a more general signification than in the former part of the section. For it would appear to be just as necessary that notice should be given of carriages, &c., having ceased to be *kept* within the Municipality as of their having ceased to be *used* within it, and it is not probable, therefore, that any distinction is intended to be drawn between the two cases in this respect.

"141A. Nothing in sections one hundred and thirty-one to one hundred and forty-one shall be deemed to authorise the levy of more than one fee for the same period in respect of any carriage, horse, or other animal which is kept or used in more than one Municipality."

Prohibition of double fee for carriages.

"141B. A carriage, horse, or other animal shall be deemed to be used in the ordinary course of business within the meaning of section 131, if it is used on business on an average thrice a week."

Meaning of "used in the ordinary course of business."

This section supersedes the decision in *Legal Remembrancer* v. *Shama Churan Ghose* (1895, 23 Cal., 52), which interpreted the words "habitually used" that occurred in s. 142. The word 'habitually' proved to be difficult to interpret. The difficulty was set at rest by Act II of 1896 which inserted ss. 141B and 147B and introduced the phrase "used in the ordinary course of business" in s. 142.

'Cart' is defined in s. 6 (2).

Of the Registration of Carts.

142. (133) The Commissioners at a meeting may make and publish an order that every cart, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the Municipality and is used in the ordinary course of business within it, shall be registered by the Commissioners with the name and residence of the owner; and shall bear the number of registration in such manner as the said Commissioners shall direct:

Registration and number of carts.

Provided always, that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

This section shall not apply to—

(*a*) carts which are the property of the Government or of the Commissioners;

(*b*) carts which are kept without the limits of the Municipality, and are only temporarily and casually used within such limits;

(*c*) Howrah.

Registration. See Account Rules.

Exemptions. With reference to Howrah, see Calcutta Act III of 1899, s. 208. Government can prohibit the levy of any tax on the Secretary of State. See Act XI of 1881 s. 3.

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Fee for registration.

*143. (134) The registration of carts under the last preceding section shall be made and the numbers assigned yearly or half-yearly, upon such days as the Commissioners shall notify; and such fee as they shall, from time to time, fix and notify not exceeding four rupees if the registration has effect for a year, and not exceeding two rupees if the registration has effect for half a year, shall be paid for each registration.

Rules 86 and 87 of the Account Rules relate to fees for the requisition of carts.

Proportionate payment of fee.

*144. (135) Any person becoming possessed of any cart which has not been registered for the then current period of registration, shall register the same within one month from the date on which he may have become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as shall bear the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person may have become possessed as aforesaid.

Transfer of ownership.

*145. (136) When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such last-mentioned registration.

Penalty.

146. (137) Whoever keeps, or is in possession of, a cart not duly registered as required by any of the three last preceding sections, shall be liable to a fine not exceeding three times the amount payable by him in respect of such registration, exclusive of the amount so payable; and whoever, being the owner or driver of any cart, shall fail to affix thereto the registration number as required by section one hundred and forty-two, shall be liable to a fine not exceeding five rupees.

Seizure and sale of unregistered cart.

147. (138) If any person owns or keeps any cart hereinbefore required to be registered without having caused the same to be registered, the Commissioners, or any person authorized by them in that behalf, may seize and detain such cart (provided

the same be not employed at the time of seizure in the conveyance of any passengers or goods), together with the animals drawing the same; and all police-officers are required, on the application of the Commissioners, or of any servant of the Commissioners duly authorized in that behalf, to assist in the said seizure.

After such seizure, the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such vehicle and animals by auction at such place as they may state in the notice; and if any registration-fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners, or in a Court of competent jurisdiction:

Provided that if, at any time before the sale is concluded, the person whose cart has been seized shall tender to the Commissioners, or to the person authorized by them to sell the cart, the amount of all the expenses incurred, and the registration-fee payable by him, the Commissioners shall forthwith release the cart so seized.

Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart seized under this section may be devoted to the payment of any fine imposed under the last preceding section: and any cart which has been seized under this section may be sold for the realization of any such fine.

Prohibition of double fee for registration of carts.

"147A. Nothing in sections one hundred and forty-two to one hundred and forty-seven shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one Municipality. When carts not kept within any Municipality are so used in more than one Municipality, the Local Government, on the application of the Commissioners of any such Municipality, may, if it thinks fit, apportion between all such Municipalities the registration-fees paid under this Act in respect of such carts.

Where a cart is registered under this Act in more than one Municipality, the Commissioners of the Municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other Municipality."

Meaning of "used in the ordinary course of business."

"147B. A cart shall be deemed to be used in the ordinary course of business within the meaning of sections 142 and 147A if it is used on an average twice a week."

"See *Legal Remembrancer* v. *Shama Charan Ghose* (1895), 23 Cal., 52."

Of Tolls on Ferries.

Existing public ferries.

148. (139) The Local Government may, with the consent of the Commissioners, make over to the Commissioners any existing public ferry within, or adjacent to, the limits of the Municipality, to be administered by them until the Local Government shall otherwise direct.

Every ferry, while so administered, shall be deemed to be a Municipal ferry, and the profits derivable therefrom, or such part of the profits as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

By section 4 of the Bengal Ferries Act, 1885, none of the provisions of that Act shall apply to any ferry deemed or declared to be a Municipal ferry.

The Government of India have laid down the following principles limiting and regulating the rights of a Municipality in a ferry made over to it:—

(i) A Municipality is not entitled to any compensation for diminution in its receipts from a ferry by reason of a Railway having started an outagency, bridge or ferry near it. In the case of local traffic being thus diverted to the Railway agency where the Municipality had already made sufficient and satisfactory arrangements for it, the best arrangement would be to make over the receipts for such traffic to the Municipality, the Railway receiving a reasonable return for the service rendered.

(ii) Revenues of public ferries are, however, part of the general revenues, and it is therefore in the discretion of the Government at any time to make new arrangements for the service of the ferry, either with a Railway Company or otherwise.

(iii) No local authorities, whether Municipalities or District Boards have any proprietary rights in any tolls or ferries which are made over to them, conditionally or unconditionally. They merely work the ferries and take the tolls in pursuance of arrangements which the Government is at any time at liberty to vary or determine. (Govt. letter No. 480-M., dated the 17th November 1897, to Commissioner, Presidency.)

"Ferry" is not defined here, but in Bengal Act I of 1885 it is described as including "a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge, a temporary bridge and a landing stage" (s. 5). 'Ferry' would therefore seem to mean the right to transport passengers across a river by any of the means mentioned above: although s. 158 seems to deal with *permanent* bridges.

See *Government of Bengal* v. *Enayet Ali* (1900), 27 Cal., 317, and the notes to s. 155.

In Government Resolution issued with Cir. No. 22, dated 5th December 1887, it was laid down that the proceeds of ferries can only be made over to a Municipality, if

(1) charges equal to the police charge, of which they have been relieved, are undertaken by them;

(2) other charges equivalent to the ferry receipts are undertaken

See C. & O., Vol. IV, p. 1029.

Other ferries may be declared to be municipal.

149. (140) The Commissioners may also, with the sanction of the Local Government, declare that any other ferry within, or adjacent to the limits of, the Municipality is a Municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the Municipal Fund:

Provided that due compensation shall be made by the Commissioners to any person for the loss which he may have sustained in consequence of such ferry, being declared to be a Municipal ferry.

The amount of compensation due in such cases shall be ascertained and awarded by the Magistrate under the provisions of section four of Bengal Act I of 1866 (*to amend certain provisions of Regulation* VI *of* 1819), or any similar law for the time being in force.

This section should not be resorted to in order to take possession of a private ferry, not for the purpose of making it a public ferry, but for the purpose of enabling the Government or Municipality, to acquire it at a lower rate of compensation than that to which the owner would be entitled under the Land Acquisition Act, *e.g.*, if it were intended to build a bridge or drain a Khal. To do so would, the Advocate-General has given his opinion, be a fraud on the Ferry Act.

(B. Govt. Munl. Dept. 22851 S. C., dated 18th July 1900 to Board.)

Bengal Act I of 1866 was repealed by Bengal Act I of 1885. Section 17 of that Act is as follows:—

Claims for compensation, and what amount to be awarded.

"17. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of, or a new public ferry, or subsidiary ferry, being established under s. 6 or s. 11, shall be inquired into by the Magistrate of the District in which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear

justly entitled thereto. Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profits."

Duties of Commissioners in regard to such ferries.

*150. (141) Every Municipal ferry shall be maintained by the Commissioners, and they shall do all things necessary to provide for the safety and convenience of travellers, and the safety of property to be conveyed on such ferry.

Rate of tolls to be established and published.

151. (142) When it has been determined to impose tolls on Municipal ferries, the Commissioners at a meeting shall make and publish an order specifying the ferries and, with the sanction of the Commissioner of the Division the rates at which such tolls shall be levied.

Such rates may from time to time be varied with the like sanction.

See Account Rules.

When person crossing river not liable to toll.

*152. (143) No person shall be liable to pay any toll for crossing any river or stream at or near a Municipal ferry, unless he avails himself of the means provided by the Commissioners for crossing such river or stream.

Cancellation of ferry lease, &c.

153. (144) Every lease of a ferry given by the Commissioners as hereinafter provided shall be liable to be cancelled at once, if it shall appear to the Commissioners at a meeting that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice, in writing, from the Commissioners.

On the cancelment of a lease, the Commissioners may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry ; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until they can make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances :

Provided that within a week of taking such possession, the Commissioners shall be bound to give notice to the said

lessee of their intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

Toll must be prepaid.

*154. (145) Any Collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a Municipal ferry until the proper toll has been paid, and may require any person who refuses to pay the toll to leave the boat and to remove his goods from it.

Penalty.

Any person who refuses to leave a Municipal ferry-boat or to remove his goods therefrom when required to do so under this section, shall be liable to a fine not exceeding ten rupees.

Keeping of unauthorized ferry.

*155. (146) No person shall keep a ferry-boat for the purpose of plying for hire within a distance of two miles above or below any Municipal ferry without the previous sanction of the Commissioners, if he plies within the limits of the Municipality, of the Magistrate of the District, if without such limits, or of the Magistrate of the District and the Commissioners if one of the two banks between which he plies is within, and the other bank is without, such limits.

This section shall not apply to any private ferry which may be in existence at the commencement of this Act.

A boatman or fisherman who, while employed in his ordinary avocations, consented to cross a passenger over a river and received a gratuity for doing so, could not reasonably be held to have committed the offence contemplated by this and the following section. For the offence consists in *keeping a ferry boat for the purpose of plying for hire*, and not in the casual and unpremeditated ferrying over of a passenger.

Still less can a person be convicted of an offence under this section for merely crossing the bar of a khal leading into the limits of a Municipal ferry. A ferry lessee has no authority to demand tolls from persons who are merely passengers in an unlicensed boat. The remedy is against the person who keeps the boat. (*Govt. of Bengal* v. *Enayet Ali*, 27 Cal., 317.)

"*Two miles.*"—Under the Bengal General Clauses Act 'distance' is to be measured in a straight line of a horizontal plane in the case of all Bengal Acts passed subsequent to that Act.

Penalty.

*156. (147) Whoever keeps a ferry-boat contrary to the provisions of the last preceding section, shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

"A further fine." A very common misapprehension with regard to sections which provide for daily fines is, that a Court has the power to

pass a sentence directing that, in addition to any fine or other punishment then inflicted, the accused shall pay a daily fine as long as he perseveres in the offence. Such a sentence is, however, absolutely bad in law, and obviously so, as it inflicts a penalty for an offence before it is committed.—In re *Sagur Dutt*, 1 B. L. R., O. Cr., 41. *In re W. N. Love*, 9 B. L. R., App., 35; 25 W. R. Cr. R., 6; 21 W. R. Cr. R., 31; *Ram Krishna Biswas* v. *Mahendra Nath Mazumdar* (1900), 27 Cal., 565 *Limbaji Tulsiram* (1896), 22 Bom., 766.

Of Tolls on Bridges and Roads.

Existing toll-bars.

157. (148) The Local Government may, with the consent of the Commissioners at a meeting, make over to the Commissioners any existing toll-bar within the limits of the Municipality, to be administered by them until the Local Government shall otherwise direct; every toll-bar, while so administered shall be deemed to be a Municipal toll-bar, and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

Commissioners may establish toll-bar.

158. (149) The Commissioners at a meeting, with the sanction of the Local Government, may establish a toll-bar and levy tolls on any bridge or metalled road which they may have constructed after the commencement of this Act, or at any place within the Municipality adjacent to such bridge or metalled road at which tolls may conveniently be levied on vehicles and animals passing over such bridge or road, and the profits derivable therefrom shall be carried to the credit of the Municipal Fund:

Provided that no such toll-bar shall be established or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge or road and in maintaining such bridge or road in repair for the five years next after the construction thereof, together with interest on such expenses as hereinafter provided.

The continued levy of tolls at toll-bars established before the coming into force of the Act appears to be legalized by s. 2.

"See s. 148 and s. 164." When the Act is next amended it might be advisable to consider whether s. 158 should not be brought into line with s. 86A of the Local Self-Government Act (Ben. Act IV of 1885) in so far as the purposes for which tolls may be levied, are concerned.

*159. (150) Whenever a toll-bar shall have been established and tolls shall be levied, as provided in the last preceding section, the Commissioners shall, at the end of each year, publish, by causing it to be posted up at their office an abstract account shewing—

Commissioners to publish expenses, &c., of toll-bars.

(1) the amount of expenses incurred in the construction of such bridge or road, and in the maintenance of the same;

(2) the amount of interest which has accrued due thereon at the annual rate of six per centum; and

(3) the amount which has been received from the profits of the said toll-bar since its establishment.

And as soon as such expenses and interest shall have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied on such bridge or road.

160. (151) When it has been determined that tolls shall be levied on any such bridge or road, the Commissioners at a meeting shall make and publish an order with the sanction of the Commissioner of the Division, specifying the rates at which such tolls shall be levied.

Rates of tolls to be established and published.

Such rates may, from time to time, be varied with the like sanction.

*161. (152) Any Collector or lessee of tolls may refuse to allow any person to pass through any Municipal toll-bar until the proper toll has been paid.

Power of Collector or lessee in case of refusal to pay toll.

*162. (153) Whoever having driven any vehicle or animal (not exempted from toll) through a toll-gate, refuses to pay the toll, or, with intent to evade payment of the toll, fraudulently avoids passing through such toll-gate, shall be liable to a fine not exceeding fifty rupees.

Penalty for refusing to pay or avoiding payment of toll.

163. (154) If the toll due on any vehicle or animal is not paid on demand, the person authorized to collect the same may seize such vehicle or animal, or any part of its burden of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners.

In case of non-payment of toll, vehicle, &c., may be seized and sold.

After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice; and if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property seized for discharge of the toll and of all expenses occasioned by such non-payment, seizure, custody and sale.

The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners, or in a Court of competent jurisdiction:

Provided that if, at any time before the sale has been concluded, the person whose property has been seized shall tender to the Commissioners, or to the officer appointed by them to sell the property, the amount of all the expenses incurred and of the toll payable, the Commissioners shall forthwith release the property seized.

Notwithstanding anything contained in this section, the surplus of the sale-proceeds of any property seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any property which has been seized under this section may be sold for the realization of any such fine.

The provision for refunds in question is now only subject to the ordinary law of limitation.

Of General Provisions relating to Tolls on Ferries and Roads.

Lease of ferry or toll-bar.

164. (155) The Commissioners may grant a lease of any Municipal ferry or toll-bar for any period not exceeding three years.

Arrears of rents on account of ferries managed by Municipalities can be realized as public demands under the Public Demands Recovery Act (I of 1895) if a clause to this effect be inserted in the lease.

"The rent law in Bengal does not apply to Ferry tolls. *Pockhea Singh* v. *Upendra Chandra Singh* (1900), 27 Cal., 239. The Public Demands Recovery Act (I of 1895) has been repealed by Act III of 1913.

Table of tolls to be hung up.

* 165. (156) A table of tolls legibly written in the vernacular of the district shall be hung up

in some conspicuous position at each end of every Municipal ferry;

and in some conspicuous position near every Municipal toll-bar, so as to be easily read by all persons required to pay the toll.

Penalty.

166. (157) Whoever, being a toll-collector or lessee of a Municipal ferry or toll-bar, neglects to hang up a table of tolls as required by the last preceding section, shall be liable to a fine not exceeding fifty rupees, and to a further fine, not exceeding ten rupees for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

"A further fine."—An order of a Court imposing a daily fine for such future time as an offence may be continued is null and void. In re *Sagur Dutt*, 1 B. L. R., O. Cr., 41. For other references, see note to s. 156.

Composition in respect of toll.

*167. (158) The Commissioners, or the lessee of any Municipal ferry or toll-bar, may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him in lieu of the ordinary toll payable.

Exemptions.

*168. (159) No tolls shall be paid for the passage

of Government stores, or the persons in charge of them;

or of Police-officers or *of any public or Municipal officer on duty*, or of any person in their custody, or of any property belonging to them or in their custody, or of any vehicle or animal employed by such persons for the transport of such property;

or of conservancy carts or other vehicles or animals belonging to the Commissioners, or of the persons in charge of them:

Provided that tolls shall be leviable for conveying such animals over a ferry.

And the Commissioners or their lessees shall not be bound to allow any person or thing not specified above to cross a ferry or to pass a toll-gate without payment of the prescribed toll.

But the Commissioners at a meeting may exempt any other class of persons or things from payment of the said toll; and in granting a lease of any ferry or toll-bar may stipulate

that any Municipal servants and property and any other persons or things shall be allowed to pass without payment of the toll.

"Public or Municipal Officer."

See note to section 125. These two sections draw a distinction between Municipal *officers* and Municipal *servants* and menials such as mehters would be liable to pay tolls unless they had been specially exempted or were in charge of conservancy carts, etc. A contractor performing municipal work is liable for tolls for his servants and materials unless he is specially exempted and unless, in cases where leases were granted, a stipulation to the contrary was inserted in the lease.

The Indian Tolls (Amending) Act II of 1901 repeals all that related to military matters in this section. It also repeals so much of the section as related to any Government stores and so much of the proviso as related to any animals which are exempted under s. 3 of Act II of 1901.

Police-officers to assist.

*169. (160) In all cases of resistance to the person authorized to collect tolls, Police-officers shall assist when required, and for that purpose shall have the same powers as they have in the exercise of their ordinary Police duties.

Penalty for taking unauthorised tolls.

*170. (161) Whoever, being authorized under this Act to collect tolls, demands or takes any higher tolls than the tolls authorized under this Act, shall be liable to a fine not exceeding fifty rupees, and in default of payment to one month's imprisonment.

The imprisonment must be simple. By s. 67, Indian Penal Code, as amended by s. 3, Act VIII of 1882, where an offence is punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple. The present offence is punishable with fine only, as imprisonment can only be awarded in default of payment. By s. 4, Act V (B. C.) of 1867, the provision of ss. 63, 64, 65, 66, 67, 68, 69, and 70 of the Indian Penal Code apply to all fines imposed under any Act subsequently passed. Of those sections, ss. 64 and 67 have been modified by Act VIII of 1882.

Commissioners may be appointed to collect tolls in a navigable channel.

171. (162) If the Local Government has declared that the provisions of the Canals Act, 1864, or any other similar law for the time being in force are applicable to any navigable channel which passes through the limits of a Municipality, it may, with the consent of the Commissioners appoint the Commissioners to collect tolls, as provided in section eight of the said Act, until the Local Government shall otherwise direct; and the profits derivable therefrom or such part thereof as shall be agreed upon between the Local

Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

In such case the Commissioners shall exercise all the powers vested by such Act in the Collector.

Section 8 of the Canals Act [V (B. C.) of 1864] is as follows :—

"The Lieutenant-Governor of Bengal shall appoint such persons as he may think fit to collect tolls under this Act, and it shall be lawful for any person so appointed to farm out the collection of tolls to any other person with the sanction of the Government of Bengal, or to employ any other person in such collection. The person to whom the collection of tolls may be farmed out, or who may be employed in the collection of them, shall have power to collect, and be authorized to receive them in the like manner as any person appointed as aforesaid."

Local Government may order Commissioners to cease levying tolls.

172. (163) The Local Government may, at any time, order that the Commissioners or any person authorized by them, shall cease to levy any tolls under the last preceding section, and may at any time withdraw such order.

The provision for the payment of reasonable compensation by the Commissioners to any farmer who had entered into a contract to collect tolls, and who might have suffered loss in consequence of an order passed under this section, has been omitted. Probably, it was considered to be unnecessary, as the right to compensation would be obvious.

PART V.

This Part corresponds with Part VI of the former Act.

MUNICIPAL REGULATIONS WHICH SHALL BE GENERALLY IN FORCE IN ALL MUNICIPALITIES.

General.

Operation of this Part.

173. (177) The provisions of this Part shall be in force in every Municipality, unless and until the Local Government shall otherwise direct.

Local Government may order provisions of this Part to be not in force in any Municipality.

174. (178) The Local Government may, at any time, make an order directing that all or any of the said provisions shall not be in force in any Municipality, or in any part thereof; and the provisions mentioned in such order shall cease to be in force in such Municipality, or part thereof, from the date specified in such order.

The Local Government may, at any time, cancel or modify any order made under this section.

Procedure when owners or occupiers required to execute works by Commissioners.

175. (179) Whenever it is provided in this Part or in Part VI that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers, of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served as provided in sections three hundred and fifty-six and three hundred and fifty-seven, on every owner or occupier who is required to execute such work or to do such thing; but if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land, to execute such work or to do such thing within a specified time; and in such notification it shall not be necessary to name the owners or occupiers.

Every requisition as aforesaid shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition, or to prefer an objection against such requisition as provided in the next succeeding section, the Commissioners will enter upon the land and cause the required work to be executed, or the required thing to be done; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

"*Sections* 175 *to* 182 *do not apply in the case of any notice issued under any of the clauses enacted by Act I* (*B. C.*) *of* 1900, *the Darjeeling Municipal Act, or under any rule or bye-law made under any such clause* (*Act I* (*B. C.*) *of* 1900, *s.* 6)."

Owner.—See s. 6 (11). A 'Receiver' is not an owner. *Fink* v. *Calcutta Corporation* (1903), 30 Cal., 721.

Occupier.—See s. 85.

Expenses.—See ss. 212, 360, 184.

Person required to execute any work may prefer objection to the Commissioners.

*176. (180) Any person who is required by a requisition as aforesaid to execute any work or to do anything, may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notification

containing the requisition; or, if the time within which he is required to comply with the requisition be less than five days, then within such less time.

Except as provided in the next succeeding section, such objection shall be heard and disposed of by the Chairman or Vice-Chairman.

Such an objection under Schedule II, No. 1 (*a*), Act VII of 1870 requires a one-anna stamp, as it relates to conservancy and improvements.

No more than one petition of objection against an individual order is admissible and when once an order has been made absolute under s. 178 no subsequent petition should be permitted to stay its execution.

Procedure if person objecting alleges that work will cost more than Rs. 300.

*177. (181) If the objection shall allege that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and disposed of by the Commissioners at a meeting; unless the Chairman or Vice-Chairman shall certify that such cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman:

Provided that in any case in which the Chairman or Vice-Chairman shall have certified his opinion as aforesaid, and the objection shall in consequence thereof have been heard and disposed of by the Chairman or Vice-Chairman, the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required; whereupon such person shall be relieved of all further liability and obligation, in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work, or do such thing, and shall exercise all powers necessary therefor.

Chairman, &c., may make order after hearing objection.

*178. (182) The Chairman or Vice-Chairman, or the Commissioners at a meeting, as the case may be, shall, after hearing the objection and making any inquiry which they may deem necessary, record an order withdrawing, modifying, or making absolute the requisition against which the objection is preferred; and if such order does not withdraw the requisition it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.

179. (182) If the person making such objection be present at the Office of the Commissioners, the said order shall be explained to him orally; and if such order cannot be so explained, notice of such order shall be served as provided in section three hundred and fifty-six on the person making the objection; and such explanation of, or service of, the notice of the said order shall be deemed a requisition duly made under this Act to execute the work or do the thing required.

Order to be explained orally.

*180. (184) If the person or persons required to execute the work or to do the thing fail, within the time specified in any requisition as aforesaid, to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners or any person authorized by them in that behalf may, after giving forty-eight hours' notice of their intention by a notification to be posted up on or near the spot, enter upon the land and perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

Power of Commissioners on failure of person to execute work.

Provided the expenditure is reasonable and is proved to have been actually made by the Commissioners, a Civil Court will not interfere. Within reasonable limits the Municipality has discretion as to the manner in which the work should be carried out. The fact that the rates charged by the Municipality are higher than those which could be obtained by other persons will not of itself constitute a ground for interference on the part of a Civil Court.—*Jogesh Chunder Dutt, In re*, 16 W. R., C. R., 285; also unreported case quoted in note to s. 209.

181. (185) Whenever any expenses incurred by the Commissioners are to be paid by the owners of any land as provided in the last preceding section, the Commissioners may, if there be more than one owner, apportion the said expenses among such of the owners as are known in such manner as to the Commissioners may seem fit.

Commissioners may apportion expenses among owners.

And whenever any such expenses are to be paid by the occupiers of any land, as provided in the last preceding section the Commissioners may, if there be more than one occupier,

apportion the said expenses among such of the occupiers as are known in such manner as to the Commissioners may seem fit.

Apportionment among owners and occupiers.

182. (186) Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land, as provided in section one hundred and eighty, the Commissioners may apportion the said expenses among the said owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit.

Time for complying with requisition or order, and power to enforce requisition or order in default of person directed.

"182*A*. (1) *When the Commissioners, by written notice, make any requisition or order under any of the clauses enacted by the Darjeeling Municipal Act*, 1900, *or under any rule or bye-law made under any such clause, a reasonable period shall be prescribed in such notice for carrying such requisition or order into effect.*

(2) *If any such requisition or order or any portion thereof is not complied with within the period so prescribed or any further period allowed by them, the Commissioners may take such measures, or cause such work to be executed or such things to be done, as may, in their opinion, be necessary for giving due effect to such requisition or order ; and the expenses thereof shall be paid by the person or by any one of the persons to whom such requisition or order was addressed.*

(3) *The Commissioners may take any measure, execute any work, or cause anything to be done under this section whether or not the person who has failed to comply with the requisition or order is liable to punishment or has been prosecuted or sentenced to any punishment for such failure.*

Right to show cause against certain requisitions or orders.

"182*B*. (1) *Any person on whom a notice under section* 210*B*, *section* 210*C*, *section* 244*V or section* 248*A is served may, at any time before the expiration of the period or further period prescribed under section* 182*A for carrying into effect the requisition or order made by the notice, appear before the Commissioners and show cause why such requisition or order should not be complied with.*

(2) *If cause is shown as aforesaid by any such person, the Commissioners shall, after hearing him, either cancel the notice*

or confirm the same, subject to such modifications (if any) as they may think fit."

Occupier may recover cost of works executed at his expense from owner.

183. (188) Whenever any works or any alterations and improvements, of which the Commissioners are authorized by this Part or Part VI to require the execution, are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners shall certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any Court of competent jurisdiction.

Liability to pay expenses or fees may be contested in Civil Court.

184. (189) Any owner or occupier of land may contest his liability to pay any expenses or fees under this Part or Part VI, or may contest the amount which he has been called upon to pay, in a Civil Court of competent jurisdiction :

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount in the manner provided by section three hundred and sixty.

The manner provided in s. 360 is "the manner provided in ss. 120 to 129, both inclusive," that is to say, by the presentation, in the first instance, of a bill, to be followed, if necessary, by a notice of demand in the form marked (A) in the fourth Schedule, and finally by distress and sale of movable property. Section 129 affords the alternative remedy of bringing a suit in a Civil Court.

Damages and compensation how to be determined.

185. (190) Where any damages or compensation, other than compensation payable under section thirty-five, are by this Act directed to be paid by the Commissioners, the amount, and, if necessary, the apportionment of the same, shall, in case of dispute, be ascertained and determined by a Civil Court of competent jurisdiction.

Section 35 refers to compensation for land taken up under the Land Acquisition Act.

Of Sewage, Offensive Matter, Rubbish, Privies, and Drains.

Establishments for removal of sewage, offensive matter, and rubbish.

186. (193) The Commissioners shall provide all establishments, cattle, carts, and implements required "by them" for the removal of sewage, offensive matter and rubbish.

"Sewage" is defined to mean "nightsoil and other contents of privies, drains and cess-pools," s. 6, clause (17).

"Offensive matter" means dirt, dung, putrid or putrifying substances, and filth of any kind not included in the term "sewage:" s. 6, clause (10).

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

Hours and mode of removal of offensive matter.

187. (194) The Commissioners at a meeting may, from time to time, by an order published as prescribed in section three hundred and fifty-four, appoint the hours within which it shall be lawful to remove "sewage" and offensive matter and the manner in which the same shall be removed, and may provide places convenient for the deposit thereof, and may require the occupiers of houses to cause the same to be deposited daily, or at other stated intervals, in such places, and may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so in accordance with this Act.

See ss. 217 and 350 (c).

Mehters must give one month's notice if they leave the service of the Commissioners.

188. (195) Whenever such order shall have been published, no mehter or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.

Any mehter or other such person who, after the said publication, withdraws from his duties without giving such notice as aforesaid, shall be liable to rigorous imprisonment for a term not exceeding one month, and shall forfeit all salary which may be due to him.

Commissioners may appoint hours for placing rubbish on public road.

189. (196) The Commissioners at a meeting may, from time to time, by an order published as prescribed in section three hundred and fifty-four, appoint the hours within which only every occupier of any house or land may place rubbish on the public road adjacent to his house or land in order that such rubbish may be removed by the Commissioners: and the Commissioners may charge such fees as they may think fit in respect of the removal of such rubbish, with the consent of the occupier of any house or land, from such house or land or in respect of the removal from such public road of any rubbish which has accumulated in the exercise of a trade or business.

The following extracts refer to this section :—

"The Hon'ble Mr. Reynolds objected to the amendment. He thought there was some misapprehension of the object and force of the section. The three cases for which the section provided were separate—*First*, there was the ordinary case in which house rubbish was placed in a convenient part of the road, and then removed in the ordinary duty of sanitation; *then* there was the proviso for charging fees for the removal of trade rubbish: the *third* case was that in which rubbish was removed for the convenience of occupiers, not from the road, but from private premises. The word 'consent' did not apply to the charging of fees, but to the removal of the rubbish."

"The Hon'ble Mr. Dampier asked if the meaning was that the Commissioners and the owners of premises might enter into voluntary agreements for the removal of rubbish from the premises themselves, what was the use of stating in the law that they might do so?"

"The Hon'ble Advocate-General explained that the section empowered the Municipality to enter into this particular kind of contract." *P. C., February* 22, 1884.

Non-compliance with an order issued under this section is punishable under s. 216, clause (1).

"Rubbish" is defined in s. 6, clause (14).

Drains, privies, &c., under control of Commissioners.

190. (199) All drains, privies, and cess-pools shall be subject to the inspection and control of the Commissioners.

The term "drain" is not defined in the Act. In the Public Health Act, 1875, it is defined as follows :—

"'Drain' means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cess-pool or other like receptacle for drainage or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed."

The term, as used in the present Act, has evidently a wider meaning and would include drains for carrying off surface water, at the sides of road or otherwise.

See s. 270. Under the Municipal law no private person can claim a right to foul an ordinary drain by discharging into it what it was not intended to carry off. An owner of a shellac factory can be restrained from discharging refuse and offensive liquid which interferes with the occupation of property and causes special injury. When a person knows that the liquid must create a nuisance from the condition of the drain and the nature of the refuse, he is responsible and cannot shift the responsibility on the Municipality. In *Galstaun* v. *Doonia Lal Seal* (1905), 30 Cal., 697, it was held that an injunction for the permanent stoppage of the nuisance was the only effectual remedy in such a case.

On the other hand a certain responsibility rests with the Municipality. Where drainage water passing along a certain drainage cut, owing to some defect, instead of flowing along the assigned channel, flowed across the road into the plaintiff's field and caused damage to the plaintiff, and the damage was found to be due not to the authorized drainage work, but to the neglect of the drainage channel which the Municipality was bound to repair, it was held that the Municipality is liable in damages. *Dhulia Town Municipality* v. *Patel Dasaibhai*, 38 Bom., 116. The exemption from liability of local bodies on the ground of misfeasance is confined to neglect of highways and does not apply to drainage work made for the convenience of the local bodies which they are bound to maintain in a proper state of repair so that they shall not be a nuisance to neighbouring owners. *Borough of Bathhurst* v. *Macpherson* (1879), 4 App. Cas., 256.

Inspection of drains, privies, and cess-pools.

*191. (200) The Commissioners, or any officer authorized by them in that behalf, may inspect all privies, drains and cess-pools at any time between sunrise and sunset, after six hours' notice in writing to the occupier of any premises in which such privies, drains or cess-pools are situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of preventing or removing any nuisance arising from such privies, drains or cess-pools; and the expenses thereby incurred shall be paid by the owner or occupier of such premises.

In Darjeeling the words "without giving notice" have been substituted for the words "after six hours' notice in writing" in s. 191. *See* the Darjeeling Municipal Act, 1900, s. 8.

Commissioners may direct the use of disinfectants or deodorants for such drains, privies, &c., as are in a noxious state.

192. Whenever the Commissioners are satisfied that the existence of such privy, drain, or cess-pool is attended with risk of disease to the inhabitants of the neighbourhood, they may direct the use of such disinfectants or deodorants as they shall specify in such privy, drain, or cess-pool, in such quantities or for such time as they shall think fit. The Commissioners shall, if necessary, themselves supply such disinfectants or deodorants for such use at cost price, and the expense

thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of such privy, drain, or cess-pool; or the Commissioners may, if they think fit, order that such expense shall be paid from the Municipal Fund.

For Disinfectants or *deodorants, see Appendix, post.*

Common privies.

*193. (201) The Commissioners may provide and maintain, in sufficient numbers and in proper situations, common privies and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed.

This section corresponds with s. 39 of the Public Health Act. It has been more than once held that the latter section does not preclude a Court from granting an injunction against an urban authority when the situation of a public urinal would render it a nuisance.—*Vernon* v. *Vestry of St. James' Westminster*, 42 L. J. (N. S.), 82.

Licensing of public necessaries.

194. (202) The Commissioners may license such necessaries for public accommodation as they from time to time may think proper.

The penal provision at the end of the former section has been omitted, but is included in s. 217, clause (2). Under s. 202, the Commissioners had the power of withdrawing the license. By s. 278 the Magistrate, before whom the licensee is convicted, has the power of suspending the license for two months, and on a subsequent conviction the Commissioners may cancel it altogether. It must be remembered, however, that s. 278 being part of Part VI, is only in force in Municipalities to which it has been expressly extended.

Power to require owners to clear noxious vegetation and to improve bad drainage.

195. (204) Whenever any land, being private property, or within any private enclosure, appears to the Commissioners, by reason of thick or noxious vegetation or jungle, or inequalities of surface, to afford facilities for the commission of a nuisance, or by want of drainage to be in a state injurious to health, or offensive to the neighbourhood, the Commissioners may require the owners or occupiers, or the owners and occupiers of such land, within fifteen days, to clear and remove such vegetation, or level such surface or drain such land:

Provided that if, for the purpose of effecting any drainage under this section, it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

Non-compliance with a requisition issued under this section is an offence punishable under s. 219. In default of compliance, the Commissioners can carry out the work themselves under s. 180, and recover the costs from the person to whom the requisition was addressed.

In *Browne* v. *Umesh Chunder Roy* (7 W. R., C. R., 213) it was held that if the Commissioners have cleared away jungle, upon default after notice on the part of the owner or occupier, they are entitled to recover the expenses. They were not bound to visit the spot personally or hear evidence in order to satisfy themselves, in the first instance, that the jungle should be removed. They were justified in acting on the reports of their subordinates.

The wording of the section is peculiar. If by reason of thick or *noxious* vegetation or jungle, the land appears to afford facilities for the commission of a nuisance, the Commissioners may require, etc. There are, therefore, two conditions precedent necessary for the interference of the Commissioners: (1) the land must be covered by thick or noxious vegetation, *and* (2) such vegetation must afford facilities for the commission of a nuisance. Now, if the vegetation is *noxious* by which term noxious to health appears to be meant, it constitutes a nuisance without the other condition, and there seems to be no reason why the Commissioners should not have the power to order its removal. Under s. 73 of Act III of 1864, they had such power without the second condition referred to.

196. (206) All sewage, rubbish, and offensive matter collected by the Commissioners from roads, privies, sewers, cess-pools, and other places shall be the property of the Commissioners, who shall have power to sell or otherwise dispose of the same; and the money arising from the sale thereof shall be carried to the credit of the Municipal Fund.

All rubbish collected to be the property of Municipal Commissioners.

"Sewage" is defined in s. 6, clause (11), to mean nightsoil and other contents of privies, drains, and cess-pools. "Rubbish" means broken brick, mortar, broken glass, kitchen or stable refuse, or refuse of any kind whatsoever not included in the term "offensive matter:" s. 6 clause (14).

The word "sewer" comes from the word "sew," *i.e.*, to drain, and has a much more extended signification, embracing works on the largest scale such as draining the fens of Lincolnshire by means of canals. In the common sense of the term it means a large and generally, though not always, underground passage for fluid and feculent matter from a house or houses to some other locality; but it does not comprise a cess-pool for the sake of retaining the sewage, whether as a simple deposit or to be converted into manure or other useful purpose.—*Sutton* v. *Mayor of Norwich*, 27 L. J. Ch., 742.

*197. (207) All existing public sewers, drains, and other conservancy works shall be under the direction and control of the Commissioners, who shall have power to construct any further works of that nature which they may consider necessary.

Sewers, drains, &c., under control of the Commissioners.

In a suit for alleged damage done to the plaintiff's premises by excavations for drainage purposes, which the Justices were authorized

to make by Act VI of 1863 (B. C.), it being shewn that the Justices had entrusted the execution of the work to skilled and competent contractors —*Held*, the Justices were not liable.—*Ullman and others* v. *The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

An action may be maintained against a local authority for not keeping a sewer properly cleansed, whereby it becomes choked up, and the overflow of foul water *runs* into private premises.—*Meek* v. *Whitechapel*, 2 F. & F., 144.

Construct further works.—This section should be read with ss. 69 (i) and 201.

"Maintenance."—The Municipality is responsible for maintenance. *See* s. 69 (1). If works are not maintained in proper condition the Commissioners are liable for damages. *See* note to s. 190.

Of Bathing and Washing Places and Tanks.

All public streams, &c., to be under direction and control of the Commissioners.

*198. (208) All streams, channels, water-courses, tanks, reservoirs, springs, and wells, not being private property, shall, for the purposes of this Act, be under the direction and control of the Commissioners.

Commissioners may make provision for drinking water, bathing places, &c.

199. (209) The Commissioners may, by order published at such places as they may think fit, set apart convenient "wells," tanks, parts of rivers, streams, or channels, not being private property, for the supply of water for drinking and for culinary purposes and may prohibit therein all bathing, washing of clothes and animals, or other acts calculated to pollute the water set apart for the purposes aforesaid;

and may similarly set apart a sufficient number of the same for the purpose of bathing;

and a sufficient number for washing animals and clothes or for any other purpose connected with the health, cleanliness or comfort of the inhabitants.

"The Commissioners may, by an order published at such places as they may think fit, prohibit in the private portion of any stream or channel used as a part of the public water-supply, bathing, washing of clothes or animals or any act likely to pollute the water in the public portion of such stream or channel."

Disobedience to an order issued under this section is punishable under s. 217, clause (4).

No. 443-T.—M., dated Darjeeling, the 18th June 1892.

"I am directed to acknowledge the receipt of your letter No. 1049-J., dated 9th May 1892, submitting for orders a copy of a letter from the Magistrate of Backergunge, and of its enclosure from the Chairman, Barisal Municipality, in which the question is raised whether it is the duty of the Police or of the Municipality to guard from pollution tanks specially reserved for drinking purposes. It appears that under the orders of the Magistrate a special Police guard was placed on two such reserved tanks in the Barisal Municipality; but the Inspector-General of Police having objected to this arrangement, the Chairman submits the question for an authoritative decision of Government."

2. "In reply, I am directed to say that the law on the subject appears to be correctly stated in paragraph 3 of your letter. By s. 198 of Bengal Act III of 1884, all streams, tanks, &c. (within Municipal limits), not being private property, are placed for the purposes of the Act under the direction and control of the Commissioners, who are further empowered, under s. 199, to 'set apart convenient tanks, &c., for the supply of water for drinking and for culinary purposes,' any disobedience of an order passed under s. 199 being made punishable with fine under s. 217 (4). It is, however, obvious that the duty of placing a special guard upon every reserved tank cannot be imposed upon the town police, their present strength being, as a rule, only just sufficient for the performance of beat duty by night and such day duty as is absolutely necessary for the watch and ward of the town. In these circumstances, I am directed to say that although under s. 34 of Act V of 1865 and s. 365 of the Bengal Municipal Act, it is the duty of the Police to arrest persons polluting reserved tanks in their presence, the cost of maintaining a special guard over the tanks for the prevention of such offences must be a charge on the Municipality, and cannot be accepted by the State."

A Municipality excavated a tank. There was heavy rain and a quantity of plaintiff's goods stored in a building on the bank of the tank was damaged. It was held that the *onus* of proving negligence was on the plaintiff, and if it was not proved the suit was not maintainable. The incident was due in this case to *vis major* (excessive rain). *Municipality of Hubli* v. *L. E. Kalli* (1911), 35 Bom., 492.

Contributions made by the Commissioners towards the re-excavation, &c., of a private tank or well shall if the amount exceeds Rs. 100 be subject to confirmation by the District Magistrate and shall in every case be subject to the condition that the water shall be available for use by the public for domestic purposes and for watering cattle. Cir. No. 30-M., dated 7th November 1905.

Municipalities might with advantage bear in mind Cir. No. 278, dated 12th May 1896, dealing with the advantages and disadvantages of the various kinds of wells. C. & O. Vol. III, p. 1087. *See* also Dr. Warden's report circulated with Cir. No. 8-L., 6, dated 6th January 1890.

Prohibition by Commissioners of use of unwholesome water.

"199A. If the Chief Civil Medical Officer of the district certifies that the water in any well, tank, or other place situated within a Municipality is likely, if used for drinking, to engender or cause the spread of any dangerous disease, the Commissioners may, by public

notice, prohibit the removal or use of such water for drinking during a period to be specified in such order."

Disobedience of such a prohibition is punishable under s. 217, clause (4).

Power to require unwholesome tanks or private premises to be cleansed or drained.

"200. (1) The Commissioners may require the owner or occupier of any land within eight days, or such longer period as the Commissioners may fix, either to re-excavate or fill up with suitable material, at his option, or to cleanse any well, water-course, private tank or pool therein, and to drain off and remove any waste or stagnant water which may appear to be injurious to health or offensive to the neighbourhood:

"Provided that if, for the purpose of effecting any drainage under this section, it shall be necessary to acquire any land not being the property of the person who is required to drain his land or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

Commissioners may retain possession of tank or pool until expenses for re-excavation, &c., are realized.

"(2) If under section one hundred and eighty the commissioners execute the work of such re-excavation or filling up with suitable material, they may retain possession of the tank or pool, or the site of such tank or pool, and turn the same to profitable account until the expenses thereby incurred shall have been realized."

Neglect to comply with a requisition issued under this section is an offence punishable under s. 219. The Commissioners may also proceed under s. 180, and carry out the work themselves, recovering the costs from the person to whom the requisition was addressed. The provisions of ss. 175—185 apply to any order issued under this section.

Where a Municipality cleared out and re-excavated a tank, after default on the part of an owner to comply with a notice to carry out such work. *Held*, that the Municipality had a discretion as to how the work should be carried out, and that even though the rates charged by the Municipality were higher than those which could be obtained by other persons, there was no ground for the interference of the High Court.—*In re Jugesh Chunder Dutt*, 16 W. R. C. R., 285. A similar decision in an unreported case is given in the note to s. 209.

The discretion as to the necessity of calling upon the owner either to re-excavate, or fill up or cleanse any tank under this section appears to be conferred on the Commissioners, and the ruling in the *Municipal Commissioners of Madras* v. *Pathasaradi and others* (11 Mad., 391), appears applicable. In that case it was held that in a suit by the Municipal Commissioners to recover from the defendants the cost of draining and cleansing a tank, it was not open to the defendants to prove that the tank was not likely to prove injurious to the health of the neighbourhood.

Of Obstructions and Encroachments on Roads.

Power to close a road or part of a road for repairs, or other public purpose.

201. (213) The Commissioners may close temporarily any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any sewer, drain, culvert, or bridge, or for any other public purpose:

Provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.

Whenever, owing to such repairs or constructions, or from any other cause, any road or part of a road shall be in a state which is dangerous to passengers, the Commissioners shall cause sufficient barriers or fences to be erected for the security of life and property, and shall cause such barriers or fences to be sufficiently lighted from sunset to sunrise.

It will be observed that the section merely empowers the Commissioners *temporarily* to close a road for certain specified purposes. It gives them no power permanently to close or divert a public road. Such an act was held by the High Court to be illegal in *Empress on the prosecution of Jadunath Ghose* v. *Brojonath Dey*, 2 Cal., 425.

The facts of the case quoted were briefly as follows:—Within the Municipality of Serampore, there was a lane through which the public had a right of way, and which ran through the garden of the defendant. After some litigation the defendant applied to the Municipal Commissioners for permission to close the lane on such conditions as might appear to them to be reasonable. The Vice-Chairman passed an order on the petition, granting permission for the closing of the lane "on condition that the applicant make at his own expense a road ten feet wide round the south and north-west side of his garden" so as to afford through communication.

In deciding that this order was one which neither the Vice-Chairman nor the Commissioners had power to make, Markby, J., remarked, that the general sections of the Act (III of 1864) which vested public highways in the Commissioners, and which empowered them to hold properties movable and immovable, and to dispose of the same, must be considered to be controlled by the specific provisions which define their powers over such properties. For, if the mere fact of property being vested in the Commissioners gave them full power of dealing with it according to their discretion, the sections which define their power over such property would be meaningless.

"Road" is defined in s. 6, clause (13). From the definition there given, it is obvious that the present section does not apply to private roads over which there is no public right of way.

The use of barbed wire fencing alongside public roads and paths, and in enclosing public gardens being considered dangerous to the public, Government has directed that it be wholly discontinued on Government property, and has requested that Municipalities may be informed that its use is disapproved of by Government and should be discouraged as much as possible. (Cir. No. 3 T.—M., dated 21st October 1899).

"Barriers or Fences"—If an accident occurs owing to neglect to fence an excavation the Municipality will be liable for damages. *Corporation of Calcutta* v. *Anderson* (1884), 10 Cal., 445.

(The following special provisions for Darjeeling follow under section 10, Act I of 1900).

Absolute closing of Public road

"201A. (1) *If it appears to the Commissioners that any public road or part thereof—*

(a) threatens the stability or security of any hillside or bank or any immovable property thereon, or

(b) in consequence of its condition or its situation with reference to any adjacent hillside or bank, cannot be efficiently maintained or repaired except at a cost, which, in their opinion, is unreasonable the Commissioners may, by public notice, declare such road or part to be absolutely closed :

Provided that the Commissioners shall, before declaring any public road or part thereof to be closed, be bound to provide other reasonably sufficient means of access to holdings adjacent to such road or part if no such means of access already exist.

(2) *From the date of any notice published under sub-section* (1) *in respect of any public road or part thereof, the Commissioners shall not be bound to maintain or repair such road or part ; and the site thereof may be disposed of or otherwise dealt with in any manner the Commissioners may think fit :*

Provided that, if the Commissioners determine to sell or to let on lease or otherwise transfer any part of such site which is adjacent to any private land or building, the owner of such land or building shall have a prior right to buy or take on lease such part at a reasonable rate.

Control over private roads and bridges

"201B. *All private roads and bridges shall be subject to the inspection and control of the Commissioners.*

Control over construction or alteration of private road or bridge.

"201C. (1) *Every person who intends to construct, re-construct or alter a private road or bridge shall send to the Commissioners an application for permission to execute the work.*

(2) *Every such application shall be accompanied by the documents or particulars prescribed in this behalf in Schedule A.*

(3) *Every person applying for permission to construct, re-construct or alter a private road must further mark out on the ground the alignment of the road for inspection by the Commissioners or an officer authorised by them in that behalf.*

(4) *The permission referred to in sub-section* (1) *may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in the said Schedule A.*

(5) *No work referred to in sub-section*(1) *shall be commenced without the written permission of the Commissioners.*

Re-construction, etc., of private road or bridge.

"201D. *If it appears to the Commissioners that any private road or bridge is so situated or is in such a condition as to threaten the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner—*

(*a*) *to re-construct, re-grade, divert, alter or repair such road or bridge or*

(*b*) *to make a revetment or retaining wall on either side or both sides of such road, or*

(*c*) *to take such other order with such road or bridge as may be specified in the notice.*

Provision or enlargement of waterway on private road.

"201*E*. *If it appears to the Commissioners that waterway ought to be provided on any private road, or that the waterway provided on any private road ought to be enlarged, they may, by written notice, require the owner of the road—*

(*a*) *to provide and maintain waterway, or*

(*b*) *to enlarge the existing waterway, as the case may require.*

Rules as to construction, etc., of private roads and bridges

"201*F*. *Whenever any private road or bridge is to be constructed, reconstructed, re-graded, diverted, altered or repaired, and whenever waterway for any private road is to be provided or enlarged, in pursuance of s.* 201*C*, *s.* 201*D or s.* 201*E*, *the work shall be executed in accordance with the rules contained in Schedule A, so far as they are applicable to the particular case.*

Power to close private road.

"201*G*. *If it appears to the Commissioners that the existence of any private road threatens the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner to close the road and to take such order with the site thereof as they may consider necessary for the stability or security of such hillside, bank or property and as may be prescribed in the notice :*

Provided that no notice shall be issued under this section in respect of any private road which constitutes the only approach to a building, unless, in the opinion of the Commissioners, another road affording a suitable approach to the building can be constructed at reasonable expense."

Removal of future obstructions or encroachments in or on road.

202. (215) The Commissioners may issue a notice requiring any person to remove any wall which he may have built or any fence, rail, post or other obstruction or encroachment which he may have erected in or on any road or open drain, sewer, or aqueduct, after the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the Municipality ; or in case none of the said Acts was in force in the Municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto ; and if such person shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed ; and thereupon the Commissioners may remove any such obstruction or encroachment ;

and the expenses thereby incurred shall be paid by the person who erected the same.

No person shall be entitled to compensation in respect of the removal of any wall, fence, rail, post, or other obstruction under this section.

A notice was issued under s. 215, Bengal Act V of 1876, requiring *A* to remove an alleged obstruction. The requisition was not complied with, and *A* was prosecuted for non-compliance therewith under s. 216 before a Bench of Honorary Magistrates. *Held*, that the Court had power to enquire whether the alleged obstruction was in point of fact an obstruction or not.—*Municipal Committee of Dacca* v. *Somcer*, 9 Cal., 38.

Non-compliance with a requisition issued under this section is an offence punishable under s. 218.

The Magistrate acting under this section, and the Commissioners carrying out his orders, are protected by Act XVIII of 1850. See s. 205 of the present Act.

Encroaching upon a road, drain, sewer or aequeduct is an offence punishable under s. 217, clause (5).

The provisions of ss. 175—184 apply to any order issued under this section.

See *Dahore Town Municipality* v. *Navdi Anupram Haribhai*, 38 Bom., 15.

In a suit brought against a Municipality to restrain them from obstructing the plaintiff in reinstating a stone which was imbedded in his *otla* in its original position, the lower Court found that the Municipality had no right to interfere as there had been adverse possession for 12 years of the portion of the street occupied by the stone. *Held* that the Municipality was the creature of the statute with duties *inter alia* to preserve the passage along public streets. It mattered not for the Municipality whether the encroachment had been in existence for 12 years or more.

Procedure when person who erected obstruction cannot be found.

203. (217) If the person who built or erected the said wall, fence, rail, post or other obstruction or encroachment is not known, or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said wall, fence, rail, post, or other obstruction or encroachment, requiring any person interested in the same to remove it, and it shall not be necessary to name any person in such requisition; and if the said wall, fence, rail, post, or other obstruction or encroachment be not removed in compliance with the requisition contained in such notice within eight days of the posting up of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed; and thereupon the Commissioners may remove any such obstruction or encroachment, and may recover the cost of such removal by sale of the materials so removed.

The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners, or in a Court of competent jurisdiction.

The Magistrate acting under this section, and the Commissioners carrying out his orders, are, under s. 205, protected by Act XVIII of 1850.

Under the corresponding section, the surplus sale-proceeds, if unclaimed, could be credited to the Fund after the lapse of one year.

In an unreported case (*Stalkartt* v. *Chairman of the Howrah Municipality*) the High Court granted a rule on the ground that the Magistrate's order for removal should be a judicial one, *i.e.*, passed after enquiry and notice to the person concerned—but eventually refused to interfere with the order on hearing it had already been carried out.

Projections from houses erected in future to be removed.

204. (218) The Commissioners may give notice in writing to the owner or occupier of any house requiring him to remove or alter any projection, encroachment or obstruction erected or placed against or in front of such house which may have been so erected or placed after the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the Municipality; or in case none of the said Acts was in force in the Municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto, if the same overhangs the road, or juts into, or in any way projects or encroaches upon, or is an obstruction to the safe and convenient passage along any road;

or obstructs, or projects, or encroaches into or upon any aqueduct, drain, or sewer in such road.

And if such owner or occupier shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such projection, encroachment, or obstruction be removed or altered, and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction, and the expenses thereby incurred shall be paid by the owner or occupier so making default.

No person shall be entitled to compensation in respect of the removal of any projection, obstruction, or encroachment under this section.

Non-compliance with a requisition issued under this section is punishable under s. 218.

The Magistrate and the Commissioners are protected by the next section.

The question has been raised under the corresponding section (208) of the Calcutta Act (B. C. Act IV of 1876), as to whether the taking down and and rebuilding of an old projection could be held to be the erection of a new projection. On a reference to the Advocate-General it was held that if the old projection had been taken down with the obvious object of rebuilding it, and another of the same dimensions put up without undue delay, it could not be considered to be a new projection.

[This view has since been confirmed by the High Court Ruling in *Eshan Chandra Mitra* v. *Banka Behary Pal*, 25 Cal., 160.]

An application to a Magistrate by a Municipal officer requires no stamp-duty—Act VII of 1870, s. 19, clause xviii.

The provisions of ss. 175—184 apply to any order issued under this section. *Held* that the eaves of certain buildings which projected into a public road constituted an obstruction within the meaning of s. 195 of Acts III of 1872 and IV of 1878. The question to be decided was not whether there was a practical inconvenience to public traffic on the street. When an Act gives power to a Municipality or Corporation for the public benefit, a more liberal construction should be given to it than when powers are to be exercised for private gain or other advantage.—*Ollivant* v. *Rahimtula Nur Mahomed*, 12 Bom., 474.

Effect of order made under sections 202, 203, 204, 233.

205. (220) Every order made by the Magistrate under sections two hundred and two, two hundred and three, two hundred and four, or two hundred and thirty-three shall be deemed to be an order made by him in the discharge of his judicial duty; and the Commissioners shall be deemed to be persons bound to execute such orders of a Magistrate within the meaning of Act XVIII of 1850 (*for the protection of Judicial Officers*).

Act XVIII of 1850 contains only one section; the whole Act is given below:

"*An Act for the Protection of Judicial Officers.*"

"For the greater protection of Magistrates and others acting judicially, it is enacted as follows:

"1. No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of, and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same."

As "the Magistrate" is no longer necessarily an *ex-officio* Commissioner, this section appears now to be hardly necessary. If necessary,

it is not clear why the same protection is not extended to "the Magistrate" when acting under s. 345.

Houses projecting beyond line of road or drain when taken down to be set back.

206. (221) Whenever any house, part of which projects beyond the regular line of a road, or drain, or beyond the front of the house on either side thereof, shall be burnt down or otherwise destroyed, or shall be taken down in order to be rebuilt or repaired, the Commissioners may require the same to be set back to, or beyond, the line of the road, or drain, or the line of the adjoining house, and may pay reasonable compensation to the owner of such house if any damage shall be thereby sustained.

Disobedience to a requisition issued under this section is punishable under s. 218. The provisions of ss. 175—185 apply to any order issued under this section.

In *Dholka Municipality* v. *Patel Desabhai* (38 Bom., p. 116), it was held that under the Bombay Act the Municipality could not compel the owner to give a set back with reference to a street which might come into existence in the future. The Municipality cannot say "at some future time the street will be widened by 10 feet.; therefore set back your building 10 feet." *See* also *Queen-Empress* v. *Veerammal.* 16 Mad., 230. So under this section it would seem that the line of the set back must be already determined by the road, drain, or the line of the adjoining house.

See 10 Cal. W. N., 1004 (1906).

Fallen house, &c., obstructing road or drain, to be removed by owner.

207. Whenever any private house, wall, or other erection, or any tree, shall fall down and obstruct any public drain or encumber any public highway, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners shall seem fit.

Disobedience to a requisition issued under this section is punishable by s. 218. The provisions of s. 175—184 apply.

In Darjeeling this section is replaced by the following (s. 11, Act I of 1900).

"207. (1) *Whenever any building, wall, revetment or other erection or any part thereof, or any stone, tree, soil or debris from private premises, falls down and obstructs any public road or drain, the Commissioners may cause the obstruction to be removed.*

Removal of materials falling upon or into public road or drain.

(2) *All stone and trees so removed shall be separately heaped near the spot, and a notice shall be affixed in the vicinity calling upon the persons from whose premises the stone or trees or any of the same has or have fallen to take away the same.*

(3) *If, in the course of removing any obstruction under sub-section* (1) *it be found necessary to break up or blast any stone or to cut up any tree, the*

work shall be executed by the Commissioners; and, if any persons desire, in pursuance of a notice affixed under sub-section (2), *to take away any stone or tree which has been so dealt with, they must first pay to the Commissioners the expenses incurred by them under this sub-section.*

(4) *If such stone or trees be not taken away by the said persons within seventy-two hours after the affixing of the said notice, or within any further period allowed by the Commissioners, the same shall become the property of the Commissioners.*

Removal of *débris* falling upon or into private road or drain.

"207*A*. *If it appears to the Commissioners that any* débris *which has fallen upon or into any private road or drain ought to be removed, they may*—

(a) *cause such* débris *to be removed, at the expense of the owner of the road or drain, or*

(b) *by written notice require the said owner to remove the* débris."

See note to s. 201.

Commissioners may require landholders to trim hedges, &c.

"208. The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges thereon bordering on any road, and to cut and trim any trees thereon overhanging any road or tank or any well used for drinking purposes, or obstructing any road or causing or likely to cause damage to any road or any property of the Commissioners or likely to cause damage to any person using any road, or fouling or likely to foul the water of any well or tank."

Disobedience to such an order is punishable under s. 218. The provisions of ss. 175—184 apply to any order issued under this section.

In Darjeeling this section has been repealed by the Darjeeling Municipal Act 1900, s. 23.

Of General Conservancy and Improvement.

Wells, tanks, &c., to be secured.

209. (224) If any well, tank, or other excavation, whether on public or private ground, be, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith, if it appears to them to be necessary, cause a temporary hoard or fence to be put up for the protection of passengers, and may require the owners or occupiers, or the owners and occupiers of the land on which such tank, well or other excavation is situated, within seven days, properly to secure or protect such well, tank or other excavation.

"Within seven days" has been substituted for "forthwith."

Section 219 provides a penalty for the neglect of an order passed under this section, and s. 180 empowers the Commissioners, in the case of such neglect, to execute the work themselves, the expenses being paid by the owners or occupiers. The provisions of ss. 175—184 apply to any such order.

The Municipal Commissioners of Howrah enclosed a tank, alleged to be dangerous to passengers, under s. 76, Act III of 1864, and sued the owner for the costs incurred, amounting to Rs. 117-10. The Court of first instance awarded Rs. 30 only, on the ground that the Commissioners had put up a very expensive enclosure. On appeal to the High Court, a decree was granted for the full amount claimed, on the ground that the Commissioners must be authorised to execute the necessary repairs or protection in a sufficient and durable manner, and that provided the expense they undergo is made out and does not exceed the bounds of reason, they are entitled to recover.—*Unreported case.*

See note to s. 201.

Fencing of buildings in a dangerous state.

"210. If any building, or portion of a building, or structure affixed to a building, be deemed by the Commissioners to be in a ruinous state and dangerous to the inmates, if any, of such building or of any other building or to passers-by, or if any wall or other structure be deemed by the Commissioners to be in a ruinous state and dangerous to passers-by or to any other persons, they shall forthwith, if it appears to them necessary, cause a proper hoard or fence to be put up for the protection of passers-by or of other persons who may be endangered, and may require the owner or occupier of the building or the owner or occupier of the land to which such building, wall or other structure is affixed, within seven days, to take down, secure or repair such building, wall or other structure, as the case may require."

This section is based on s. 75 of the Towns Improvement Clauses Act (10 & 11 Vict., cap. 4). The former section while professing to deal with buildings "in any way dangerous" only provided a remedy in cases where the state of the building caused danger to the passers-by. Section 242 confers on the Commissioners the power of prohibiting the letting of an unstable house.

The provisions of ss. 175—184 apply to any order issued under this section. Disobedience is punishable under s. 219.

See note to s. 201.

Commissioners may require owners to pull down ruins.

"210A. Whenever it appears to the Commissioners that any building, by reason of being unsecured and untenanted, or by reason of having fallen into ruins, affords facilities for the commission of a nuisance or for the harbouring of snakes or other noxious animals, the Commissioners may require the owner of such building or the owner of the land to which such building is attached, to properly secure the same, or to remove or level such ruins as the case may require."

The provisions of ss. 175—184 apply to any order issued under this section. Neglect to comply with the requisition is punishable under s. 219.

[*Sections added in Darjeeling by section* 12, *Act I of* 1900.]

Powers where buildings, &c., threaten the stability of other immovable property.

"210*B*. *If it appears to the Commissioners that any building or portion of a building, or anything affixed to a building, or any wall or structure on any land, is in such a condition as to threaten the stability or security of any hillside or bank or any immovable property thereon, the Commissioners may, by written notice, require the owner of such building or land,—*

(*a*) *to take down such building, or portion, thing, wall or structure and remove the materials, or*

(*b*) *to secure or repair such building, portion, thing, wall or structure, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice, and*

(*c*) *in case* (*a*), *also to take such order with the site of such building, wall, or structure, for ensuring the stability or security of any hillside or bank or any immovable property thereon, as may be prescribed in the notice.*

Powers where hillside or bank threatens the safety of buildings.

"210*C*. *If it appears to the Commissioners that the condition or situation of a hillside or bank, being private property, is such as to threaten the safety of any building, and that the safety of such building cannot be ensured by taking action under s.* 248*A*, *and also that such building threatens the safety of some other building, they may, by written notice, require the owner of such first-mentioned building—*

(*a*) *to take down the building and remove the materials, or*

(*b*) *to secure the building, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice,*

and may also, by written notice, require the owner of such other building to secure the same, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice."

Power to enter upon possession of houses so repaired.

*211. (228) If the Commissioners shall have caused any repairs to be made to any house or other structure, and if such house or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them.

The general provisions at the commencement of Part V provide for the procedure to be adopted by the Commissioners in the event of their orders not being complied with, and authorize them to carry out repairs themselves, if necessary. See ss. 175 to 180.

The following will explain the object with which this section has been framed :—

"His Honour the President said, that there were many houses in mofussil towns which were simply tumbling down on account of disputes

amongst the owners. In fact, there was hardly a town in which one or more such houses were not to be met. As the Bill stood, the Commissioners must pull such houses down, because they were dangerous to the passers-by, whereas, according to the intention of the Hon'ble Mover, these houses might be repaired and taken possession of by the Commissioners. In neither case did the shareholders get them. But was it better that the houses should be repaired and taken possession of by the Commissioners until the repayment of the expenses incurred, or that the houses should be pulled down?"—(*B. C., March*, 1876.)

Sale of materials of houses, &c., pulled down.

212. (229) The materials of anything which shall have been pulled down or removed under the provisions of section "one hundred and seventy-five" and two hundred and ten, may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred.

The surplus-sale proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a Court of competent jurisdiction.

The provision for refund of the surplus sale-proceeds is now subject to the ordinary law of limitation.

Stray dogs to be killed at certain appointed periods.

213. (230) The Commissioners may, by published order, appoint from time to time certain periods within which any dogs without collars or other marks distinguishing them as private property, found straying in the roads or beyond the enclosures of the houses of the owners of such dogs, may be destroyed; and such dogs may be destroyed in accordance with such order.

The payment of rewards for destroying the dogs is provided for by the next section. Stray dogs are evidently noxious animals.

Commissioners may offer rewards for destruction of noxious animals.

214. (231) The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of a Municipality.

In the corresponding section "wild animals." The word "animal" includes every living creature, though the suggestion that has been made by more than one Municipality that the word "snakes" should be added in this section, shows that this fact is occasionally lost sight of.

Names of roads and numbers of houses.

215. (232) The Commissioners at a meeting may cause a name to be given to any road and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house; and in like manner may

from time to time cause such names and numbers to be altered.

This section is taken from s. 64 of the Towns Improvements Clauses Act (10 and 11 Vict., cap. 34.)

Penalties.

216. (236) Any person who, in any Municipality—

Offences under sections 189 and 215.

(1) places, or allows his servants to place, rubbish on a public road at other than the times appointed by the Commissioners under the provisions of section one hundred and eighty-nine; or

(2) destroys, pulls down, defaces, or alters any name or number put up by the Commissioners under the authority of section two hundred and fifteen,

shall, for every such offence, be liable to a penalty not exceeding twenty rupees.

It does not appear that any distinction is to be drawn between the term "penalty" in this and the following sections, and the term "fine." "There is no distinction between the terms 'penalty' as used in the Bombay District Municipal Act (VI of 1873) and the word 'fine' as used in s. 64 of the Indian Penal Code (XLV of 1860). Imprisonment can, therefore, be awarded in default of any penalty inflicted under s. 84 of the Municipal Act." *In re Lakmia*, 18 Bom., 400.

217. (198) Any person who, in any Municipality—

Occupier not removing filth, &c.

(1) being the occupier of a house in or near a public road, keeps, or allows to be kept, for more than twenty-four hours, or for more than such shorter time as may be prescribed by a bye-law, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, nightsoil or filth, or any noxious or offensive matter, in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same; or

Keeping unlicensed public necessary.

(2) (202) keeps any public necessary without a license from the Commissioners under section one hundred and ninety-four; or having a license for a public necessary, suffers such necessary to be in a filthy or noxious state, or neglects to employ proper means for cleansing the same; or

Not keeping private drain, &c., in proper order.

(3) (203) being the owner or occupier of any private drain, privy or cess-pool, neglects or refuses, after warning from the Commissioners, to keep the same in a proper state; or

(4) (209 and 210) disobeys an order passed by the Commissioners under the provisions of "section one hundred and ninety-nine or one hundred and ninety-nine A;" or

Disobeying order under section 199 or 199A.

(5) (214) encroaches upon any road, drain, sewer, aqueduct, or watercourse, by making any excavation, or by erecting any wall, fence, rail, post, or other obstruction,

Erecting obstruction.

shall, for every such offence, be liable to a penalty not exceeding fifty rupees.

When the owner of certain land lived in another district and was not proved to have suffered the land to be in a filthy state, and the Municipal Commissioners fined his Muktiar under s. 67, Act III of 1864—*Held*, that the discretion which that section gave of proceeding against either the owner or the occupier had not been properly exercised. Proceedings quashed.—*The Queen* v. *Dwarkanath Hazrah* (*petitioner*), 8 B. L. R., App. 9; 16 W. R. Cr. R., 70.

Generally, when there is an occupier, he, and not the owner, should be proceeded against for not keeping the land, etc., in a proper state.—See *Queen* v. *Brojo Lall Mitter*, 8 W. R., Cr. R., 45. *See* also *Queen* v. *Purbutty Charan Sircar*, 3 W. R., Cr. R., 57.

The term road in clause 5 of s. 217 of Bengal Act III of 1889 is not limited to roads vested in the Municipal Commissioners.

A person was charged at the instance of a Municipality under that clause with obstructing a path through his paddy-field by erecting a fence at either end of it. It was found that the public had a right of way over the path, and the lower Courts convicted the accused under that clause. In revision it was contended that the conviction was bad, as the clause could only refer to a road which had been vested in the Municipal Commissioners.

Held, for the above reasons, that the conviction was right and must be upheld.—*Ram Chander Ghose* v. *The Bally Municipality*, 17 Cal., 684.

218. (215, 218 and 222) Whoever, being an owner or occupier of any house or land within a Municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections two hundred and two, two hundred and four, "two hundred and six, two hundred and seven," or two hundred and eight, shall be liable, for every such default, to a penalty not exceeding fifty rupees, and to a further penalty, not exceeding ten rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

Disobeying requisition under section 202, 204, 206, 207 or 208.

The further penalty cannot be imposed with prospective effect. A sentence ordering an accused person to pay a daily fine as long as he shall persevere in committing an offence is absolutely bad in law.—*In re Sagur*

Dutt, 1 B. L. R., O. Cr., 41 ; *In re W. N. Love*, 9 B. L. R., App., 35 ; 25 W. R., Cr. R., 6 ; 21 W. R., Cr. R., 31.

In Darjeeling the references to ss. 207 and 208 have been repealed by the Darjeeling Municipal Act, 1900, s. 23.

Disobeying requisition under sections 195, 200, 209, 210 or 210A.

219. (204, 211, 224 and 226) Whoever, being an owner or occupier of any house or land within a Municipality, fails to comply with any requisition issued by the Commissioners under the provisions of sections one hundred and ninety-five, two hundred, two hundred and nine, two hundred and ten, "or two hundred and ten A," shall be liable, for every such default, to a penalty not exceeding one hundred rupees, and to a further penalty, not exceeding twenty rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

"A further penalty." See note to preceding section.

PART VI.

This part corresponds with Part VII of the former Act.

Of Special Regulations.

Operation of Part VI, VII, VIII, IX or X.

220. (233) No provision contained in this Part or in Part VII, VIII, IX, or X, shall apply to any Municipality, unless and until it has been expressly extended thereto by the Local Government in the manner provided by the next succeeding section.

Saving clause.

"Provided that, except as is otherwise provided by this Act, in the case of any Municipality to which all the provisions of any one of the Part VII, VIII or IX of the Bengal Municipal Act, 1876, may have been extended, and provided that such provisions were still in force in such Municipality immediately before the commencement of this Act ; all the provisions of the corresponding Part of this Act, namely, of Part VI, XI, or X respectively, shall be, and shall be deemed to have always been, in force in such Municipality without such provisions being expressly extended thereto."

"*Provided also that the provisions enacted by the Darjeeling Municipal Act, 1900, shall take effect in the Darjeeling Municipality without being expressly extended thereto.*" (Act I (B. C.) of 1900, s. 13).

See note to s. 320 (*post*).

Circular No. 9 T.—M., dated 8th June 1886, of the Municipal Department, states that "the law officers of Government. . . . hold that in a Municipality to which a particular part of the old Act was extended the provisions of the corresponding part of the new Act must be held to be in force *in their entirety*, and that the mere fact of a particular part of Act III (B. C.) of 1884 containing some additional sections, or additions to sections which do not occur in the corresponding part of the Act of 1876, does not necessitate the issue of fresh orders for putting in force the additional provisions in that Municipality . . . . When it is necessary, however, to introduce into a Municipality only a particular section of the new Act, which varies at all from the corresponding section of the old Act, or which may contain provisions not embodied in that Act, a fresh notification will always be issued on the subject."

The addition to the section has been made to clear up doubts which have been expressed as to the correctness of the above view.

Local Government may order the provisions of these Parts to be in force.

221. (234) The Commissioners may apply, in pursuance of a resolution passed at a meeting specially convened to consider the question to the Local Government, to extend to the Municipality all or any of the provisions of this Part or of Part VII, VIII, IX, or X; or to exclude from the operation of the said provisions, or any of them, any place within the Municipality.

And the Local Government may thereupon make an order accordingly.

Government has been advised that there is no legal objection to extending part of a section only to a Municipality. The term used in the above section is, it will be observed, "provision," and it is obvious that several provisions may be, and often are, included in the same section.—(L. R.)

Publication of order.

222. (234) Every such order shall be published in the *Calcutta Gazette*, and the Commissioners shall, within fifteen days of such publication, cause a copy of the same, with a translation thereof into the vernacular of the district, to be posted up at their office, with a notice of the date on which such order shall take effect, and shall cause the same to be published as prescribed in section three hundred and fifty-four.

And the said provisions shall come into force in the Municipality from the date so fixed:

Provided that the date so fixed shall not be less than fifteen days after the publication under the said section, or more than three months after the publication of the order of the Local Government as aforesaid in the *Calcutta Gazette*.

Section 354 provides that orders, bye-laws, etc., shall be published by beat of drum and by copies being posted in public places, in addition to the copy to be affixed at the Commissioners' office as here provided.

223. (234) The Local Government, on a similar application made by the Commissioners, may at any time cancel or modify an order made under section two hundred and twenty-one, and such cancellation or modification shall be published, and shall take effect in the manner prescribed by the last preceding section.

Local Government may cancel or modify order.

Of a Survey.

"223A. The Commissioners at a meeting may order that a survey shall be made of the lands situated in the Municipality, and thereupon all the provisions of the Calcutta Survey Act, 1887, shall, so far as may be practicable, apply and be extended to such Municipality."

Survey of a municipality.

The Act will be found in Appendix (post).

The preparation of Municipal maps is a matter of great importance. They must, of course, be kept up to date. The opinion of the Government of Bengal will be found in Cir. Nos. 14 and 188—93, dated 8th March 1895 and 18th June 1895.—C. & O. Vol. III, p. 1037.

See also Cir. No. 16-T.—M., dated 16th October 1906.—C. & O. Vol. III, p. 1061.

Of Privies, Drains, and Excavations.

224. (235) The Commissioners may require the owners or occupiers, or the owners and occupiers of any land, within fifteen days to repair and make efficient any drain, privy or cess-pool, or to remove any privy or close any cess-pool which is situated on such land.

Commissioners may require owner or occupier to repair drain, &c.

The provisions of ss. 175—184 apply to any order issued under this section. Neglect to carry out an order issued under this section is now punishable under s. 271.

An order to remove a privy under this section if made in accordance with the provisions of the law cannot be disputed in the civil Court, the Municipality being the sole judges of its necessity (*F. W. Duke* v. *Rameswar Malia*, 26 Cal., 811).

In Darjeeling so much of s. 224 as relates to drains has been repealed by s. 23 of the Act of 1900. S. 224 is difficult to enforce as persons proceeded against under this section often stay proceedings by means of an injunction in the Civil Court. The Civil Courts, however, seem to have jurisdiction only so far as matters of law and procedure are concerned, and the Commissioners are the sole judges of the *necessity* for the passing of an order requiring the execution of sanitary improvements. *Duke* v. *Chairman, Howrah Municipality*, 26 Cal., p. 811.

See case of *Chairman, Puri Municipality* v. *Kissori Lal Sen*, 1 C. W. N., ccxlv. The Vice-Chairman issued a notice requiring Kissori Lal Sen to make efficient a privy by making certain additions and alterations. *Held* that s. 224 contemplates a case of mere efficiency even when no repair is necessary and that the notice did not properly come within that section. *Held* also that the notice was bad as it did not contain a reference to the second clause or proviso to s. 175. *Held* also that the notice was bad because there was nothing to show that the Chairman had delegated his authority under s. 45 or that his sanction had been previously or subsequently obtained.

In Darjeeling, s. 14, Act I of 1900, inserts the following after s. 224.

224*A*. *The Local Government may, by notification in the Calcutta Gazette, define, for the purposes of this Act, the limits of any* jhora, *watercourse, channel or natural drainage line.*

Power to define limits of *jhoras*, &c.

"224*B*. (1) *Every person who intends to construct, re-construct, alter, stop-up or obstruct any private drain shall send to the Commissioners an application for permission to execute the work.*

Control over construction or alteration of private drains.

(2) *Every such application shall be accompanied by a general description of the drain.*

(3) *The permission referred to in sub-section* (1) *may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in Schedule B.*

(4) *No work referred to in sub-section* (1) *shall be commenced without the written permission of the Commissioners.*

Re-construction, repair, etc., of private drains.

"224*C*. *The Commissioners may, by written notice, require the owner of any building or land—*

(*a*) *to re-construct, enlarge, extend, alter, repair, make efficient, stop-up or remove any drain belonging to such building or land, or*

(*b*) *to alter the inclination or direction of any such drain, or*

(*c*) *to provide movable coverings, or gratings for any such drain, of such nature as may be specified in the notice, or*

(*d*) *to carry any such drain to such point of outlet or of junction with some other drain as may be specified in the notice.*"

*225. (238) Every person constructing a privy shall have such privy shut out by a sufficient roof and wall or fence from the view of persons passing by, or residing in, the neighbourhood: and the Commissioners may require any owner or occupier of land on which a privy stands to cause the same to be shut out from view as aforesaid within fifteen days.

Privies must be properly enclosed.

Non-compliance with a requisition issued under this section is punishable under s. 271. A breach of the rule laid down in the first part of the section is punishable under s. 266. In default of obedience to the requisition, the Commissioners may carry out the work themselves under s. 180 and recover the costs.

The provisions of ss. 175—184 apply to any order issued under this section.

Unauthorized drains leading into public sewers may be demolished.

*226. (240) If any person, without the written consent of the Commissioners first obtained, makes or causes to be made, or alters or causes to be altered, any drain leading into any of the sewers or drains vested in the Commissioners, the Commissioners may cause such branch drain to be demolished, altered, re-made, or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such branch drain.

The provisions of ss. 181—184 apply to such expenses.

Commissioners may require owner to drain land.

*227. (242) If any land, being within one hundred feet of a sewer, drain or other outlet into which such land may, in the opinion of the Commissioners, be drained, is not drained to the satisfaction of the Commissioners, the Commissioners may require the owner, within one month, to drain the said land into such sewer, drain or outlet.

The provisions of ss. 175—184 apply to an order issued under this section.

Disobedience of an order issued under this section is now punishable under s. 271.

Group or block of houses, &c., may be drained by a combined operation.

228. (243) If it appear to the Commissioners that a group or block of houses may be drained or improved more economically or advantageously in combination than separately, and a sewer, drain or other outlet already exists within one hundred feet of any part of such group or block of houses, the Commissioners may cause such group or block of houses to be so drained and improved; and the expenses thereby incurred shall be recovered from the owners of such houses in such proportions as shall to the Commissioners seem fit.

Substitution of new sections for sections 227 and 228.

For sections 227 and 228 the following shall be substituted, in Darjeeling.

Power to require provision of private drain.

"227. *If any building or land is not drained to the satisfaction of the Commissioners, they may, by written notice, require the owner to provide a drain therefor, at such inclination, and to such point of outlet or of junction with some other drain, as may be specified in the notice.*

Private drainage in combination.

"228. (1) *If it appears to the Commissioners that any buildings or lands belonging to different owners can be drained, or the drainage thereof improved, more economically or advantageously in combination than separately,*

the Commissioners may cause such buildings or lands to be drained, or the drainage thereof to be improved, in such manner as they may consider suitable.

(2) *The Commissioners may cause any drain which has been provided or improved under sub-section* (1) *to be maintained or repaired in such manner as they may consider suitable.*

(3) *All expenses incurred under sub-section* (1) *or sub-section* (2) *in connection with the drainage of any buildings or lands shall be paid by the owners of such buildings or lands, in proportion to the benefits derived by them respectively.*

(4) *The said proportion shall be determined by the Commissioners.*

Commissioners may alter any drain, &c., made contrary to their orders.

*229. (244) If any branch drain, privy or cess-pool be constructed contrary to the directions and regulations of the Commissioners, or contrary to the provisions of this Act; or if any person, without the consent of the Commissioners, constructs, re-builds or unstops any branch drain, privy, or cess-pool which has been ordered by them to be demolished or stopped up, or not to be made, the Commissioners may cause such amendment or alteration to be made in any such drain, privy or cess-pool as they think fit, or may cause the same to be removed; and the expenses thereby incurred shall be paid by the person by whom such drain, privy, or cess-pool was improperly constructed, re-built or unstopped.

In Darjeeling so much of s. 229 as relates to drains has been repealed by the Act of 1900, s. 23.

"229*A*. *Whenever any private drain is to be constructed, re-constructed, enlarged, extended, altered, repaired or otherwise dealt with in pursuance of section 224B, section 224C, section 227 or section 228, the work shall be executed in accordance with the rules contained in schedule B, so far as they are applicable to the particular case.* [Darjeeling Act I (B. C.) of 1900: (6)].

Rules as to construction, &c., of private drains.

The provisions of ss. 181—184 will apply to such expenses.

No latrine to be constructed within fifty feet of a tank.

230. (246) No person shall, without the written permission of the Commissioners, construct or keep any latrine, urinal, cess-pool, house-drain, or other receptacle, for sewage or other offensive matter, within fifty feet of any public tank or watercourse or a tank or watercourse which the inhabitants of any locality use.

The Commissioners may require any owner and occupier upon whose land any latrine, urinal, cess-pool, house-drain or

other receptacle so situated exists, or may hereafter be constructed, to remove the same within eight days.

The offence described in the first portion of the section is punishable under s. 270, clause (3). Neglect of a requisition made under the latter portion of the section is punishable under s. 271.

The provisions of ss. 175—184 apply to such a requisition.

The section is defective. The construction of latrines, &c., within 50 feet of a well should be absolutely prohibited.

Construction of privy.

*231. (247) No person shall, without the written permission of the Commissioners, construct a privy with a door or trap-door opening on to any road or drain. The Commissioners may require any owner or occupier upon whose land any such privy exists to remove the same within eight days.

The offence described in the first part of the section is punishable under s. 270, clause (3). Neglect of the requisition is punishable under s. 271.

The provisions of ss. 175—184 apply to such a requisition.

The offence under s. 270 (3), *viz.*, construction of latrines in contravention of ss. 230 and 231 is not a continuous offence. S. 353 bars all prosecutions unless they are instituted within three months of the offence or within three months from the date when the commission of the offence is brought to the knowledge of the Chairman. *Bidhu Bhusan Mullik* v. *Assansol Municipality*, 6 C. W., N., p. 167.

Power to prohibit excavations.

232. (249) The Commissioners at a meeting may, by a general order, prohibit the making of excavations for the purpose of taking earth or stone therefrom, or for the purpose of storing rubbish or offensive matter therein, and the digging of cess-pools, tanks or pits without special permission previously obtained from them.

If any such excavation, cess-pool, tank or pit is made after the issue and publication of such order, without such special permission, the Commissioners may require the owners and occupiers of the land on which such excavation, cess-pool, tank or pit is made, within two weeks, to fill up such excavation.

Breach of the prohibitory order is punishable under s. 270, clause (4), and neglect of the requisition referred to in the latter part of the section, by s. 271.

The provisions of ss. 177—184 apply to such a requisition.

No suit will lie against the Commissioners for damage alleged to arise from a refusal to permit the excavation of a tank.—*Shyrub Chander Banerjee* v. *Makgill*, 17 W. R., C. R., 215.

The power of prohibiting excavation, for the purpose of taking out stone, is new, and has been conferred with special reference to Darjeeling,

The last clause allows two weeks instead of eight days as in the corresponding section.

In Darjeeling s. 232 has been repealed by the Act of 1900 s. 23.

Of Obstructions and Encroachments on Roads.

Removal of existing projection from houses.

233. (251) The Commissioners at a meeting may determine on the removal or alteration, as they shall think fit, of any projection, encroachment or obstruction which may have been erected or placed against, or in front of, any house on any road within the limits of the Municipality before the date on which the District Municipal Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, came into force in the Municipality, or in case none of the said Acts was in force in the Municipality before the commencement of this Act, then before the date on which this Act may have been extended thereto.

Notice in writing shall be given to the owner or occupier of such house, requiring him to remove or alter the said projection, encroachment or obstruction, or to show cause before the Commissioners why he should not be required so to do; and if such owner or occupier shall fail to comply with such requisition within thirty days of the receipt of the same, or if after such owner or occupier shall have shewn cause against being required to remove or alter the said projection, encroachment or obstruction, the Commissioners shall make an absolute order directing such removal or alteration; and if such owner or occupier shall fail to comply with such order within fifteen days of the date of the same, the Magistrate may, on the application of the Commissioners, order such projection, encroachment or obstruction to be removed or altered; and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction.

The Commissioners shall make reasonable compensation to every person who suffers damage by any removal or alteration under this section.

In determining the amount of compensation, the value of the land shall not be taken into consideration.

The provisions of ss. 175—185 are applicable to this section.

An order made by the Magistrate under this section is made in the discharge of his judicial duty, and both he and the Commissioners are protected by Act XVIII of 1850. See s. 205 of the present Act.

"The Magistrate" is defined in s. 6, clause (8).

The ruling in *Hanumaya* v. *Roupell* (8 Mad., 64), has an important bearing on this section. By s. 139 of Madras Act III of 1871, the Commissioners are empowered to remove any obstruction or encroachment erected before the introduction of the Act upon payment of compensation. Where certain projections were proved to have been in existence forty or fifty years at least—*Held*, that the *onus* lay upon the Commissioners to prove that the land upon which the *projections* had been built formed part of the road, and that they were not constituent parts of the houses. In the absence of such proof the action of the Commissioners in removing the projections was illegal.

Leave to deposit materials on, or to excavate or close, a road.

234. (253) The Commissioners may grant permission to any person, for such period as they may think fit, to deposit any moveable property on any road, or to make an excavation in any road, or to enclose the whole or any part of any road, and may charge such fees as they may fix for such permission :

Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences to protect the public from injury, danger or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.

The acts referred to, for which permission may be granted, must obviously be of a very temporary nature, and the words "for such period as they may think fit" must be understood in a very restricted sense.

The fact that such person undertakes to erect and light such fences does not relieve the Commissioners from the legal liability for any damages which may result from his neglect to do so in an efficient manner.—*The Corporation of the Town of Calcutta* (defendant) v. *Anderson* (plaintiff), 10 Cal., 445.

Hoards to be set up during repairs.

*235. (254) Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall if any public road will be obstructed or rendered inconvenient by means of such work, before beginning the same, cause sufficient hoards or fences to be put up in order to separate the house where such works are being carried on from the road, and shall keep such hoard or fence standing and in good condition, to the satisfaction of the Commissioners during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night :

Provided that no person shall put up a hoard or fence without the written permission of the Commissioners, nor

shall he keep up the said hoard or fence for a time longer than allowed in the said written permission.

A breach of this section is punishable under s. 273, clause (1).

Of Building Regulations.

236. (256) The Commissioners at a meeting may "by an order published in the manner prescribed in section three hundred and fifty-four" direct that, within certain limits to be fixed by them, the external roofs and walls of huts or other buildings which may thereafter be erected, or the roofs or walls of which may thereafter be renewed or repaired, shall not be made of grass, leaves, mats, or other inflammable materials.

Roof and external walls not be made of inflammable materials.

Disobedience to an order issued under this section is now punishable under s. 270, clause (5).

"237 (1) Every person who intends to erect or re-erect any house, not being a hut, shall give notice in writing of his intention to the Commissioners, and shall accompany such notice with a general description of the building which he intends to erect, and of the provision he intends to make in respect of drainage and latrine accommodation, and the Commissioners may, within six weeks after the receipt of such notice either refuse to sanction the said building or may sanction the said building either absolutely or subject to any written directions which the Commissioner may deem fit to issue in accordance with the rules, if any, made under section two hundred and forty-one:

Notice of erecting a house not being a hut.

Provided that the Commissioners shall make full compensation to the owner for any damage which he may sustain in consequence of the prohibition of the re-erection of any house or of their requiring any land belonging to him to be added to the street.

(2) Any person giving notice to the Commissioners under this section shall, if required to do so by any rule, forward with his notice a plan and specification of the house, not being a hut, which he intends to erect or re-erect, together with a site plan of the land, of such character, and with such details, as the rule may require; and no notice under this section shall be valid until such plans and specification have been supplied."

Now that the period of limitation for suits for the recovery of public streets or roads by local authorities has been extended to 30 years by

Act XI of 1900, these petitions should be preserved for ever. (B. Govt. Cir. 33-M., dated 22nd December 1900 to Commissioners.)

By Act IV of 1899 (which will be found *post*) all Government buildings, including buildings occupied by Government for the public service, whether existing or designed, are exempt from the operation of these Regulations. In the case of buildings connected with imperial defence or whose plan or construction Government considers should be kept confidential, the exemption is absolute. In other cases a procedure is provided whereby the plans may be examined by the Commissioners and their criticism or objections be considered by Government.

Plaintiff applied to build a house with two balconies, He was allowed to build the house and was informed that orders would be issued later in regard to the balconies. Not hearing from the Municipality the plaintiff built the balconies and after one year the Municipality ordered him to remove them. *Held* that the plaintiff must succeed in his suit against the Municipaltiy. Delay is inconsistent with the Act. *Ahmedabad Municipality* v. *Ramji Kaber*, 36 Bom., 61.

" 238. (1) Should any person commence to erect or re-erect such house, not being a hut, without giving notice, or without submitting such plans and specification as aforesaid, or without waiting for the orders of the Commissioners for six weeks from the date of his giving notice in writing under s. 237, or in contravention of any legal order of the Commissioners issued within six weeks of receipt of a valid notice under the last preceding section, the Commissioners may, by notice, to be delivered within fifteen days, require the building to be altered or demolished, as they may deem necessary.

Commissioners may order a house, not being a hut, erected without notice, etc., to be altered or demolished.

(2) Should the Commissioners neglect or omit for six weeks after the receipt of a valid notice under the last preceding section to make and deliver to the person who has given such notice any order in respect thereof, they shall be deemed to have sanctioned the proposed house absolutely :

Provided that no rule under section two hundred and forty-one and no legal order shall be held to have been contravened by anything done in accordance with plans and specifications forwarded to the Commissioners under section two hundred and thirty-seven and not objected to by them "

As amended by Act II of 1896. Before this the High Court had held (*Chandra Kumar Dey* v. *Ganesh Das Agarwallah*, 25 Cal., 419) " that to commence building without orders or permission did not necessarily contravene the law, but merely incurred the risk of disapproval and of the act being treated as one of contravention." The matter has now been cleared up.

See note to s. 273 (1).

"239. Every sanction for the erection or re-erection of any house, not being a hut, which shall be given or deemed to be given by the Commissioners, shall be available for one year from the date on which the notice shall have become valid and complete, and no longer; and should the house so sanctioned not have been begun by the person who has obtained such sanction, or some one lawfully claiming under him within such year, it shall not be begun without fresh sanction, but such person as aforesaid may at any subsequent time give fresh notice to the Commissioners in the manner hereinbefore prescribed, and thereupon the provisions hereinbefore contained shall apply to such notice."

Sanction available for one year only.

"240. The expression 'erect or re-erect any house, not being a hut,' as used in the two last preceding sections includes :—

Definition of expression "erect or re-erect any house, not being a hut."

(*a*) any material alteration or enlargement of any building ;

(*b*) such alterations of the internal arrangements of a house as affect an alteration of its drainage or sanitary arrangements, or affect its stability."

In *Emperor* v. *Desouza*, (35 Bom., 412), it was held that reconstructing a small side wall of a house on the old boundaries was not necessarily a new building. The ruling in 35 Bom., 236, was distinguished. In that case it was held that the rebuilding of a whole wall which had fallen down was a material reconstruction.

"241. (1) The Commissioners at a meeting may from time to time make, repeal or alter rules to regulate the erection or re-erection of houses, not being huts, within the Municipality in respect of all or any of the following matters :—

Power of the Commissioners to make rules as to mode of constructon of houses, not being huts.

(*a*) the materials and method of construction to be used for external and party walls, roofs, floors, fireplaces and chimneys ;

(*b*) the provision, position and ventilation of drains, privies and cess-pools ;

(*c*) the free passage or way in front of the house ;

(*d*) the space to be left about the house to secure free circulation of air and facilitate scavenging, and for the prevention of fire ;

(*e*) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on ;

(*f*) the level and width of the foundation, the level of the lowest floor and the stability of the structure ;

(*g*) the number and height of the storeys of which the house may consist ;

(*h*) the means to be provided for egress from the house in case of fire ;

(*i*) the line of frontage with neighbouring houses if the house abuts on a street.

(2) Rules under this section, not inconsistent with the 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.

(3) If in and during the erection or re-erection of any house, any rule under this section is contravened, the Commissioners may by notice to be delivered within fifteen days require the building to be altered, or, if necessary, demolished within the space of thirty days, so as to secure conformity to such rule.

(4) This section shall not take effect in a Municipality until it has been specially extended thereto by the Local Government at the request of the Commissioners at a meeting."

This section might with advantage be recast. It seems to be essential that s. 241 should be extended to a municipality before it can adopt the model rules as to the mode of construction of privies circulated with Cir. No. 53, dated 27th January 1904. "The first step towards the extension of s. 241 is a Resolution of the Commissioners at a meeting requesting the Government to extend it (clause 4). The procedure then to be followed is laid down in ss. 221 and 222 which apply to all sections of Part VI. Preliminary notification and publication of the Government order is necessary in the manner prescribed in s. 222. After the order has been published the rules have to be framed (or adopted) by the Commissioners under s. 241 subject to Government sanction and publication under s. 241 (2). Most of the rules fall under clauses (*a*) and (*b*) of s. 241 ; a privy being a house or part of a house (s. 6 (4)). But the rules apply only to the erection or re-erection of privies. As to existing privies the provisions of ss. 190, 192, 224, 225, 231 and bye-laws under s. 350 (*c*) must be resorted to. Of these ss. 224, 225 and 231 are in Part VI of the Act and require extension by special order of Government in the manner indicated above. The Act is silent as to urinals, but I presume urinals are included in the words "privies, drains and cess-pools" (L. R.).

Commissioners may prohibit letting of unstable or illdrained house.

"242. The Commissioners may prohibit the owner of any house, not being a hut, from letting it for occupation, if in their opinion it is unstable, or if the drainage or latrine accommodation of such house is in their opinion defective, until its stability shall have been secured or such defects in

drainage or latrine accommodation shall have been made good to their satisfaction."

The power of prohibiting the letting of an unstable house is new. Disobedience to a prohibition issued under this section is punishable under s. 273, cause (1).

Appeals from orders of Commissioners.

"242A. (1) Any person aggrieved—

(*a*) by the prohibition by the Commissioners under section two hundred and thirty-seven of the erection or re-erection of a house, not being a hut, or

(*b*) by a notice from the Commissioners under section two hundred and thirty-eight or sub-section (3) of section two hundred and forty-one requiring the alteration or demolition of a building, or

(*c*) by any order made by the Commissioners under the powers conferred upon them by section two hundred and forty-two, may appeal within thirty days from the date of such prohibition, notice or order, to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) The order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final:

Provided that the prohibition, notice or order shall not be modified or set aside until the appellant and the Commissioners have had reasonable opportunity of being heard."

It was held in *P. C. De* v. *Calcutta Corporation* (40 Cal., 836), that no suit is maintainable if the Chairman and General Committee have acted honestly and within their authority when rejecting building plans. *See* 12 C. W. N., 709 (1908).

Erection of new huts to be under the control of the Commissioners.

243. (261) It shall not be lawful for any person to erect a hut, or any range or block of huts or sheds, or to add any hut or shed to any range or block already existing, or to enlarge any existing hut, without "one month's

previous notice to the Commissioners; and the Commissioners may require such huts or sheds to be built so that they may stand in regular lines, with a free passage or way in front of "each line" and between "every two lines" of such width as they may think proper for ventilation and to facilitate scavenging, and with such number of privies and with such means of drainage, as to them may seem necessary, and at such a level as will admit of such drainage, and with a plinth at least two feet above the level of the nearest street.

A breach of the provisions of this section is punishable under s. 267. For note on the meaning of the word "hut," see s. 245.

The provisions of ss. 175—184 apply to any requisition issued by the Commissioners under this section.

Power to direct removal of huts built without notice.

*244. (262) If any such huts or sheds be built without giving such notice to the Commissioners, or otherwise than as required by the Commissioners, the Commissioners may require the owners of the land on which such huts and sheds are built, and the occupiers of such huts and sheds, to take down and remove the same within one month, or to effect such alterations as they may deem necessary.

Disobedience to a requisition issued under this section is punishable under s. 267. The Commissioners may also proceed under s. 180, and remove the huts or sheds themselves, recovering the costs from the persons upon whom the requisition may have been served. The provisions of ss. 175—184 are applicable to any requisition issued under this section.

Institution of new sections 236 to 244

In Darjeeling for ss. 236 *to* 244 *of the said Act and the heading prefixed thereto the following are substituted namely, by* s. 17, *Act I of* 1900.

"*Building Regulations.*

Prohibition of inflammable materials for roofs or external walls.

"236. (1) *Except with the previous written permission of the Commissioners, external roofs or walls of buildings shall not, after the commencement of the Darjeeling Municipal Act,* 1900, *be made of grass, leaves, mats, canvas, shingles or other inflammable material.*

(2) *The Commissioners may, by written notice, require the owner of any building situated in or near a road and contiguous to or adjoining any other building, and having, at the commencement of the Darjeeling Municipal Act,* 1900, *an external roof or wall made of any such inflammable material as aforesaid, to remove or alter such roof or wall.*

(3) *Sub-sections* (1) *and* (2) *shall not apply to any garden-hut, orchid-house, fernery or other similar structure within a compound, unless in any particular case the Commissioners consider any such structure to be dangerous.*

"237. *After the commencement of the Darjeeling Municipal Act, 1900, no land shall be used as a site for the erection, re-erection or material alteration of a building, and no building shall be erected, re-erected or materially altered otherwise than in accordance with the provisions of this Act, and any rules, bye-laws or orders made under this Act, relating to the use of building-sites or the erection, re-erection or material alterations of buildings, as the case may be.*

Use of building-sites, and erection, re-erection and material alteration of building.

"*Masonry buildings and framed buildings.*

"238. (1) *Every person who intends—*

(*a*) *to erect or re-erect a masonry or framed building, or*

(*b*) *to materially alter a masonry or framed building in the manner referred to in sub-clause (e), sub-clause (f), sub-clause (g), sub-clause (h) or sub-clause (i) of clause (27) of section 6,*

shall send to the Commissioners an application for approval of the site together with a site-plan of the land.

Application for approval of site for erection, re-erection or material alteration of a masonry or framed building.

(2) *Every such application and site-plan shall contain the particulars and be prepared in the manner prescribed in this behalf in Schedule C.*

"239. *Within thirty days after the receipt of any application made under s. 238 for approval of a site, or of any information or further information required under Schedule C, the Commissioners shall, by written order, either—*

(*a*) *approve the site, subject to such conditions or modifications (if any) as may be specified in the order, or*

(*b*) *refuse, on one or more of the grounds mentioned in s. 244B, to approve the site.*

Approval of site when to be given or refused.

"240. (1) *Every person who intends to erect, re-erect or materially alter a masonry or framed building shall send to the Commissioners an application for permission to execute the work, together with a plan of the building, complete elevations and sections of the work, and a specification of the work.*

Application for permission to erect, re-erect or materially alter a masonry or framed building.

(2) *Every document referred to in sub-section (1) shall contain the particulars and be prepared in the manner prescribed in this behalf in Schedule C.*

(3) *Every application under sub-section (1) for permission—*

(*a*) *to erect or re-erect a masonry or framed building, or*

(*b*) *to materially alter a masonry or framed building in the manner indicated in clause (b) of s. 238,*

must be sent either together with the application sent under section 238 or within a period of six months from the issue, under this Act, of the order (if any) approving the site; and, if any such application be sent after the expiration of the said period, it shall not be received unless a fresh application is made under s. 238 for approval of the site.

Permission to erect, re-erect or materially alter a masonry or framed building not to be given unless and until site approved.

"241. *Permission to erect or re-erect a masonry or framed building, or to materially alter a masonry or framed building in the manner indicated in clause (b) of s. 238 shall not be given unless and until the Commissioners have approved the site on an application sent to them under s. 238.*

Work not to be commenced unless and until permission granted.

"242. *The erection, re-erection or material alteration of a masonry or framed building shall not be commenced unless and until the Commissioners—*

(a) *have granted written permission for the execution of the work on an application sent to them under s. 240, or*

(b) *where an appeal or reference has been made to the Engineer appointed under section 351D—have received orders from the Engineer determining that permission to execute the work should be granted.*

Permission to execute work when to be granted or refused.

"243. *Within thirty days after the receipt of any application made under section 240 for permission to execute any work, or of any information or further information required under Schedule C, the Commissioners shall, by written order, either—*

(a) *grant permission to execute the work, subject to such conditions or modifications (if any) as may be specified in the order, or*

(b) *refuse, on one or more of the grounds mentioned in section 244C, to grant such permission :*

Provided that, where the approval of a site is required by this Act, the said period of thirty days shall not in any case begin to run until the site has been approved under this Act.

Record of reasons when approval or permission refused.

"244. *Whenever the Commissioners refuse to approve a site for the erection, re-erection, or material alteration of a masonry or framed building, or to grant permission to erect or re-erect or materially alter such a building, they shall state specifically the grounds for such refusal.*

Reference to appellate Engineer if grant or refusal of approval or permission is delayed.

"244A. *If, within the period prescribed by section 239 or section 243 as the case may be, the Commissioners have neither given nor refused their approval of a building-site or their permission to execute any work, as the case may be, the Engineer appointed under section 351D shall be bound, on a written reference being made to him by the applicant within six months after the expiration of the said period, to determine forthwith, by written order, whether such approval or permission should be given or not.*

Grounds on which approval of site may be refused.

"244B. *The only grounds on which approval of a site for the erection, re-erection, or material alteration of a masonry or framed building may be refused are the following, namely :—*

(1) *that the site is not, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer, a safe site for the erection, re-erection, or alteration of the building ;*

(2) *that the erection, re-erection, or alteration of the building upon the site would, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed*

under section 351D) the Engineer, threaten the stability or security of some hillside or bank or some immovable property thereon ;

(3) *that any particulars comprised in the site-plan would contravene some specified provision of this Act or some specified rule, bye-law or order made hereunder ;*

(4) *that the application for such approval, or the site-plan, does not contain the particulars or is not prepared in the manner prescribed in Schedule C ; or*

(5) *that any information required under the said Schedule has not been duly furnished.*

Grounds on which permission to execute work may be refused.

"244C. *The only grounds on which permission to erect, re-erect, or materially alter a masonry or framed building may be refused are the following, namely :—*

(1) *that, having regard to the site, to the plan of the building, to the elevations, sections and specification of the work, and to the information and documents (if any) furnished to the Commissioners, the building, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer,—*

(a) *would not be safe for human habitation, or*

(b) *would threaten the stability or security of some hillside or bank or some immovable property thereon ;*

(2) *that the work, or any of the particulars comprised in the building-plan elevations, sections or specification, would contravene some specified provision of this Act or some specified rule, bye-law or order made hereunder ;*

(3) *that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule C ; or*

(4) *that any information required under the said Schedule has not been duly furnished.*

Lapse of permission if not acted upon within six months.

"244D. (1) *If the erection or re-erection of any masonry or framed building or the material alteration of any such building in the manner indicated in clause (b) of section 238 is not commenced within six months after the date on which permission was given to execute the work, the work shall not be commenced until fresh applications have been made under sections 238 and 240 and fresh approval and permission have been given under this Act.*

(2) *If any other material alteration of a masonry or framed building is not commenced within six months after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made under section 240 and a fresh permission granted under this Act.*

Notice before commencing building work and inspection of site.

"244E. (1) *When any site, after having been approved under this Act, has been prepared for building-work, the owner of the building shall, not less than three days before building-work is commenced, send to the Commissioners a written notice specifying the date on which it is proposed to commence such work.*

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(2) *The Commissioners or the Municipal Engineer, if authorised by them in that behalf, may thereupon inspect the site; and, if it appears to the Commissioners that the site is in such a condition as to render the building unsafe or that the proposed work would threaten the stability or security of any hillside or bank or any immovable property thereon, they may, by written order, withdraw their permission to execute the work, and may, if they think fit, by a like order grant a fresh permission subject to such conditions for ensuring safety as they may consider necessary.*

Notice after completion of building-work.

"244F. *Within fifteen days after the erection, re-erection, or material alteration of any masonry or framed building has been completed, the owner shall send to the Commissioners a written notice of the fact.*

Inspection of building.

"244G. *The Commissioners, or any officer authorised by them in that behalf, may, at any time during the erection, re-erection or material alteration of any masonry or framed building, or within one month after the receipt of the notice sent under section 244F with respect to any building inspect such building, without giving previous notice of the intention so to do.*

Powers on inspecting building.

"244H. (1) *If, when any such inspection is made, the Commissioners find that the building is being or has been constructed—*

(a) *otherwise than in accordance with the plans approved under this Act, or*

(b) *in such a way as to contravene any of the provisions of this Act or any rule, bye-law or order made hereunder,*

they may, by written notice, require the owner of the building either—

(i) *to make such alterations as may be specified in the notice with the object of bringing the work into conformity with the said plans or provisions, or*

(ii) *to appear before them and shew cause why such alterations should not be made.*

(2) *If such owner does not appear and show cause as aforesaid, he shall be bound to make the alterations specified in such notice.*

(3) *If such owner appears and shows cause as aforesaid, the Commissioners shall, after hearing him, cancel the notice issued under sub-section (1) or confirm the same subject to such modifications (if any) as they may think fit.*

"*Huts.*

Application for permission to erect, re-erect or materially alter a hut.

"244J. (1) *Every person who intends to erect re-erect, or materially alter a hut shall send to the Commissioners an application for permission to execute the work.*

(2) *Every such application shall contain the particulars and be prepared in the manner prescribed in this behalf in Schedule C.*

Work not to be commenced unless and until permission given.

"244K. *The erection, re-erection, or material alteration of a hut shall not be commenced unless and until the Commissioners—*

(a) *have granted written permission for the execution of the work on an application sent to them under section 244J, or*

(*b*) *where an appeal or reference has been made to the Engineer appointed under section 351D—have received orders from the Engineer determining that permission to execute the work should be granted.*

Permission to execute work when to be given or refused.

"244*L*. *Within fourteen days after the receipt of any application made under section 244J for permission to erect, re-erect, or materially alter a hut, or of any information or further information required under Schedule C, the Commissioners shall, by written order, either—*

(*a*) *grant such permission, subject to such conditions or modifications (if any) as may be specified in the order, or*

(*b*) *refuse, on one or more of the grounds mentioned in section 244O to grant such permission.*

Record of reasons when permission refused.

"244*M*. *Whenever the Commissioners refuse to grant such permission as aforesaid, they shall state specifically the grounds for such refusal.*

Reference to appellate Engineer if grant or refusal of permission is delayed.

"244*N*. *If, within the period prescribed by section 244L, the Commissioners have neither granted nor refused permission to erect, re-erect, or materially alter a hut, the Engineer appointed under section 351D shall be bound, on a written reference being made to him by the applicant within six months after the expiration of the said period to determine forthwith, by written order, whether such permission should be granted or not.*

Grounds on which permission to erect, re-erect, or materially alter a hut may be refused

"244*O*. *The only grounds on which permission to erect, re-erect, or materially alter a hut may be refused are the following, namely :—*

(1) *in the case of erection or re-erection, or of any material alteration of the kind indicated in clause (b) of section 238, that the site is, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer, an unsafe site for a hut ;*

(2) *that the work would, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D the Engineer, threaten the stability or security of some hillside or bank or some immoveable property thereon ;*

(3) *that the work would contravene some specified provision of this Act or some specified rule, bye-law or order made hereunder ;*

(4) *that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule C ; or*

(5) *that any information required under the said Schedule has not been duly furnished.*

Lapse of permission if not acted upon within six months.

"244*P*. *If the erection, re-erection, or material alteration of any hut is not commenced within six months after the date on which permission was granted to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this Act.*

"244Q. (1) *If any site be specially prepared for erecting, re-erecting, or materially altering a hut in pursuance of any permission granted under this Act, the owner of the hut shall, not less than three days before building-work is commenced, send to the Commissioners a written notice specifying the date on which it is proposed to commence such work.*

Notice before commencing building-work, and inspection.

(2) *The Commissioners, or the Municipal Engineer, if authorised by them in that behalf, may thereupon inspect the site, and, if it appears to the Commissioners that the site is in such a condition as to render the hut unsafe or that the proposed work would threaten the stability or security of any hill-side or bank or any immoveable property thereon, they may, by written order, withdraw their permission to execute the work, and may, if they think fit, by a like order, grant a fresh permission subject to such conditions for ensuring safety as they may consider necessary.*

"*Exemptions.*

"244R. *The following buildings shall be exempted from the operation of sections 240 to 244Q, except in so far as those sections relate to sites, that is to say—*

Exemptions.

(a) *any building erected and used, or intended to be erected and used exclusively for the purpose of a plant-house, summer-house (not being a dwelling-house), poultry-house or aviary, provided the building be wholly detached from, and situated at a distance of at least ten feet from, the nearest adjacent building; and*

(b) *any building of a temporary character erected or intended to be erected by, or with the sanction of, the Commissioners for use solely as a hospital for the reception and treatment of persons suffering from any infectious or contagious disease.*

"*Demolition, alteration, and stopping of work.*

"244S. *If the Commissioners are satisfied—*

Demolition or alteration of work unlawfully commenced, carried on or completed.

(1) *that any work referred to in section 201C, sub-section (1) or section 224B, sub-section (1), or the erection, re-erection, or material alteration of any building—*

(a) *has been commenced without obtaining the permission of the Commissioners, or (where an appeal or reference has been made to the Engineer appointed under section 351D) without waiting until the Commissioners have received the orders of the Engineer, or in contravention of any orders passed by him, or*

(b) *is being carried on or has been completed otherwise than in accordance with the particulars on which such permission or orders was or were based, or*

(c) *is being carried on or has been completed after such permission has been withdrawn, or*

(d) *is being carried on or has been completed in breach of any provision contained in this Act or in any rules or bye-laws made hereunder, or of any condition, modification, direction, or requisition lawfully imposed, made or given under this Act or such rules or bye-laws, or*

(2) *that any alterations required by any notice issued under section 244H have not been duly made,*

the Commissioners may apply to the Magistrate, and such Magistrate may make an order—

(*i*) *directing that the work done, or so much of the same as has been unlawfully executed, be demolished by the owner or altered by him to the satisfaction of the Commissioners, as the case may require, or*

(*ii*) *directing that the work done, or so much of the same as has been unlawfully executed, be demolished or altered by the Commissioners at the expense of the owner :*

Provided that the Magistrate shall not make any such order without giving the owner full opportunity of adducing evidence and of being heard in defence.

"244*T*. (1) *In any case in which any work referred to in section 244S has been unlawfully commenced or is being unlawfully carried on, the Commissioners may, by written notice, require the person carrying on the work to stop the same pending the decision of the Magistrate on an application made to him under that section.*

Power to stop progress of work unlawfully commenced or carried on.

(2) *If any work be carried on upon any premises in contravention of a notice issued under sub-section* (1), *any person directing or carrying on such work may, under the orders of the Commissioners, be removed from the premises by any police-officer.*

"244*U*. *When any person is liable to be directed to demolish work and to pay a fine under this Act, both those directions may be given at the discretion of the Magistrate.*

Demolition and fine cumulative.

"*Control over occupation of buildings.*

"244*V*. (1) *If it appears to the Commissioners that any building or the site thereof is, in consequence of its condition or of its situation with reference to any hillside or bank unsafe,*

Power to prohibit occupation of unsafe or insanitary building.

they may, by written notice, prohibit the owner or any other person from occupying or continuing to occupy the building or from permitting it to be occupied until the building or the site, as the case may be, is rendered safe to the satisfaction of the Commissioners.

(2) *If it appears to the Commissioners that the drainage of, or the latrine accommodation provided for, any masonry or framed building is defective, they may, by written notice, prohibit the owner from letting the building for occupation until the defects have been remedied to their satisfaction.*

"244*W*. *If any person occupies or continues to occupy any building in contravention of any notice issued under sub-section* (1) *of section 244V, he may, under the orders of the Commissioners, be removed from the building by any police-officer.*

Power to remove persons occupying unsafe building.

"244*X*. (1) *If, for any person, any building intended for or used as a dwelling place appears to the Commissioners to be unfit for human habitation, they may apply to the Magistrate to prohibit the further use of such building for such purpose ; and the Magistrate may, by written order, make a prohibition as aforesaid or may pass such other order as he may deem just and proper :*

Prohibition of use of unfit building for human habitation.

Provided that the Magistrate shall not make any order under this sub-section without giving the owner and occupier of the building full opportunity of adducing evidence and of being heard in defence.

(2) *When any such prohibition has been made, no owner or occupier of such building shall use the same or suffer it to be used for human habitation until the Commissioners certify in writing that the causes rendering it unfit for human habitation have been removed to their satisfaction, or the Magistrate, by written order, withdraws the prohibition aforesaid.*

Abatement of overcrowding in dwelling-house or dwelling-place.

"244Y. (1) *If it appears to the Commissioners that any dwelling-house or any hut which is used as a dwelling-place, or any room in any such house or hut, is so overcrowded as to endanger the health of the inmates thereof, they may apply to the Magistrate to abate such overcrowding ;*

and the Magistrate may, by written order, require the owner of the building or room, within a reasonable time to be prescribed in the said order, to abate such overcrowding by reducing the number of lodgers, tenants, or other inmates of the building or room,

or may pass such other order as he may deem just and proper :

Provided that the Magistrate shall not make any order under this sub-section without giving the owner and occupier of the building or room full opportunity of adducing evidence and of being heard in defence.

(2) *The Commissioners may, by written order, declare what amount of superficial and cubic space shall be deemed, for the purposes of sub-section* (1), *to be necessary for each occupant of a building or room ;*

(3) *If the owner of any building or room referred to in sub-section* (1) *has sub-let the same, the landlord of the lodgers, tenants, or other actual inmates of the same shall, for the purposes of this section, be deemed to be the owner of the building or room ;*

(4) *It shall be incumbent on every tenant, lodger, or other inmate of a building or room to vacate on being required by the owner so to do in pursuance of any requisition made under sub-section* (1).

" Roof-gutters and down-pipes or platforms.

Provision, &c., of roof-gutters and down-pipes or masonry platforms.

"244Z. (1) *The Commissioners may, by written notice, require the owner or occupier of any building—*

(*a*) *to provide and maintain a sufficient number of suitable roof-gutters and down-pipes or masonry platforms for carrying water from the roof of the building into such drains as may be specified in the notice, or*

(*b*) *to renew, alter, repair or remove any such gutters, pipes or platforms already provided for the building.*

(2) *The said gutters must be of such dimensions and have such slope, and the said pipes must be of such dimensions, and the bends in such pipes must be made at such angles, as may be prescribed by rules made by the Commissioners at a meeting."*

Of Sanitary Measures with regard to Blocks of Huts.

Power of Commissioners as to inspection of huts.

*245. (264) Whenever the Commissioners at a meeting are satisfied, from inspection, or by report of competent persons, that any existing block of huts within the Municipality is, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage and the impracticability of scavengering, attended with risk of disease to the inhabitants of the neighbourhood, they may cause the locality to be inspected by two Medical Officers, who shall make a report in writing on the sanitary condition of the said block of huts; and shall specify, if necessary, in the said report, the huts which should be removed, the roads, drains, and sewers which should be constructed, and the low lands which should be filled up, with a view to the removal of the said risk of disease.

In an unreported case, *Gobind Lal Seal and others* v. *The Howrah Municipality*, decided on the 15th January 1884, Mr. Justice O'Kinealy made the following remarks with regard to the interpretation to be placed on this section :—

"The question in this case appears to me to be simply a question of construction,—that is to say, the construction to be put upon the report submitted by two Medical Officers to the Corporation authorities under s. 246 of the Municipal Act. . . When the Commissioners at a meeting are satisfied of a certain state of facts, they may cause the locality to be inspected by two Medical Officers, who shall make a report in writing on the huts, the drains and roads and sewers, which are to be constructed with a view to the removal of the risk of disease. By the words "risk of disease" is meant the risk of disease referred to in the previous part of the section. In order then that the Corporation could proceed to exercise the very summary power given to them by the Act, it seems to me that it was absolutely necessary that the medical certificate should cover what purported to have been done under the Act.

"Now, on turning to the medical certificate, we find nothing of the kind. It runs as follows: 'We, the undersigned Medical Officers, have the honor to report that, at the request of the Municipal Commissioner we have carefully inspected the blocks of huts situated within the localities specified below, and we are of opinion that the huts are so crowded together and so irregularly situated that there is risk of disease to the inhabitants, and there are no means for effectually scavenging the localities, and there is a want of drainage. We have specified below, in detail, what improvements we consider to be necessary in the way of making roads and drains and removing huts'. The crowding of huts is a matter which gives jurisdiction to the Commissioners under s. 264. Irregular building does not. So, looking at the certificate, we must read it to be that, so far as the huts are crowded together, there is risk of disease. Further than this we cannot go, for it certainly does not state that insufficiency of scavenging or the want of drainage is attended with any risk whatever. The order cannot go beyond the certificate. I think, therefore, that so much of the order as refers to the crowding of the huts and the removal

of them is good, while the latter portion which refers to the insufficiency of scavengering and want of drainage, is bad."

But where the Municipality having proceeded in accordance with ss. 245 and 246 of the Act decides that certain rules are necessary, that conclusion, in the absence of *malâ fides* or fraud or considerations of that nature, cannot be questioned in the Civil Court. [*F. W. Duke* v. *Ramessar Maliah*, 26 Cal., 881.]

On receipt of report, Commissioners may cause notice to be served.

246. (265) On receipt of the said report, the Commissioners at a meeting may require the owners or occupiers of the huts, or at the option of the Commissioners, the owner of the land on which such huts are built, to carry out and execute, within a reasonable time, to be fixed by the Commissioners for such purpose, all or any of the works specified in the aforesaid report or any portion thereof respectively, and if such owner, owners, or occupiers shall fail to comply with such requisition, the Commissioners themselves may execute all or any of such works.

The provisions of ss. 175—184 are applicable to any requisition made under this section.

Expenses may be recovered by instalments or remitted in case of poverty.

*247. (266) The Commissioners at a meeting may order that any expenses payable in respect of any work done by them in consequence of the failure of the owners or occupiers to execute such work when required to do so under the last preceding section, shall be recovered by instalments from the person liable to pay the same; or if it should appear to them that the said person is unable by reason of poverty to pay the same, may order the same, or any portion thereof, to be paid out of the Municipal Fund.

Sale of huts.

*248. (267) If any of the said huts be pulled down the Commissioners shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or, if the owner be unknown or the title disputed, shall be held in deposit by the Commissioners, until the person interested therein shall obtain the order of a Civil Court of competent jurisdiction for the payment of the same.

In an unreported case (*Ramanath Ghosh* v. *Chairman, Howrah Municipality*, Appeal No. 1105 of 1900) the High Court have ruled as follows: "The suit * * is one in regard to what is called a bustee road. The plaintiff claims the bustee road as his. The Howrah Municipality, who are the defendants, allege that the road is vested in them.

The Subordinate Judge has found in favour of the defendants, but has given the plaintiff a declaration that the soil of the road belongs to him.

"The plaintiff . . . impugns the finding at which the Subordinate Judge has arrived. He even says that there are no grounds upon which the Subordinate Judge should have applied the provisions of s. 30 of the Municipal Act to this road; secondly, that although the Municipality have the right to use the *bustee* road, for conservancy purposes of the village in which it is situated, it has no right to use it for the purpose of cleansing other *bustees*.

"In our opinion there is no force in either of these pleas.

"The Subordinate Judge has proved as a matter of fact that the road is a bustee road constructed by the Municipality and which vested in the Municipality at least 14 years ago and that since then it has been used by the Municipal *mehtars* and others as a pathway. He further finds that it is such a road as vests in the Municipality under s. 30. These are findings of facts which conclude us: and no grounds have been shown us which induce us to suppose that these findings have been arrived at in an improper manner.

As to the second ground of appeal there is no authority in the Municipal Act for such a view of the matter. There is no clause in that Act which in any way limits the right of user of the Municipality over *bustee* roads. The Municipality seems to have full rights over the road in this case and to be entitled to use it in any way it pleases."

The following is added to s. 248 *in Darjeeling* by s. 18, Act I of 1900.

"*Revetting, turfing and sloping.*

"248A. *If it appears to the Commissioners that the condition or the situation of any land, being private property, is such as to threaten the stability or security of any hillside or bank or any immoveable property thereon, the Commissioners may, by written notice, require the owner of the land to do all or any of the following things, namely:—*

Power to require revetting, turfing and sloping.

(a) *to construct and maintain a revetment, retaining-wall or toe-wall upon any part of the land;*

(b) *to re-construct, enlarge, strengthen, alter or repair any revetment, retaining-wall or toe-wall already standing on the land:*

(c) *to turf the land or any portion thereof;*

(d) *to slope the land or any portion thereof.*

"244B. *If any owner to whom a notice is issued under section 248A represents to the Commissioners, within fifteen days after the service of the notice, that the work required by the notice will directly and substantially benefit the owners of any adjacent buildings or land,*

Execution of work where owners of adjacent property would be benefited.

the Commissioners may, after hearing all the owners concerned, themselves cause the said work to be executed;

and the expenses thereby incurred shall be recovered from any or all of such owners, in such proportions as the Commissioners may direct.

"248*C*. *If it appears to the Commissioners that buildings or lands belonging to two or more owners can be protected by the execution of works of the nature referred to in section 248A, more economically or advantageously in combination than separately,*

Power to execute works in combination.

the Commissioners may themselves cause such works or any of them to be executed, maintained and kept in repair;

and the expenses thereby incurred shall be recovered from the said owners in such proportions as the Commissioners may direct.

"248*D*. *Notwithstanding anything contained in section 248A, the Commissioners may at any time themselves cause any revetment, retaining-wall or toe-wall to be constructed, re-constructed, enlarged, strengthened, altered or repaired on any private land immediately abutting upon any public road, drain, revetment or retaining-wall;*

Power to execute works where public road, drain, revetment or retaining-wall is affected.

and the expenses thereby incurred shall be paid by the Commissioners and the owner of such land, in such proportions as the Commissioners may direct.

"248*E*. *Whenever any revetment, retaining-wall or toe-wall is to be constructed, re-constructed, enlarged, strengthened, altered or repaired, or any land is to be turfed or sloped, in pursuance of section 201D, section 210B, section 210C, section 248A, section 248B, section 248C, or section 248D, the work shall be executed in accordance with the rules contained in Schedule D, so far as they are applicable to the particular case.*"

Rules as to revetting, turfing and sloping

Of the Regulation of the Sale of Food, Drink, and Drugs.

*249. (271) Every owner, or occupier, or farmer, of any place for the sale of meat, poultry, fish, or vegetables, or of any slaughter-house, within the limits of a Municipality, shall cause such drains to be made therein as shall be considered sufficient by the Commissioners, and (if required so to do by the Commissioners) shall cause all the floors and drains to be paved with stone or burnt brick, and shall also cause a supply of water to be provided, sufficient for keeping such place or slaughter-house in a clean and wholesome state.

Markets, slaughter-houses, &c., to be properly drained.

Non-compliance with the orders issued by the Commissioners under this section is punishable under section 268.

It is a question whether fuller power should not be conferred on Municipalities for the regulation of dairies, slaughter-houses and markets and for the prevention of the sale of milk and food by persons suffering from infectious and contagious diseases (tuberculosis, &c.). But little attempt has been made hitherto to take full advantage of the law as it stands. The provisions which relate to the subject are contained in sections 249—251, 261, 262, 263, 264 and 335—345. There is also the Indian Penal Code.

See Cir. No. 2-M., dated 2nd January 1904. C. & O., Vol. III, p. 1030.

Sale of unwholesome food or drink.

*250. (273) Any Magistrate, on the application of the Commissioners or any of their officers setting forth that there is just cause to believe that any article which has been rendered or has become noxious or unfit for use as food or drink for man is in the possession of any person for the purpose of being sold, or offered or exposed for sale, within the limits of a Municipality as food or drink for man, may grant a warrant to enter upon the premises of such person, and to search for and seize such article.

And if it appear to the said Magistrate that the same is noxious or unfit for such use, he shall order it to be forfeited and disposed of in such way as to him shall seem proper.

A written application to a Magistrate by a Municipal Officer is exempted from stamp-duty—Act VII of 1870, section 19, clause (18).

Prohibition of the sale of articles of food not of the proper nature, substance or quality.

251. "No person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser under a penalty not exceeding one hundred rupees: Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say—

(1) Where any matter or ingredient not injurious to health has been added to the food, because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the food, or conceal the inferior quality thereof;

(2) Where the food is unavoidably mixed with some extraneous matter in the process of collection or preparation.

The term 'food' shall include every article used for food or drink by man other than drugs or water.

In any prosecution under this section, it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale.

No proceedings to be had without leave of the Commissioners.

"251A. No proceedings shall be instituted under the last preceding section without the order or consent of the Commissioners."

"251B. The Commissioners, or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any market, building, shop, stall or place used for the sale or storage of articles intended for food, or as a slaughter-house, and may examine any such articles which may be therein, and if, upon examination, such articles, or any of them, appear to be unfit for food, may seize the same."

Power of Commissioners to enter and inspect markets, shops, &c., and to seize unwholesome articles exposed for sale.

"251C. Upon the seizure of any article of food, under the last preceding section, the same may, if the owner or the person in whose possession the same is found consent, be forthwith destroyed or so disposed of as to prevent it being used as food, but if the owner or the person in whose possession the same is found do not consent, then, if it appear to a Magistrate upon sufficient evidence that the same is unfit for food, he shall order the same to be destroyed or so disposed of as to prevent it being used as food, and may impose a penalty not exceeding one hundred rupees upon the owner or person in whose possession the same was found, such person not being merely a carrier or bailee thereof."

Power to destroy unwholesome articles.

"251D. If the Commissioners, or any person authorized by them in that behalf, shall apply to purchase any article of food exposed to sale, and shall tender the price for a quantity not more than shall be reasonably requisite for the purpose of analysis, and the person exposing the same for sale shall refuse to sell the same, such person shall be liable to a penalty not exceeding fifty rupees."

Person refusing to sell any article to Commissioners liable to penalty.

The original section has been altered, and the additional sections A, B, C, and D added by B. C. Act III of 1886.

Selling, or exposing for sale, any food or drink, knowing the same to be noxious, is an offence punishable under section 273, Indian Penal Code, with rigorous imprisonment for six months, and fine of Rs. 1,000.

Adulterating food or drink intended for sale, so as to render it noxious is punishable to the same extent under section 272, Indian Penal Code.

252. No shop or place shall be kept for the retail sale of drugs recognized by the British Pharmacopœia, not being also articles of ordinary domestic consumption, unless the same shall have been registered in the Office of the Commissioners. Any keeper of such shop or place failing to register the same within two months after this section shall come into

Registry of shops for sale of European drugs.

force, or within two months from the date of the establishment of such place, shall be liable to a fine not exceeding one hundred rupees. The Commissioners shall, upon registration, grant the keeper of such shop or place a license which he shall be bound to display in some conspicuous part of his premises.

Certificated dispensers.

No person shall compound, mix, prepare, dispense, or sell any drug in any such registered shop or place unless he be duly certified as a fit person to be entrusted with such duties under rules made for that purpose by the Local Government :

Provided that the provisions contained in the second clause of this section shall not come into operation until after the expiration of a period of six months from the publication of a notification to that effect in the *Calcutta Gazette* by the Local Government.

Nothing in this section contained shall be construed to apply to the sale of drugs used by practitioners of indigenous medicines, whether recognized by the British Pharmacopœia or not, when such drugs are not sold in a shop or place where medicines recognized by such Pharmacopœia are dispensed upon prescription.

This section is taken *verbatim* from the Calcutta Municipal Consolidation Act Amendment Act, 1881, s. 23. Using such a shop or place without its being registered is an offence punishable under s. 275. Breach of the provisions of the second clause with regard to the compounding etc., of drugs is punishable under s. 276.

For Rules prescribed under this section, *see* Appendix.

Inspection of drugs.

253. The Commissioners, or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any place kept for the sale of drugs, or in which drugs are sold, and if they have reason to suspect that any drug in the said place is adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, may remove the same on giving a receipt therefor, specifying the nature and quantity of the drug removed, and its approximate value ; and if it appear to a Magistrate that the said drug removed as aforesaid is adulterated or has become inert, unwholesome, or deteriorated as aforesaid, he may order the same to be destroyed, or to be so disposed of as to him may seem fit.

Compensation if drug be not adulterated.

If it shall appear to the said Magistrate that the drug so removed is not adulterated or has not become inert, unwholesome, or deteriorated as aforesaid, the person from whose shop or place it has been taken shall be entitled to have it restored to him, and it shall be in the discretion of the said Magistrate to award him such compensation as he may think proper, not exceeding the actual loss which has been sustained.

If the drug removed as aforesaid is not brought before a Magistrate, it shall be restored to the person from whose shop or place it was taken, and such person shall be entitled to compensation for any actual loss which he may have sustained by the removal of the said drug.

This is also taken from the Calcutta Municipal Consolidation Act Amendment Act, 1881, s. 24. The last para. is taken *verbatim* from s. 277 of Act V of 1876.

Adulterating drugs intended for sale is punishable under s. 274, Indian Penal Code, with six months' imprisonment, and fine of Rs. 1,000. Selling, or exposing such adulterated drugs for sale, is similarly punishable under s. 275, Indian Penal Code.

Under s. 521, Criminal Procedure Code, the Court can order the destruction of the drugs in addition to any punishment inflicted.

Of Burial and Burning-Grounds.

Registration of existing burial and burning grounds.

254. (278) Within three months from the date on which this and the six next succeeding sections may come into force as provided in section two hundred and twenty-two, every place which is used as a burial or burning-ground for corpses shall be registered as such by the owner thereof in the office of the Commissioners, but no fee shall be charged for such registry.

The object of the section is to obtain a correct record of the burial and burning grounds actually in use, and all such must be registered without charge during the period specified.

No new or disused burial or burning place henceforth to be used without leave of Government or of Commissioners.

255. (279) No burial or burning ground, whether public or private, shall be made or formed, or having lapsed into disuse shall be again used as such, otherwise, than with the permission of the Commissioners, or under the authority of the Local Government.

It has been held that the Commissioners have no power to levy fees upon interments or cremations in new burial or burning grounds sanctioned under the section. The only case in which they are justified in levying such

fees is, where they have themselves provided, out of the Municipal fund, fitting places to be used as burial or burning grounds according to the provisions of s. 259 (L. R.).

No burial or burning ground . . . . shall be made or formed. This plainly refers to new grounds which might be made or formed after these sections come into force. If made or formed with the permission of the Commissioners, such grounds must (having regard to ss. 257 and 274) be registered.

Having lapsed into disuse. The question has been raised as to whether these words refer to grounds which have been registered under the preceding section, and *then* fallen into disuse, or to grounds which had fallen into disuse *before* the extension of these sections. In all probability the latter case is referred to. If the Commissioners permit disused grounds to be re-opened registration of such grounds is obviously necessary with reference to ss. 257 and 274.

By s. 29A the powers and functions of the Local Government under this section have been delegated to Commissioners of Divisions.

Commissioners may order certain burial or burning grounds to be closed.

256. (280) If it shall appear to the Commissioners at a meeting that any public or private burial or burning ground is dangerous to health or offensive to the tax-payers or to the inhabitants of the neighbourhood, and also that a suitable place for interment or burning as the case may be, exists within a convenient distance and is open and available to the inhabitants of the Municipality, the Commissioners shall give public notice of their intention to close such burial or burning ground, and shall consider any objections which may be preferred within fifteen days of the publication of such notice; after considering such objections they may, by notification to be affixed on some conspicuous part of the ground, appoint a time not being less than two months, for the closing of such burial or burning ground.

If any building is attached to, and used in connection with a burning-ground closed under this section, the Commissioners shall, if the owner of such building make an application to them in that behalf, take over the same on payment of a fair price therefor.

Under the corresponding section, the sanction of the Commissioner of the Division was required, before the issue of the notification in question. *Semble* that the objections should be considered at a meeting. Cf. *Municipality of Poona* v. *Mohanlal*. 9 Bom., 51.

Private burial-places may be excepted.

"256A. When notice is given of the intention to close any burial-ground under the last preceding section, private burial-places in such burial-grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf:

Provided that the limits of such burial-places are defined and that they shall only be used for the burial of members of the family of the owners thereof."

Appeals from orders under sections 256 and 256A.

"256B. Any person aggrieved by any order made by the Commissioners under the powers conferred upon them by the two last preceding sections may appeal to the Magistrate whose decision shall be final."

"The Magistrate" is defined in s. 6, clause 8.

Prohibition to bury or burn in unregistered grounds.

257. (281) After the expiration of the three months mentioned in section two hundred and fifty-four, no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning ground; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

A breach of the provisions of this section is an offence punishable under s. 274.

The words "special permission for a corpse" clearly show that a separate special permission must be given for every such corpse, and that the Commissioners have no power to grant a general permission to any person or to the public generally, to bury or burn in an unregistered ground.

Commissioners may cause corpses to be burnt or buried according to the religious tenets of the deceased.

258. After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried, and the expenses thereby incurred shall be recoverable as a debt due from the estate of such person. In every such case, the corpse shall be disposed of, so far as may be possible, in manner consistent with the religious tenets of the deceased.

No. 532T.—M. of the 12th May 1884, in the Municipal Department orders that the following clause should be added to Rule 8 of the "Rules for reporting, transmitting, and disposing of intestate movable property":—

"The *bonâ fide* expenses incurred by a Municipality on account of the cost of the burial or cremation of the corpses of persons dying intestate within Municipal limits, should also be included in Form III, and should be paid at once from the estate of the deceased to the Vice-Chairman of the Municipality, on his presenting a duly receipted bill for the amount to the Judge."

Commissioners may provide places to be used as burial or burning grounds.

259. (283) The Commissioners at a meeting may, from time to time, out of the Municipal Fund, with the sanction of the Local Government, provide fitting places to be used as burial or burning grounds, and may impose a fee

not exceeding two rupees in respect of every corpse buried or burnt within such burial or burning grounds.

By s. 29A the powers and functions of the Local Government under this section have been delegated to Commissioners of Divisions.

Commissioners may provide for burial of paupers free of charge.

*260. (284) The Commissioners at a meeting may, from time to time, out of the Municipal Fund, provide for the burial and burning of paupers free of charge within the limits of the Municipality.

Power to license fuel-shops at burning-grounds.

"260A. (1) The Commissioners may, from time to time, grant licenses to persons applying for the same, for the sale at burning-grounds of fuel and other articles used for the cremation of dead bodies, and in case any such license shall be granted shall, at a meeting, prescribe a scale of rates for the sale of such articles, and any person not so licensed, who shall, within three hundred yards of any such burning-ground, sell or offer for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such license they may think fit, and any person to whom any such license is granted, who shall charge for the sale of any such article any higher rate than the rate fixed for such article in such scale, shall, at the discretion of Commissioners, be liable to have his license cancelled, and shall be liable also to a fine not exceeding ten rupees."

"At the instance of the Commissioners of South Barrackpore, we have introduced *by s. 69 of the Bill* a new section (260A), giving the Municipal Commissioners power to grant licenses to persons for the sale of fuel and other necessaries at cremation-grounds and to prescribe a rate for the sale of such articles."—*Final Report of Select Committee on Amending Bill.*

Where a Municipality granted under s. 260A a license which created an exclusive right to employment as cremation priest and to sell fuel in the burning-ground; *held* that the action of the Municipality was *ultra vires*. Section 260 was never intended to allow the creation of an exclusive right. *Gour Mani Debi* v. *Chairman, Panihati Municipality*, 14 C. W. N., p. 1057.

Of certain Offensive and Dangerous Trades or Occupations.

Certain offensive and dangerous trades not to be established within limits to be fixed by the Commissioners without license.

261. (265) Within such local limits as may be fixed by the Commissioners at a meeting, no place shall be used without a license from the Commissioners, which shall be renewable annually, for any of the following purposes, namely—

melting tallow;

boiling offal or blood ;
skinning or disembowelling animals ;
as a soap-house, oil boiling-house, dyeing-house,

as a tannery, slaughter-house, or kiln for making bricks, pottery, tiles, or lime ;

as a manufactory or place of business from which offensive or unwholesome smells may arise ;

as a yard or depôt for trade in hay, straw, wood, thatching grass, jute, or other dangerously inflammable material ;

as a store-house for kerosine, petroleum, naphtha, or any inflammable oil or spirit ;

as a shop for the sale of meat ;
" as a place for the storage of rags or bones or both ; "
or as a lodging-house or a serai.

Such license shall not be withheld unless the Commissioners have reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood.

" The Commissioners at a meeting may, in accordance with a scale of fees to be approved by the Commissioner of the Division, levy a fee in respect of any such license and the renewal thereof, and may impose such conditions upon the grant of any such license as they may think necessary."

It would seem that this section does not apply to cases where the premises are only temporarily used for the purposes specified, for private convenience and not in the way of business or trade. There is a High Court ruling with regard to s. 77, Act III of 1864 (B. C.), which appears to be in point, as no distinction can be drawn between the two sections in this respect. *In the matter of Sree Ram Chunder Haldar*, Glover and Birch, JJ., remarked as follows : " We think that this rule must be made absolute. The Junior Government Pleader, who has appeared on behalf of the Chairman of the Municipality, says, that no one is permitted to make bricks, whether for his own use or for sale, without taking out a license. The only section of Act III of 1864 (B. C.) which could be applied to this case refers to making bricks or doing other things with reference to trade. There is nothing in the section which applies to a person making bricks for his own use or which makes it an offence against Municipal Regulations to make them without first taking out a license . . . . . It appears to us that this fine has been improperly levied on the petitioner and that it should be returned to him."—20 W. R., Cr. R., 35.

One Deno Manjee was prosecuted by the Howrah Municipality for using a straw depôt without a license. He was acquitted by the Honorary Magistrate who tried the case, on the ground that he had petitioned for a license, and that the order of the Secretary refusing the same was not according to law. The acquittal was set aside by the High Court, on the ground that the only question which the Bench had to decide was as to whether the accused was carrying on his business without a license or

not and not as to whether his petition had been properly dealt with.—*Unreported case.*

The offence of using any place for any of the purposes detailed in this section without a license is punishable under s. 273, clause (2); a breach of the conditions of the license is punishable under s. 273, clause (3).

It appears that the only person liable to a penalty for using the premises for any of the purposes specified is the owner or occupier who carries on the business. His servants cannot be held to be liable, neither can the customer be held to be liable. A butcher, therefore, who slaughtered cattle in a slaughter-house for which no license had been taken out by the owner could not be held to have used the premises as a slaughter-house within the meaning of this section. For the offence consists, not in the isolated act, but in the carrying on of the trade or business without a license—*Municipal Commissioners of the Suburbs of Calcutta* v. *Zamir Sheik*, 16 W. R., Cr. R., 4.

The definition of "owner," given in s. 6, clause (11), must, however, not be lost sight of.

The scale of fees now requires the approval of the Commissioner of the Division. This provision follows the example of the Punjab Act. The provision is a salutary one, as the section has been much abused. It is obvious that the power of demanding a fee for the grant of a license is not a power to tax a particular industry, at discretion. The scale of fees should be moderate and fixed for each class of industry.

Government has laid down the following general principles to be followed in this matter.

"A distinction should, in the first place, be drawn between dangerous trades and offensive trades, and those only should be included in the latter category which cause actual annoyance or discomfort to persons living in the neighbourhood and which can equally well be carried on outside Municipal limits. In respect of these the Lieutenant-Governor has no objection to fees being levied at such rates as will tend to discourage the establishment of such industries within Municipalities. In the case of trades which contain some elements of danger (such as the danger from fire which attends on the establishment of depôts for inflammable material) but which it is not desirable to drive outside Municipal limits, inasmuch as they can with suitable precautions be carried on within those limits without causing annoyance or risk to the neighbours, the fee levied should not be much in excess of the cost of maintaining the supervision necessary to secure that such precautions are taken, "(Ben. Govt. Muncpl. Cir. No. 67-M., dated 10th June 1896 to Commissioners.)"

The fee leviable under s. 261 is only a fee in respect of a license to use a place for a certain specified purpose. No power is given to the Commissioners to levy a tax on the products of the manufacture carried on in a place so licensed. (Ben. Govt. Muncpl., No. 2057-M., 23rd June 1898.)

By s. 46 of Act I. (B. C.,) of 1893, this section is repealed as regards inflammable materials, in the Municipalities to which that Act is extended. The Act will be found *post.*

See *Municipal Council Kumbakonam* v. *Abdulla Sahib*, 36 Mad., 113.

Farming out by a Municipality of its right to collect fees on the slaughter of animals which the Municipality can levy under s. 191 of the

Madras Act (IV of 1884) is *ultra vires*. A contract of lease farming out such a right is void and unenforceable under s. 11 and s. 23 of the Contract Act (IX of 1872) being beyond the competency of the Municipal Corporation to enter into.

Any amount due to the Municipality under such a contract cannot be recovered.

A right of farming out is not necessary to the exercise of the right of levying, as such fees can easily be collected by the Municipal subordinates.

The fact that there is an express power to farm out tolls negatives an implied power to farm out other kinds of fees. See s. 161.

21 M. L. J. 788; 24 Madras 401 applied. Halsbury's *Laws of England* Vol. VIII, Art. 805, referred to.

License fees cannot be levied on places used for the storage of coal and coke. Coal and coke were designedly excluded from the list of articles mentioned in s. 285 of the Municipal Consolidation Act, 1876, upon which such fees were leviable and they are not *ejusdem generis* with wood, hay, &c., specifically included in s. 261. Cirs. Nos. 10 and 1407, dated 15th July 1902. C. and O. Vol. III, p. 1040.

A distillery is not taxable under this section. G. O. No. 4575, dated 20th December 1895. (*Ibid*).

Petitioner was convicted under s. 278 (2) for having used without license certain premises for the storing of hides in contravention of s. 261 but no resolution passed by the Commissioners at a meeting fixing the local limits within which licenses should be required under s. 261 was on record—*Held* that the conviction must be set aside in absence of proof of the existence of the Resolution. The presumption that official Acts have been regularly performed s. 114 (*e*), [Evidence Act] cannot supply the deficiency in the proof.

Quære.—Does the penultimate clause of s. 261 empower the Commissioners to do more than withhold the license in individual cases? *Syed Motiram Ali* v. *Cuttack Municipality*, 17 C. W. N., p. 531.

Commissioners may, in certain cases order the use of slaughter-houses and the carrying on of dangerous and offensive trades, to be discontinued.

262. (287) If it be shewn to the satisfaction of the Commissioners at a meeting that any place licensed under section two hundred and sixty-one is a nuisance to the neighbourhood they may, notwithstanding anything contained in the said section, give notice to the occupier to discontinue the use of such place within one month after the date of such notice:

"Provided that in this case the Commissioners shall refund so much of the fee levied under the last preceding section as may be proportionate to the unexpired portion of the year for which the license was granted."

This section is apparently based on the ruling in *Municipal Commissioners of the Suburbs of Calcutta* v. *Mohammed Ali* (16 W. R., Cr. R., 6) in which it was laid down that a previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance.

In the same case it was ruled that "no one has a right to corrupt the air of a particular locality by the practice of a noxious trade, simply because at the commencement of the nuisance, no one was in a position to be injured by it; and no prescriptive right can be acquired to maintain and no length of enjoyment can legalize, a public nuisance involving actual danger to the health of the community."

"Another species of nuisance is the carrying on of an offensive or dangerous trade or manufacture. Such carrying on when only occasioning injury to some private individual may form the subject of an action at his suit; but when it is detrimental to the public at large, it is a criminal offence punishable by fine and imprisonment; and it may be remarked that to support an indictment for such nuisances as these, it is not necessary to prove that they are offensive to health, if they be manifestly offensive to the senses."—(4 *Steph. Com.*, 245.)

"262A. Within such local limits as may be fixed by the Commissioners at meeting no place shall be used as a kiln for making bricks, pottery, tiles or lime for private purposes."

Commissioners may prohibit private kilns.

This section has been added with reference to the ruling: *In the matter of Sree Ram Chunder Haldar*, quoted in the note to s. 261.

Disobedience to an order issued under this section is punishable under s. 273, clause (2).

263. (289) Within such limits as the Commissioners at meeting may determine, no milkman, cartman, livery stable-keeper or keeper of hackney-carriages shall keep horses, ponies, or cattle, for the purposes of trade or business except in a place licensed by the Commissioners.

Milkman, &c., not to keep animals or cattle without license.

The Commissioners may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

It shall be in the discretion of the Commissioners at a meeting to grant any such license subject to such conditions as they may think fit.

A breach of the provisions of this section is an offence punishable under s. 273, clause (2). Breach of the conditions of the license is punishable under s. 273, clause (3).

The words "exceeding ten in number" after "cattle" were struck out by the Amending Act.

264. The Commissioners may provide public stables for the accommodation of horses and cattle and may direct that, within such limits as they shall at a meeting determine, no person shall keep horses or cattle exceeding ten in

Commissioners may provide public stables.

number, for the purpose of trade or business, except in such public stables, or in places licensed under the preceding section.

The Commissioners may charge such reasonable fees as they shall think fit for the use of such public stables.

This is altogether new and is founded on a suggestion made by the Army Sanitary Commission. A breach of the order is punishable under s. 273, clause (4).

Conditions for keeping pig-sty.

265. (292) Within such limits as the Commissioners may direct, no person shall keep any pig-sty adjoining or near a road unless it is shut out therefrom by a sufficient wall or fence, and in no place within such limits shall more than ten pigs or more than twenty sheep or goats be kept without the written permission of the Commissioners.

The Commissioners may charge an annual fee not exceeding two rupees for such permission and may impose such conditions in respect of such permission as they may think necessary.

Punishable under s. 273, clause (5).

The powers given by this section seem to be inadequate for the proper control of the nuisance.

Penalties.

Failing to shut out privy from view.

266. (239) Any person constructing a privy within a Municipality, and failing to have it shut out from view, as in section two hundred and twenty-five required, shall be liable to a fine not exceeding twenty rupees.

Erecting huts without notice.

267. (263) Whoever erects a hut, or any range or block of huts or sheds, or adds to any hut or shed, or to any range or block already existing, contrary to the provisions of section two hundred and forty-three; and whoever fails to remove such hut, block of huts, or shed, when required by the Commissioners to do so, shall be liable to a fine not exceeding twenty rupees for every such offence, and to a further fine, not exceeding five rupees, for each day during which the offence is continued after he has been convicted of such offence.

A further fine. The sentence of a Court, imposing a daily fine with prospective effect, is bad.—In re *Sagur Dutt*, 1 B. L. R., O. Cr., 41. For other references see section 156.

In Darjeeling section 267 has been repealed by the Act of 1900, section 23.

268. (272) If any owner, occupier or farmer of any place for the sale of meat, poultry, fish or vegetables, or of any slaughter-house within the limits of a Municipality, after notice in writing given to him by the Commissioners that such place or slaughter-house is defective in any of the particulars specified in section two hundred and forty-nine, and requiring him to remedy the defect specified within not less than thirty days, makes default therein, he shall be liable to a fine not exceeding twenty rupees for every day during which such default is continued after the expiration of the period mentioned in such notice.

Disobeying requisition under section 249.

See note to preceding section.

269. If any person, in order to provide for the passage of water, or for any other purpose, shall, without the consent of the Commissioners, dig or cut up any public road or thoroughfare he shall be liable to a fine not exceeding twenty-five rupees, and shall, in addition, be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road or thoroughfare.

Cutting up road for passage of water.

270. Whoever, within a Municipality,—

(1) (236) without the permission of the Commissioners, throws or puts, or permits his servants to throw or put, any sewage or offensive matter on to any road, or who throws or puts, or permits his servants to throw or put, any earth, rubbish, sewage or offensive matter into any sewer or drain belonging to the Commissioners, or into any drain communicating therewith ; or

Throwing rubbish into sewers.

*(2) (237) causes or allows the water of any sink, sewer or cess-pool, or any other offensive matter belonging to him or being on his land, to run, drain or be thrown or put upon any road, or causes or allows any offensive matter to run, drain, or be thrown into a surface drain near any road ; or

Allowing water of any sewer, &c., to run on any road.

(3) (248) constructs a latrine, urinal, cess-pool, house-drain or privy, in contravention of the provisions of sections two hundred and thirty or two hundred and thirty-one ; or

Constructing latrine, &c., in contravention of sections 230 and 231.

(4) (250) without the written permission of the Commissioners, digs, or makes, or causes or suffers to be dug or made, any excavation,

Making excavations.

cess-pool, tank or pit, in contravention of the provisions of section two hundred and thirty-two ; or

(5) makes or repairs a roof or wall with grass, leaves, mats or other inflammable material in contravention of the provisions of section two hundred and thirty-six,

Making a roof or wall of grass, &c.

shall be liable, for every such offence, to a fine not exceeding twenty-five rupees.

In Darjeeling clauses (4) and (5) of section 270 have been repealed by the Act of 1900, section 23.

The road or drain referred to in clause (2) of section 270 is a road or drain belonging to the Municipality. If a bye-law made under section 350 authorise the Municipality to interfere with private property, it is *ultra vires*.—*Chandra Nandy* v. *Basanta Kumar Das*, 10 C. W. N., p. 667.

271. Whoever, within a Municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections two hundred and twenty-four, two hundred and twenty-five, "two hundred and twenty-seven," two hundred and thirty, two hundred and thirty-one or two hundred and thirty-eight, shall be liable, for every such offence, to a fine not exceeding twenty-five rupees, and to a further fine, not exceeding five rupees, for every day during which he shall continue to make such default after service on him of such requisition.

Disobeying requisition under sections 224, 225, 227, 230, 231 and 238.

In Darjeeling the reference to sections 227 and 238 have been repealed by the Act of 1900, section 23.

The service of requisition on the accused who is charged with disobedience thereof as well as the requisition itself should be proved and found before there can be a conviction for an offence under section 271. *Bidhubhusan Mullik* v. *Asansol Municipality*, 6 C. W. N., p. 167.

272. Whoever, within a Municipality,—

(1) (241) without the written consent of the Commissioners previously obtained, makes or causes to be made, or alters or causes to be altered, any drain leading into any of the sewers or drains vested in the Commissioners by this Act ; or

Altering, &c., drains leading to public sewers.

(2) (245) constructs any branch drain, privy or cess-pool contrary to the directions and regulations of the Commissioners or contrary to the provisions of this Act ; or without the consent of the Commissioners, constructs, rebuilds or unstops any drain, privy or cess-pool, which has been ordered

Making drains contrary to the orders of the Commissioners.

by them to be demolished or stopped up or not to be made, shall be liable, for every such offence, to a fine not exceeding fifty rupees.

The following has been added to section 272 in *Darjeeling* by section 19 of Act I of 1900.

"272A. *Whoever—*

Fine for certain offences

(*a*) *contravenes any provision of any of the clauses of this Act mentioned in the first column of the following table, or*

(*b*) *fails to comply with any requisition lawfully made upon him or any direction lawfully given to him under any of the said clauses,*

shall be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

Explanation.—The entries in the second column of the following table headed "Subject," are not intended as definitions of the offences described in the clauses mentioned in the first column, or even as abstracts of those clauses, but are inserted merely as references to the subject of the clause, the number of which is given in the first column.

1	2	3
Clauses.	Subject.	Fine which may be imposed.
Section 201D ..	Requisition to re-construct, etc., a private road or bridge.	Five hundred rupees.
„ 201E ..	Requisition to provide and maintain, or to enlarge, waterway.	Two hundred and fifty rupees.
„ 201F ..	Construction, etc., of private road or bridge.	Ditto.
„ 201G ..	Requisition to close a private road.	Ditto.
„ 207A, clause (*b*).	Requisition to remove *debris* falling upon or into a private road or drain.	Fifty rupees.
„ 210B ..	Requisition to take down a building, etc., where buildings, etc., threaten the stability of other immovable property.	Five hundred rupees.
„ 210C ..	Requisition to take down a building, etc., where hillside or bank threatens the safety of buildings.	Ditto.
„ 224C ..	Requisition to re-construct, etc., a private drain.	Two hundred and fifty rupees.
„ 227 ..	Requisition to provide a drain..	Ditto.
„ 229A ..	Construction, etc., of private drain.	Ditto.
„ 236, sub-section (*1*).	Construction of external roofs or walls with inflammable material.	Twenty-five rupees.

1	2	3
Clauses.	Subject.	Fine which may be imposed.
Section 236, sub-section (*2*).	Requisition to remove or alter external wall or roof made of inflammable material.	Twenty rupees.
„ 244E, sub-section (*1*).	Sending written notice to Commissioners before commencing building work.	Fifty rupees.
„ 244F ..	Sending written notice to Commissioners after completion of building work.	Ditto.
„ 244Q, sub-section (*1*).	Sending written notice to Commissioners before commencing building work.	Twenty-five rupees.
„ 244T, sub-section (*1*).	Requisition to stop work pending decision of Magistrate.	Five hundred rupees.
„ 244V, sub-section (*1*).	Prohibition of occupation of unsafe building.	Two hundred and fifty rupees in the case of a masonry or framed building and twenty-five rupees in the case of a hut.
„ 244V, sub-section (*2*)	Prohibition of occupation of insanitary building.	Fifty rupees.
„ 244X, sub-section (*2*).	Using building declared unfit for human habitation.	Ditto.
„ 244Y, sub-section (*1*).	Requisition to abate overcrowding in building or room.	Ditto.
„ 244Y, sub-section (*4*).	Requisition to vacate overcrowded building or room.	Ten rupees.
„ 244Z, sub-section (*1*).	Requisition to provide, repair, etc., roof-gutters and down pipes or masonry platforms.	One hundred rupees
„ 248A ..	Requisition to construct revetment, etc.	Five hundred rupees.
„ 248E ..	Revetment, turfing and sloping	Two hundred and fifty rupees.

Continuing fine for certain offences

"272*B*. *Whoever, after having been convicted of failing to comply with any requisition lawfully made upon him or any direction lawfully given to him under any of the clauses of this Act mentioned in the first column of the following table,*

continues to neglect to comply with the said requisition or direction, shall be punished, for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

Explanation.—The entries in the second column of the following table, headed "Subject" are not intended as definitions of the offences described

in the clauses mentioned in the first column, or even as abstracts of those clauses, but are inserted merely as references to the subject of the clause, the number of which is given in the first column :—

1	2	3
Clauses.	Subject.	Daily fine which may be imposed.
Section 201D ..	Requisition to re-construct, etc., a private road or bridge.	One hundred rupees.
,, 201E ..	Requisition to provide and maintain, or to enlarge, waterway.	Fifty rupees.
,, 201G ..	Requisition to close a private road.	Fifty rupees.
,, 207A, clause (*b*).	Requisition to remove *debris* falling upon or into a private road or drain.	Ten rupees.
,, 210B ..	Requisition to take down a building, etc., where buildings, etc., threaten the stability of other immoveable property.	One hundred rupees.
,, 210C ..	Requisition to take down building, etc., where hillside or bank threatens the safety of buildings.	One hundred rupees.
,, 224C ..	Requisition to re-construct, etc., a private drain.	Fifty rupees.
,, 227 ..	Requisition to provide a drain	Fifty rupees.
,, 244V, sub-section (*1*).	Prohibition of occupation of unsafe building.	Fifty rupees in the case of a masonry or framed building, and five rupees in the case of a hut.
,, 244V, sub-section (*2*).	Prohibition of occupation of insanitary building.	Ten rupees.

Fine for unlawfully commencing, carrying on or completing work

"272C. *If any work referred to in section 201C, sub-section (1), or section 224B, sub-section (1), or the erection, re-erection or material alteration of any building—*

(*a*) *is commenced without obtaining the permission of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) without waiting until the Commissioners have received the orders of the Engineer, or in contravention of any orders passed by him, or*

(*b*) *is carried on or completed otherwise than in accordance with the particulars on which such permission or orders was or were based, or*

(*c*) *is carried on or completed after such permission has been withdrawn, or*

(*d*) *is carried on or completed in breach of any provision contained in this Act or in any rules or bye-laws made hereunder, or of any condition, modification, direction or requisition lawfully imposed, made or given under this Act or such rules or bye-laws, or*

if any alterations required by any notice issued under section 244H be not duly made,

the owner shall be liable to fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to five hundred rupees, and in the case of a hut to fifty rupees, and

to further fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to one hundred rupees, and in the case of a hut to ten rupees, for each day after conviction during which the offence is continued.

"272D. *If any person to whom a direction to demolish or alter work is given under clause (i) of section 244S fails to obey the same, he shall be liable*

Fine for disobedience of direction for demolition or alteration where work unlawfully commenced, carried on or completed.

to fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to five hundred rupees, and in the case of a hut to fifty rupees, and

to further fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to one hundred rupees, and in the case of a hut to ten rupees, for each day after conviction during which he so fails.

"272E. *When a building has been erected, re-erected or materially altered under this Act without any statement having been made, under rule 23 or rule 28 of Schedule C, that it was intended to use the building or any part thereof for any of the purposes specified in section 261, or as a stable, cattle-shed or cow-house, then any person using the building or any part thereof for any of those purposes shall be liable,—*

Fine for using building for carrying on offensive trade without previous declaration.

(*a*) *in the case of a masonry or framed building, to fine which may extend to two hundred rupees, and to further fine which may extend to twenty rupees for each day after conviction during which he continues such use, and*

(*b*) *in the case of a hut, to fine which may extend to twenty rupees, and to further fine which may extend to five rupees for each day after conviction during which he continues such use.*"

In Darjeeling so much of clause (2) of this section as relates to drains has been repealed by the Act of 1900, s. 23.

273. Whoever, in a Municipality,—

(1) (255) begins to build or to take, own, or alter or repair, any house contrary to the provisions of sections two hundred and thirty-five, two hundred and thirty-eight or two hundred and forty-one, or lets a house for occupation contrary to the provisions of section two hundred and forty-two; or, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever; or who, being permitted, fails to put up such fence or hoard, or to continue the same standing, or to

Offence under sections 235, 238, 241, 242.

maintain the same in good condition ; or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night ; or who does not remove the same within eight days when directed by the Commissioners ; or

Offence under sections 261, 262, 262A.

(2) (286 & 290) without a license uses any place for any of the purposes specified in section two hundred and sixty-one, or section two hundred and sixty-three ; " or uses any place as a kiln in contravention of the provisions of section two hundred and sixty-two A ; or "

Offence under sections 261, 263.

(3) (291) being a holder of a license under section two hundred and sixty-one or section two hundred and sixty-three, breaks any condition of such license ; or

Offence under section 264.

(4) after the issue of an order under section two hundred and sixty-four, keeps horses or cattle exceeding ten in number in contravention of such order ; or

Offence under section 265.

(5) (293) keeps any pig-sty, pigs, sheep or goats contrary to the provisions of section two hundred and sixty-five,

shall be liable, for every such offence, to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees, for every day during which the offence is continued after he has been convicted of such offence.

"*A further fine . . . . for every day.*" A sentence of a Court imposing a daily fine with prospective effect is bad in law.—In re *Sagar Dutt*. I. L. R., O. Cr., 41. See note to section 156 for other references. It is for consideration whether the law should not be amended.

See note to s. 237.

The High Court quashed an order by a Magistrate for the demolition of a second story added to a house without permission on the ground that such order could only be passed under section 238(1), by the Commissioner, and also set aside the conviction had under section 273 (1) on the ground that there is no necessity for obtaining permission to add a second story to a house (*Emperor* v. *Mathura Prasad*, 29 Cal., 491). The Legal Remembrancer was of opinion that the Court had overlooked the provisions of section 240 defining the expression "erect" and "re-erect" and it is suggested that when the question next arises another reference should be made.

Carefully note Govt. Circs. Nos. 18-M., and 12675-M., dated 7th November 1902 given in full on p. 1016, Vol. III, C. & O.

In Darjeeling the words "two hundred and thirty-eight or two hundred and forty-one or lets a house contrary to the provisions of section two hundred and forty-two," have been repealed by the Act of 1900, s. 23.

Burying or burning corpse in unregistered grounds.

274. (282) Whoever, within a Municipality, after the expiration of the period mentioned in section two hundred and fifty-seven, knowingly buries or burns, or causes, procures or suffers to be buried or burned, any corpse in or on any ground not registered as a burial or burning-ground, shall be liable to a fine not exceeding one hundred rupees.

Offence under section 252.

275. Whoever, within a Municipality, uses any such place as is mentioned in section two hundred and fifty-two, without the same being registered, shall be liable to a fine not exceeding one hundred rupees, and to a further fine not exceeding twenty rupees, for each day during which the offence is continued after he has been convicted of such offence.

Uncertificated persons dispensing drugs.

276. Whoever, within a Municipality, not being the holder of such certificate as is mentioned in the second clause of section two hundred and fifty-two, shall compound, mix, prepare or sell any drugs in any registered shop or place, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees for each offence; and any owner, occupier or keeper of any such shop or place, who shall employ any such uncertified person to perform any one or more of such duties, shall, on conviction before a Magistrate, be liable to a fine not exceeding two hundred rupees, and shall be further liable, at the discretion of such Magistrate, to forfeit his license:

Provided that this section shall not come into operation until after the expiration of a period of six months from the publication of a notification to that effect in the *Calcutta Gazette* by the Local Government.

This section is taken from the Calcutta Municipal Consolidation Act Amendment Act, 1881, section 23, clause (3).

Disobeying notice under section 262.

277. (288) Whoever, within a Municipality, after the expiration of the time specified in a notice issued by the Commissioners under the provisions of section two hundred and sixty-two, uses, or permits to be used, the place specified in such notice in such a manner as to be a nuisance to the neighbourhood, shall be liable to a fine not exceeding two hundred rupees, and to a further fine, not exceeding forty rupees, for each day

during which the offence is continued after he has been convicted of such offence.

If the nuisance consisted in vitiating the atmosphere so as to make it noxious to the health of persons residing in the vicinity the offence is punishable under section 278, Indian Penal Code, with fine of Rs. 500; if in voluntarily corrupting or fouling the water of any public spring or reservoir, the offence is punishable with imprisonment of either description for three months and fine of Rs. 500—Indian Penal Code, section 277.

A public nuisance is defined in section 268, Indian Penal Code, as "any act . . or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right."

"*A further fine, etc.*"—A sentence by a Court imposing a fine for an offence, and a daily fine for such time as the offence may be continued in future, is bad in law. In re *Sagur Dutt*, 1, B. L. R., O. Cr., 41. See note to s. 156.

Suspension or revocation of license, &c.

*278. (294) Any Magistrate before whom any person is convicted of an offence contrary to the provisions of this Act relating to the use of any place for a purpose for which a license is required, or of the non-observance of any of the bye-laws relating thereto made under this Act, in addition to the fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such license.

And the Commissioners, upon the conviction of any person for a second or other subsequent like offence, may cancel his license.

It must be remembered that this section, forming part of Part VI, is not in force in any Municipality to which it has not been expressly extended.

Sanitation and Town Planning.

Those interested in sanitation and town planning should read the Government of India, Education Department letters Nos. 1480—1488, dated 9th August 1912 and Nos. 1345—1354, dated 26th July 1912 and their enclosures.

English Law.—When an area is in an insanitary condition the medical officer to the local authority or a certain number of rate-payers can, under the Housing of the Working Classes Act 1890, set the law in motion and cause an improvement scheme to be prepared after the issue of a declaration that the area is unhealthy. Section 38 of the Act by a similar procedure provides for the acquisition and demolition of obstructive buildings. Section 17 of the Housing, Town Planning, etc., Act of 1909 empowers the local authority to cause inspections to be made with a view to ascertaining whether any dwelling-house is in a state so dangerous

or injurious to health as to be unfit for human habitation, and the house may be demolished if it is not put in proper order.

Indian Law.—It is a question whether the Indian Law should not be strengthened on similar lines and the building bye-laws so altered as to provide sufficient outside air space for every room.

Section 241 of the Act confers large powers on the Commissioners to frame rules as to the mode of construction of houses, but none of the clauses of that section deal with the question of providing outside air space for every room. Section 242 empowers the Commissioners to prohibit the letting of unstable or ill-drained houses, while sections 245—248 practically enable them to inaugurate an improvement scheme when blocks of huts are in an insanitary condition. These powers have not been generally utilized to the full, but the main defects in the existing law appear to be the absence of any provisions (1) authorising rate-payers to initiate schemes of improvement, (2) empowering local bodies to demolish insanitary houses and to pay compensation for acquisition, and (3) enabling Municipalities to regulate not only the erection of houses but the sanitary arrangements of each room in every dwelling in the matter of light and ventilation.

The law will probably require amendment in the near future. In this connection Chapter XXIV and Schedule XVII, Chapters XXV and XXVI and sections 444—447 of the Calcutta Act (III of 1899) and sections 36—38 of the Calcutta Improvement Act and sections 244V—244Y of the Darjeeling Act should be read.

Now that the Sanitary Officers Act has been passed Health Officers might usefully be employed to initiate schemes if and when the Municipal Act is amended.

The question of Town Planning is even more difficult. In existing towns much can be done by a system of sanitary improvements. Where towns expand the method of planning to be employed will depend on the further question whether the new areas to be taken in consist mainly of agricultural land or land in which there are already large vested interests.

It would seem obvious that the law should be amended so as to provide a proper machinery for controlling future urban developments and for acquiring land in the outskirts of towns. The provisions of sections 358—366 of the Calcutta Municipal Act of 1899 contain the germs of the English Town Planning Act and the Act of 1884 might be amended by a development of the principles underlying those sections.

PART VII.

Of a Water-Supply.

Imposition of water-rate.

"279. (1) In any Municipality to which the provisions of this Part shall be extended in the manner prescribed by section two hundred and twenty-two, it shall be lawful for the Commissioners at a meeting to impose a water-rate not exceeding seven and-a-half per centum on the annual value of holdings when the houses and lands are situated in any road supplied

with water, and not exceeding six per centum when the houses and lands are situated in any road not so supplied.

(1*a*) With the sanction of the Local Government, the amount of the water-rate imposed under this section may vary with the distance of houses or lands from the nearest stand-pipe or other source of water-supply, and the amount may be higher in the case of premises to which communication-pipes are attached than in the case of other premises.

(2) In fixing the amount or "amounts" of the rate, regard shall be had to the principle that the total net proceeds of the tax, together with the estimated income from payments for water supplied from the works under special contract, or otherwise, shall not exceed the amount required for carrying out the purposes of this Part.

(3) The water-rate shall be paid by the occupiers of the holdings by quarterly instalments in advance:

Provided that such water-rate shall not be levied upon—

(*a*) any house or land, no part of which is within a radius to be fixed by the Local Government for each Municipality from the nearest stand-pipe or other supply of water available to the public; or

(*b*) any land used exclusively for purposes of agriculture, or;

(*c*) 'any holding consisting only of tanks:'

Provided also that nothing in this section shall prevent the Commissioners from making any special arrangement consistent with this Act with persons residing beyond the radius fixed by the Local Government."

The provisions of this Part are taken from the Calcutta Municipal Consolidation Act, 1876 (B. C. Act IV of 1876). This section is taken from section 88, clause (*b*) of that Act.

In Part VII we have made some changes which are calculated, in our opinion, to render this part of the Bill more generally suited to the conditions under which Municipalities in the Mofussil are likely to avail themselves of these provisions of the law. The sections as originally drafted were taken from the Calcutta Municipal Act, 1876, which contemplates a supply of filtered water, and a general connection with dwelling-houses in the town. It has been represented to us that the water need not in all cases be filtered, and that some Municipalities may desire to lay down water in the streets, but may not be able to give a house-supply. We have modified the sections accordingly.

"A doubt has been expressed whether the provisions of Part VII would be applicable to towns (such as Darjeeling), which have already supplied water at the cost of the Municipality, and we have been urged to insert words expressly including such towns within the operations of Part VII of the Bill. But we feel no doubt that the wording of the Bill as it

stands is sufficient to provide for these cases. It will be only necessary for the Municipal Commissioners of Darjeeling (or of any other town similarly circumstanced) to apply in the prescribed manner for the extension of Part VII (either wholly or partially) to their Municipality, and they will then be entitled to levy the water-rate authorized by section 85 (now section 86) of the re-amended Bill."—*Rep. S. C.*

The provisions of sections 37-A to 37-M are applicable to this Part.

By section 280 the provisions of section 98 apply to this Part. As shown in the note to that section arable lands are not exempted from the rate on holdings. Clause (*b*) of the above section is therefore necessary to exempt lands used exclusively for purposes of agriculture from the water-rate. The term "used exclusively for purposes of agriculture" would not include pleasure-gardens nor, it is believed, orchards and fruit-growing grounds.

In accordance with the powers conferred by section 17, sub-section (2) of the Cantonments' Act, 1889 (XIII of 1889) the provisions of sections 44, 96, 97, 99, 101, 103—105, 107—109, 112—130, 279, 281—286 and 312 of Act III have been applied for the assessment and recovery of the water-rate imposed in the Cantonment of Lebong by Notfn. No. 1176-T. M., dated 17th July 1905. See Notfn. No. 1177-T. M., dated 17th July 1905.

No. 1176T.—M., dated Darjeeling, the 17th June 1905.

NOTIFICATION—By the Government of Bengal, Municipal Department.

In exercise of the power conferred by section 17, sub-section (1), of the Cantonments Act, 1889 (XIII of 1889), and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to impose a water-rate at two and three-quarters *per cent.* on the annual value of holdings situated within the Lebong Cantonment:

Provided as follows:—

(1) Such water-rate shall not be levied upon—

(*a*) any house or land, no part of which is within a radius of one thousand feet from the nearest stand-pipe or other supply of water available to the public; or

(*b*) any land exclusively for purposes of agriculture; or

(*c*) any holding consisting only of tanks.

(2) Nothing in clause (1) shall prevent the Cantonment Committee from making any special arrangement consistent with any enactment or rules for the time being in force in the Cantonment with persons residing beyond the radius prescribed in sub-clause (*a*) of that clause.

No. 1177T.—M., dated Darjeeling, the 17th June 1905.

NOTIFICATION—By the Government of Bengal, Municipal Department.

In exercise of the power conferred by section 17, sub-section (2) of the Cantonments Act, 1889 (XIII of 1889), and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to apply for the assessment and recovery of the water-rate imposed in the

Cantonment of Lebong by Notification No. 1176T.—M. of this date, the provisions of sections 44, 96, 97, 99, 101,103—105, 107—109, 112—130, 279, 281—286, and 312 of the Bengal Municipal Act, 1884 (Bengal Act III of 1884), in the adapted form set forth below :—

PART I.—ASSESSMENT.

The Cantonment Committee to determine the valuation of holdings.

1. The Cantonment Committee, after making such inquiries as may be necessary, shall determine the valuation of all holdings within the Cantonment as hereinafter provided.

[*Ben. Act III of* 1884, *section* 96.]

Duration of assessment.

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

[*Ben. Act III of* 1884, *section* 97.]

Returns for ascertaining annual value.

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

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

[*Ben. Act III of* 1884, *section* 99.]

Annual value of holding how to be ascertained.

4. The gross annual rental at which any holding may be reasonably expected to let shall be deemed to be the annual value thereof, and such value shall be accordingly determined by the Cantonment Committee and entered in the valuation list :

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

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

[*Ben. Act III of* 1884, *section* 101.]

Preparation of valuation and rating list.

5. The Cantonment Committee shall cause to be prepared a valuation and rating lists, which shall contain the following particulars, and any other which the Cantonment Committee may think proper to include :—

(*a*) name of street or road in which the holding is situated :

(*b*) number of the holding on the register ;

(*c*) description of the holding;
(*d*) annual value of the holding;
(*e*) name of owner;
(*f*) amount payable for the year;
(*g*) amount of quarterly instalment;
(*h*) if the holding is exempted from assessment, a note to that effect.

[*Ben. Act III of* 1884, *section* 109.]

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

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

The total amount of the rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land one-fourth of the water-rate so paid.

[*Ben. Act III of* 1884, *section* 107.]

Application for reduction of assessment.

7. If the value of any holding shall be diminished from any cause beyond the control of the owner thereof, the owner thereof may apply for reduction of the valuation of the same.

[*Ben. Act III of* 1884 *section* 108.]

Power to revise valuation and assessment.

8. The Cantonment Committee may, at any time after the publication of the notice required by rule 10, value and rate any holding which was without authority omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight or fraud; and may re-value and re-assess the water-rate or any holding the value of which has been increased by additions or alterations to any building thereon.

Any water-rate imposed, or enhancement made, under this rule shall take effect from the beginning of the quarter next following that on which the rate shall be imposed or enhancement made.

[*Ben. Act III of* 1884, *section* 103.]

Power to revise assessment list.

9. The Cantonment Committee may, at any time, substitute for any name mentioned in the valuation and rating list the name of any person to whom any holding mentioned therein shall have been transferred.

Such person shall be liable to pay the water-rate payable on such holding from the first day of the quarter next after the date of the transfer.

[*Ben. Act III of* 1884, *section* 104.]

Publication of notice of assessment.

10. When the valuation and rating list of the water-rate on the annual value of holdings shall have been prepared or revised, the President shall sign the same, and shall cause it to be deposited in the office of the Cantonment Committee, and shall cause the notice in Form A of the First Schedule annexed to these rules to be published as far as possible in the manner prescribed by section 354 of the Bengal Municipal Act, 1884.

[*Ben. Act III of* 1884, *section* 112.]

Application for review.

11. Any person who is dissatisfied with the amount assessed upon him, or with the valuation or rating of any building, or his liability to be assessed or rated, may apply to the Cantonment Committee to review the amount of valuation or rating, or to exempt him from the rate.

[*Ben. Act III of* 1884, *section* 113.]

Procedure upon review.

12. Every application presented under the last preceding rule shall be heard and determined by not less than three members of the Cantonment Committee who shall be appointed in that behalf by the Committee at a meeting. The members so appointed, after taking such evidence and making such enquiries as they may deem necessary, may pass such order as they shall think fit in respect of such application.

The decision of such members, or of a majority thereof, in such cases shall be final.

[*Ben. Act III of* 1884, *section* 114.]

Limitation of time for application of review.

13. Unless good cause shall be shown to the satisfaction of such Cantonment Committee for extending the time allowed, no such application shall be received after the expiration of one month from the date of publication of the notice required by the rule 10 relating to the list containing the valuation or rating in respect of which application is made, or after the expiration of fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made whichever period shall last expire.

[*Ben. Act III of* 1884, *section* 115.]

Assessment to be questioned only under these rules.

14. No objection shall be taken to any rating in any other manner than is provided for in these rules.

[*Ben. Act III of* 1884, *section* 117.]

PART II.—RECOVERY.

Office-hours for payment of the water-rate.

15. By notification to be posted up in their office the Cantonment Committee shall declare at what hours of each day (not being a Sunday or other recognized holiday), the office shall be open for the receipt of money and the transaction of business.

[*Ben. Act III of* 1884, *section* 118.]

Water-rate payable in advance.

16. The amount due by any person on account of the water-rate shall be deemed to be the amount entered in the lists, the notice relating to which is published under rule 10, unless the amount entered in such lists is subsequently altered by the Cantonment Committee as provided in these rules, in which case the amount to which the rating is so altered shall be deemed to be the amount due. Every instalment of such rate shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

[*Ben. Act III of* 1884, *section* 279, *sub-section* (3).]

17. The water-rate shall be paid by the occupiers of the holdings by quarterly instalments in advance.

Payment of water-rate.

[*Ben. Act III of* 1884, *section* 119.]

18. For all sums paid on account of the water-rate a receipt stating the amount and the rates on account of which it is paid shall be given, signed by the tax-collector or by some other officer authorized by the Cantonment Committee to grant such receipts.

Receipts to be given.

[*Ben. Act III of* 1884, *section* 120.]

19. At any time within six months after any sum has become due on account of the water-rate, the Cantonment Committee shall cause to be presented to the person liable to the payment thereof a bill for the said sum which shall contain a statement of the period for which the water-rate is in arrear. If the amount mentioned in such bill be not paid on presentation thereof a notice of demand, in the form marked A in the Second Schedule, with copy of the bill appended thereto, shall be served on the person liable to pay the same, and such notice of demand may be served at any subsequent time :

Bill and notice of demand to be presented.

Provided that no charge shall be made in respect of the service of such notice.

Such notice shall be signed by the President or an officer authorized on that behalf, and shall be served by the person authorized to receive payment.

20. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the Cantonment, or the place of abode of such owner be not known, the same may be recovered from the occupier for the time being of such holding.

Water-rate due from non-resident owner may be recovered from occupier.

[*Ben. Act III of* 1884, *section* 105.]

21. Whenever the person by whom the water-rate shall have been paid, or from whom the said rate shall have been recovered is not the owner of the house or land in respect of which the water-rate shall have been assessed, such person may recover from the owner one-fourth of the water-rate so paid or recovered, and may deduct the same from the rent payable by him to such owner.

Occupier paying water-rate may deduct one-fourth from rent due to owner.

[*Ben. Act III of* 1884, *section* 116.]

22. Whenever any house or land has been unoccupied during an entire quarter the owner of the said house or land shall pay to the Cantonment Committee one-fourth of the sum which would have been payable as water-rate by the occupier if such house or land had been occupied.

When house is unoccupied, owner to pay one-fourth of water-rate.

The sum payable by the owner under this section shall be deemed to be due on the first day of the quarter following that in respect of which the said sum is payable.

[*Ben. Act III of* 1884, *section* 231.]

Refund of water-rate when house ceases to be occupied.

23. Whenever any quarterly instalment of the water-rate shall have been paid in respect of any house or land and such house or land shall, during the quarter for which such instalment shall have been paid, cease to be occupied, the person who shall have paid such water-rate shall be entitled to be repaid by the Cantonment Committee three-fourths of such sum as shall bear to the amount paid by him the same proportion which the residue of the quarter bears to the entire quarter:

Provided that notice shall have been given in writing to the Cantonment Committee of such house or land being unoccupied, and that the application for refund be made within six months next after the date on which the house or land ceased to be occupied.

The date on which the said notice is delivered at the office of the Cantonment Committee shall for the purpose of this rule be deemed to be the date on which the house or land ceased to be occupied.

[*Ben. Act III of* 1884, *section* 282.]

Rate payable on house being re-occupied.

24. Whenever any house or land which shall have been unoccupied shall begin to be occupied during any quarter, there shall be forthwith payable by the occupier in respect of such house a sum calculated at one-fourth of the rate that would have been payable if the house or land had been occupied during the entire quarter for the period during which the house or land was not occupied, and the full rate for the residue of the quarter.

And such occupier shall be entitled to deduct from the rent, or otherwise recover from the owner, one-fourth of the water-rate that would have been payable if the house or land had been occupied during the entire quarter.

[*Ben. Act III of* 1884, *section* 284.]

Person sub-letting to several different tenants to be deemed occupier.

25. Whenever any person holding any house or land from the owner thereof has sub-let the same in severalty to two or more persons, the person holding from the owner shall, for the purpose of these rules, be deemed to be the occupier of such house or land.

[*Ben. Act III of* 1884, *section* 285.]

Power to assess owners in certain cases.

26. If any holding shall be occupied by more than one tenant holding severally, or shall be of less value than one hundred rupees, it shall be lawful for the Cantonment Committee to recover the rate from the owner of such holding, who shall have for the recovery of such rate from the tenant the remedies provided by sections 313 and 314 of the Bengal Municipal Act. 1884:

Provided that the owner shall not be entitled to recover from any occupying tenant more than three-fourths of the water-rate that would but for this proviso be recoverable by him under the said sections.

[*Ben. Act III of* 1884, *sections* 286 *and* 312.]

If not paid in fifteen days, process of distress may issue.

27. If any person after service upon him of the bill and notice referred to in rule 19 shall not, within fifteen days of the service of such notice or from the date of any order made on an application for review under rule 11, pay the sum due either to the Cantonment Committee at their office or to some person authorized by them to receive the

money, or show to the Cantonment Committee sufficient cause for not paying the same, the amount of the arrear due, with costs on the scale shown in the table of fees marked B in the Second Schedule, may, at any time within three months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any movable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found, or of any movable property belonging to another person, subject to the same exceptions which may be found within the holding in respect of which such defaulter is liable to such rate :

Provided that when the holding in respect of which the default is committed is a place of business, and the movable property distrained is shown to the satisfaction of the Cantonment Committee to have been left there for repairs or safe custody in the ordinary course of business it shall be released :

Provided also that if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

[*Ben. Act III of* 1884, *section* 121.]

Distress how to be made.

28. Every warrant of distress and sale under the last preceding section shall be issued by the Cantonment Committee and shall be in the Form marked C in the Second Schedule.

Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

Such officer shall make an inventory of all movable property seized under the warrant, and shall give not less than ten days' previous notice of the sale, and of the time and place thereof, by beat of drum, in the cantonment and by serving on the defaulter a notice in the Form marked D in the Second Schedule :

Provided that, if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent at any tme after the expiry of six hours from the seizure,

[*Ben. Act III of* 1884, *section* 122.]

Officer may break open door.

29. The officer charged with the execution of the warrant may, under the special orders of the Cantonment Committee, between sunrise and sunset, break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any movable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that he shall not enter or break open the door of any room appropriated for the zenana or residence of women, which by usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

[*Ben. Act III of* 1884, *section* 283.]

Sale how to be conducted.

30. If the sum due be not paid with costs before the time fixed for the sale or the warrant be not discharged or suspended by the Cantonment Committee, the moveable property seized shall be sold by auction at time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

The surplus sale-proceeds (if any) shall be credited to the Cantonment Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Cantonment Committee or in a Court of competent jurisdiction.

The tax-collector, or other officer authorized in that behalf, shall make a return of all such sales to the Cantonment Committee in the Form marked E in the Second Schedule.

[*Ben. Act III of* 1884, *section* 123.]

Certain person prohibited from purchasing sales.

31. All officers and servants of the Cantonment Committee, and all chaukidars, constables and other officers of police are prohibited from purchasing any property at any such sale.

[*Ben. Act III of* 1884, *section* 124.]

Cantonment Committee to keep account of distresses and sales.

32. The Cantonment Committee shall cause a regular account to be kept of all distresses levied and sales made for the recovery of the water-rate under these rules.

[*Ben. Act III of* 1884, *section* 124.]

Sale of property beyond limits of Cantonment.

33. If no sufficient movable property belonging to a defaulter, or being upon the premises in respect of which he is rated, can be found within the Cantonment, the Deputy Commissioner of Darjeeling, or any other Magistrate having jurisdiction over the cantonment may, on the application of the Cantonment Committee, issue his warrant to any officer of his Court for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal, and such other Magistrate shall endorse the warrant so issued and cause it to be executed, and the amount if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Cantonment Commiette.

[*Ben. Act III of* 1884, *section* 125.]

Distress or sale not unlawful for want of form.

34. No distress or sale made under these rules shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any error, defect, or want of form in the bill, notice, summon, warrant of distress, inventory or other proceedings relating thereto.

[*Ben. Act III of* 1884, *section* 129.]

Cantonment Committee may bring suit instead of distraining or on failure of distress.

35. Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of the water-rate, the Cantonment Committee may sue the person liable to pay the same in any Court of competent jurisdiction.

[*Ben. Act III of* 1884, *section* 130.]

Irrecoverabe amount.

36. The Cantonment Committee may order to be struck off the books any amount in respect of water-rate which may appear to them to be irrecoverable.

[*Ben. Act III of* 1884, *section* 44.]

Powers of President.

37. The President of the Cantonment Committee shall, for the transaction of business under these rules, exercise all powers vested in the Cantonment Committee, but not any power directed to be exercised by the Cantonment Committee at a meeting.

[*Ben. Act III of* 1884, *section* 128.]

THE FIRST SCHEDULE.

FORM A.

Cantonment of Lebong.

WHEREAS a valuation and rating list of the water-rate on the annual value of holdings has been deposited in the office of the Cantonment Committee as required by rule 18 of the rules for the assessment and recovery of the rate:

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 Cantonment Committee 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 Cantonment Committee for the receipt of the same, or to the tax-collector or other office 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 such other proceedings as are allowed by law.

Dated this day of

A. B.,
President of the Cantonment Committee.

THE SECOND SCHEDULE.

FORM A.

Notice of Demand.

To

CANTONMENT OF LEBONG.

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 Cantonment Committee, 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.
President of the Cantonment Committee.

[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 Cantonment Committee 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 Cantonment Committee 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 Committee may direct, will be levied unless it has been previously paid.

FORM B.

Table of Fees payable upon Distraints.

Sums distrained for	Fees.
	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 rupees	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.

Distress Warrant.

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 water-rate for the period 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 movable property of the said wherever it may be found within the cantonment, except ploughs, plough-

cattle, tools or implements of trade or agriculture, or any other movable property, subject to the same exception, 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 charges 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 Cantonment Committee. 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.

President of the Cantonment Committee.

FORM D.

Form of Inventory and Notice.

(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 mentioned in the margin, and that unless you pay to me or into the office of the Cantonment Committee of the said sum of and the further 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.*)

Cost of distraint—

Date

FORM E.

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 Cantonment Committee's office on account of arrear due, with date.

14. Amount paid into the Cantonment Committee's 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 released without sale, if not eventually sold, etc., etc.).

Valuation, assessment and collection of water-rate.

280. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections ninety-six to one hundred and nine (both inclusive), and one hundred and twelve to one hundred and thirty (both inclusive), shall, *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this Part, be applicable to the assessment and collection of the water-rate.

This is altogether new. As the provisions of section 98 are hereby extended to the assessment of the water-rate, places used for public worship and registered public burial and burning grounds are exempted from it.

With the sanction of the Local Government any holding used for purposes of public charity may also be exempted from it, under that section.

Occupier paying water-rate may deduct one-fourth for rent due to owner.

281. Whenever the person by whom the water-rate shall have been paid, or from whom the said rate shall have been recovered, is not the owner of the house or land in respect of which the water-rate shall have been assessed, such person may recover from the owner one-fourth of the water-rate so paid or recovered, and may deduct the same from the rent payable by him to such owner.

This section reproduces, with some slight verbal alterations, section 198 of the Calcutta Act.

When house is unoccupied, owner to pay one-fourth of water-rate.

282. Whenever any house or land has been unoccupied during an entire quarter, the owner of the said house or land shall pay to the Commissioners one-fourth of the sum which would have been payable as water-rate by the occupier if such house or land had been occupied.

The sum payable by the owner under this section shall be deemed to be due on the first day of the quarter following that in respect of which the said sum is payable.

From section 99 of the Calcutta Act with verbal alterations.

The definition of "owner" in section 6, clause (11), is important.

Refund of water-rate when house ceases to be occupied.

283. Whenever any quarterly instalment of the water-rate shall have been paid in respect of any house or land, and such house or land shall, during the quarter for which such instalment shall have been paid, cease to be occupied, the person who shall have paid such water-rate shall be entitled to be repaid by the Commissioners three-fourths of such sum as shall bear to the amount paid by him the same proportion which the residue of the quarter bears to the entire quarter :

Provided that notice shall have been given in writing to the Commissioners of such house or land being unoccupied and that the application for refund be made within six months next after the date on which the house or land ceased to be occupied.

The date on which the said notice is delivered at the office of the Commissioners shall, for the purposes of this section, be deemed to be the date on which the house or land ceased to be occupied.

B. C. Act IV of 1876, section 93, with some alterations.

Rate payable on house being re-occupied.

284. Whenever any house or land which shall have been unoccupied shall begin to be occupied during any quarter, there shall be forthwith payable by the occupier in respect of such house or land a sum calculated at one-fourth of the rate that would have been payable if the house or land had been occupied during the entire quarter for the period during which the house or land was not occupied, and the full rate for the residue of the quarter.

And such occupier shall be entitled to deduct from the rent, or otherwise recover from the owner, one-fourth of the water-rate that would have been payable if the house or land had been occupied during the entire quarter.

Section 96, B. C. Act IV of 1876.

Person sub-letting to several different tenants to be deemed occupier.

285. Whenever any person holding any house or land from the owner thereof has sub-let the same in severalty to two or more persons, the person holding from the owner shall, for the

purposes of this Part, be deemed to be the occupier of such house or land.

"He that holds lands or tenements in severalty or is sole tenant thereof is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein."—(1 *Steph. Com.*, 335).

Owner to pay water-rate in certain other cases.

286. The provisions of sections three hundred and twelve, three hundred and thirteen, and three hundred and fourteen shall be applicable to this Part, provided that the owner shall not be entitled to recover from any occupying tenant more than three-fourths of the water-rate that would but for this proviso be recoverable by him under the said sections.

The sections quoted refer to lighting rates. Section 312 provides that in certain cases the rate may be levied from the owner; s. 313, that rates paid by the owner may be recovered by him from the occupier; s. 314, that the owner shall have the same powers of recovering such rates as if they were rent.

The Commissioners to provide water-supply.

287. In any Municipality to which the provisions of this Part shall be extended, the Commissioners shall provide a supply of water within the limits of the Municipality; and for this purpose it shall be lawful for them to cause such mains and pipes to be laid, and such tanks, reservoirs or other works to be made and constructed, as shall be necessary, for the supply of water in the chief public streets; and they may also erect in all such streets sufficient and convenient stand-pipes or pumps for the use of the inhabitants of the Municipality for domestic purposes.

Section 129, B. C. Act IV of 1876.

What are not domestic purposes.

288. A supply of water for domestic purposes shall not include a supply of water for animals or for washing carriages, where such animals or carriages are kept for sale or hire, or a supply for any trade, manufacture, or business, or for watering gardens or roads, or for any ornamental or mechanical purpose.

This section reproduces, with slight verbal alterations, s. 130 of the Calcutta Act (B. C. Act IV of 1876).

Pressure at which water must be kept.

289. The Commissioners at a meeting shall determine what pressure of water shall be maintained in their service-pipes and mains, and during what hours such pressure shall be continued; and any rule made under this section shall be published in such

manner as the Commissioners may direct, and shall not be altered except with the sanction of the Commissioners at a meeting.

B. C. Act IV of 1876, s. 131.

Communication-pipes.

"290. Whenever the Commissioners deem it practicable and consistent with the maintenance of an efficient water-supply, they may at a meeting and subject to such rules and conditions as the Local Government may make and impose, allow the owners and occupiers paying the water-rate hereinbefore mentioned to lay down communication-pipes from the service-pipes of the Commissioners, for the purpose of leading water to their premises for domestic purposes."

I am directed to forward, for your information, a set of model rules under section 290 of the Bengal Municipal Act for the regulation of the *supply of filtered water to private houses* and to say that these rules supersede those circulated with Government circular No. 30 M., dated the 1st April 1911. I am to request that copies may be circulated for adoption as a standard by those municipalities in your division which may, in future, make new rules or revise their existing rules on the subject. I am to add that, while it is not obligatory that the model rules should be followed absolutely in all cases, irrespective of local conditions, proposals to add new rules or to depart materially from the model provisions should be supported by a full statement of reasons in submitting them for confirmation by Government. [*Municipal—Cir. No. 4 M., Calcutta, the 17th January* 1916.] For Model Rules, see p. .

Communication-pipes, &c., must be made to satisfaction of officers of the Commissioners.

291. The communication-pipes and all fittings thereon leading water from the service-pipes of the Commissioners into any house or land, and the pipes, works, and fittings inside the house or land, must in all cases be executed subject to the inspection and satisfaction of the Commissioners.

Such communication-pipes, works, and fittings, may be made by the servants and workmen of the Commissioners upon such terms as may be agreed upon between the Commissioners and the person requiring the supply, or subject to such charges as may be fixed by the Commissioners: and the Commissioners may require the amount necessary for the execution of such works to be paid or deposited before such works are executed;

And such charges and expenses shall be recoverable in the same manner as the water-rate.

This section reproduces *verbatim* s. 137, B. C. Act IV of 1876.

292. Any officer authorized in that behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land supplied with water as aforesaid in order to examine all pipes, works, and fittings connected with the supply of water, and to ascertain whether there be any waste or misuse of such water;

Power to enter premises.

And if such officer at any such time be refused admittance into such house or land for the purposes aforesaid, or be prevented from making such examination, the Commissioners may forthwith cut off the supply of water from such house or land:

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated for the *zenana* or residence of women, which, by the custom of the country, is considered private, unless a notice in writing of not less than four hours be given.

This section reproduces, with one unimportant verbal alteration, s. 138, B. C. Act IV of 1876.

293. In the event of any pipes, works or fittings connected with the supply of water to any house or land being at any time found on examination by any officer of the Commissioners authorized in that behalf, to be out of repair to such an extent as to cause waste of water, the Commissioners may cause the water to be turned off from such house or land, after giving notice in writing of not less than twenty-four hours, and may recover from the occupier of such house or land the expense incurred for turning off the water.

When pipes are out of repair, Commissioners may turn off water.

Section 139, B. C. Act IV of 1876, with merely verbal alteration.

294. The Commissioners may supply water for purposes other than domestic purposes, and may, subject to such charges and rates as may have been fixed by the Commissioners at a meeting, lay down or allow to be laid down, the necessary pipes and works of such dimensions and character as may be approved by them.

Supply for business.

Section 132, B. C. Act VI of 1876. The words "through a meter" have been struck out by the Amending Act.

295. The Commissioners at a meeting may determine what quantity of water shall be supplied to the occupier of every house, free of further charge, for every rupee paid to the Commissioners as water-rate on account of such house.

Householder entitled to certain supply of water for domestic use.

If the Commissioners have reason to believe that the occupier of any house consumes more water than he is entitled to as aforesaid, it shall be lawful for them to provide a water-meter at their own expense, and to attach the same to the water-pipes of the said house: and any water which may be used over and above the quantity to which the occupier is entitled as aforesaid shall be paid for by him at such rate as the Commissioners at a meeting may determine.

Section 133, B. C. Act IV of 1876.

Commissioners may provide filtered or unfiltered water for latrines.

296. It shall be at the option of the Commissioners to provide filtered or unfiltered water for all latrines and water-closets; and it shall be lawful for them to require that all latrines and water-closets supplied with water, filtered or unfiltered, shall be provided with a cistern of such size and description as the Commissioners shall direct, and all such cisterns shall be put up at the cost of the owner of the house or land so supplied with water.

Section 134, B. C. Act IV 1876.

Water may be cut off on neglect to pay the rate.

297. If any person, supplied with water, shall neglect to pay the water-rate hereinbefore mentioned at the times of payment thereof, or the charge made for the said water when supplied for other than domestic purposes the Commissioners may turn off the water from the house or land in respect of which such rate or charge is payable, and may recover the expense of turning off the water from such person:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he may have incurred.

Section 140, B. C. Act IV of 1876, with verbal alterations.

Occupier in whose house water is wasted liable to penalty.

298. The occupier of any house or land in which water supplied by the Commissioners under this Part is, from negligence or other circumstances under the control of the said occupier wasted; or in whose house or land the pipes, works, or fittings for the supply of water shall be found to be out of repair to such an extent as to cause waste of water, shall be liable to a fine not exceeding twenty rupees.

Section 141, B. C. Act IV of 1876, with slight verbal alterations.

Person causing waste of water liable to penalty.

299. Any person otherwise causing waste of water supplied by the Commissioners shall be liable to a fine not exceeding five rupees.

Section 142, B. C. Act IV of 1876, *verbatim*.

Commissioners at their discretion may allow person outside the town to take water.

300. It shall be within the discretion of the Commissioners to allow any person not residing within the limits of the Municipality to take or be supplied with water for domestic use, on such terms as the Commissioners in meeting may, from time to time, prescribe.

Penalty.

And any person taking or causing to be taken for use, outside the limits of the Municipality, water supplied by the Commissioners, without the permission of the Commissioners, shall be liable to a fine not exceeding fifty rupees.

Section 143, B. C. Act IV of 1876, with slight verbal alterations.

Before connection an officer of the Commissioners to cause all works and pipes to be inspected.

301. Before a connection for the supply of water from the service pipes of the Commissioners to any house or land is sanctioned, the Commissioners may cause all the works, pipes, and fittings, within the said house or land, to be inspected by an officer appointed by them in that behalf.

And the cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners in meeting shall from time to time direct.

And until such officers shall have certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner a connection with the Commissioners' service pipes shall not be permitted.

Section 146, B. C. Act IV of 1876, with alteration.

Connection with service-pipes to be executed only by an officer of the Commissioners.

302. The connection with the service pipes of the Commissioners, as also the laying of supply-pipes under any public road or thoroughfare, shall be executed by an officer of the Commissioners authorized in that behalf and by no other person.

And the expense of making such connection shall be payable in advance by the person applying for the same, at such rates as the Commissioners in meeting shall, from time to time, direct.

Section 147, B. C. Act IV of 1876, with slight alterations.

Obstructing or diverting water.

303. Any person who shall unlawfully flush, draw off, divert or take water from any water-works belonging to, or under the control of, the Commissioners, or from any water or streams by which such water-works are supplied, shall be liable to a fine not exceeding one hundred rupees.

Section 149, B. C. Act IV of 1876, with slight verbal alterations.

Estimate and specification of works to be sent.

304. No works for introducing a supply of water to any house shall be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such specification and estimate to the owner.

Section 153, B. C. Act IV of 1876, *verbatim*.

Owner to keep works in repair.

305. Except in the case of a special agreement to the contrary, the owner of any house or land shall bear the expense of keeping all works connected with the supply of water to such house or land in substantial repair :

Provided that nothing in this section shall effect the liabilities of parties under leases executed previous to the extension of this Part to the Municipality in which the said house or land is situated.

Section 156, B. C. Act IV of 1876, with verbal alterations.

Tanks, &c., vested in the Commissioners.

306. All public tanks, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other waterworks, whether made, laid or erected at the cost of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials, and things connected therewith, or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank, shall become vested in the Commissioners.

Section 158, B. C. Act IV of 1876, *verbatim*.

Application of rates and moneys received from the supply of water.

307. The water-rate and all moneys collected, received or recovered for, or in respect of, the supply of water or the execution of works, and all fines connected therewith, or in any respect relating to the water-supply, shall be applied by the Commissioners in defraying the expense of making, extending or maintaining the waterworks, " 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 the waterworks, and in the liquidation of debts incurred in connection therewith, or for some other purpose connected with the supply of water.

Section 160, B. C. Act IV of 1876. *verbatim.*

By this section it appears obvious that the sums raised as water-rates must be credited to a separate fund, and not to the General Municipal Fund. For they can only be expended on purposes connected with the supply of water, and are therefore not available for the purposes to which the General Municipal Fund may be devoted.

PART VIII.

This part is taken from the Howrah Lighting Act, Act V (B. C.) of 1873.

Of Lighting with Gas.

Municipal Commissioners may submit to the Local Government a plan for lighting.

308. In any Municipality in which this Part shall have been introduced in the manner provided in section two hundred and twenty-two, it shall be lawful for the Commissioners, from time to time, to submit to the Local Government, for its sanction, a plan for lighting with gas any portion of any area situate within the Municipal limits, whether so lighted already or not, such portion of the said area having been previously defined by the Commissioners at a meeting held for that purpose. The Local Government shall cause the plan to be published for one month in the *Calcutta Gazette*, and the Commissioners shall publish it in the vernacular within the limits of the Municipality; and after such publication, and after consideration of any objections which may be raised to it, or alterations suggested in it, the Local Government may, if satisfied that the lighting proposed in the plan is proper and sufficient, sanction such plan, or may refuse its sanction thereto, or may return it to the Commissioners for alteration in certain particulars to be specified by it, and when altered may sanction it as altered. The Local Government shall cause its sanction to any plan to be notified in the *Calcutta Gazette*, and shall at the same time cause the plan sanctioned to be published in the said *Gazette*.

Section 2, Act V (B. C.) of 1873.

In the manner provided in section 222. That is to say, by publication of the Government order extending the Part in the *Calcutta Gazette*: by

posting a copy of the same, together with a translation in the vernacular, in the Municipal office and at other public places, and by public proclamation.

Lighting-rate not exceeding three per centum may, after sanction of plan, be imposed on holdings.

309. After notification by the Local Government in the last preceding section mentioned, it shall be lawful for the Commissioners to impose an annual rate, not exceeding three per centum of their annual value, upon all holdings situated within such portion of the said area for the purpose of defraying the whole expense of lighting :

Proviso as to portions already lighted.

Provided that, as regards any portion of the said area already lighted with gas, for the future lighting of which a plan shall have been sanctioned by the Local Government under the provision of the last preceding section, if it shall appear that the estimated proceeds of the said rate at three per centum will not be sufficient to defray the whole expense of such lighting, it shall be lawful for the Commissioners to impose a rate sufficient to defray the whole expense of lighting such portion.

Section 3, B. C. Act V of 1873.

"Local Government" has been substituted for "Lieutenant-Governor," otherwise no change has been made.

"Holding" is defined in s. 6, clause (3). Under s. 318A the rate raised under this section must be credited to a separate Lighting Fund and cannot be expended upon any other purpose.

Rate payable by occupiers quarterly in advance.

310. The rate imposed under the last preceding section upon holdings shall be paid by the occupiers thereof by quarterly instalments in advance ; but no rate shall be leviable until the lamps in the portion of the area to be lighted shall have been lighted ; nor shall any rate be leviable for any quarter or portion of a quarter antecedent to such lighting.

Section 4, B. C. Act V of 1873.

Valuation, assessment, and collection of lighting-rate.

311. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections ninety-six to one hundred and nine (both inclusive), and one hundred and twelve to one hundred and thirty (both inclusive), shall *mutatis mutandis*, and so far as they are not inconsistent with

the provisions of this Part, be applicable to the assessment and collection of the lighting-rate.

Section 5, B. C. Act V of 1873.

Hon'ble Mr. Reynolds :—"It seemed unlikely that this part of the Bill would ever be extended to places in which the tax on holdings was not in force; and if it was so extended, it seemed proper that the valuation on holdings for the assessment of the lighting-rate should be made as it was for the water-rate, even though there was no valuation on holdings for general purposes."—*P. C., March* 1, 1884.

By this section all the provisions of the Act relating to the rate on holdings, except those contained in s, 110 and 111, are declared applicable to the lighting-rate. It follows, therefore, that all those classes of holdings which are liable to the rate on holdings are liable to the lighting-rate. By s. 98, holdings used for public worship, or duly registered as burning or burial grounds, are exempted from the rate on holdings, and are therefore exempted from the lighting-rate. Any holding used for purposes of public charity may be exempted from the rate on holdings, and consequently from the lighting-rate, with the sanction of the Local Government. Arable lands will be liable to the lighting-rate if they are liable to the rate on holdings and not otherwise. The liability of arable lands to the rate on holdings is discussed in the note to s. 98.

In the present Act, as originally drafted, arable lands and lands used for pasturage were distinctly exempted from the lighting-rate. The following extract explains how this provision came to be omitted :—

"The Hon'ble Mr. Reynolds moved the omission of the second clause of s. 309, which provided that arable lands, places of public worship, etc., should be exempt from the lighting-rate. He said, there was a general exemption clause in s. 97 (now s. 98) relating to the house-rate, and there seemed no reason for having a different procedure for the lighting and the water-rate."—*P. C., March* 1, 1884.

It is not quite clear from the above extract, whether the fact was recognised that arable lands had not been exempted under s. 98; but it is obviously improbable that it should have been overlooked.

Power to assess owners in certain cases.

312. If any holding shall be occupied by more than one tenant holding severally, or shall be of less annual value than one hundred rupees, it shall be lawful for the Commissioners to recover the rate from the owner of such holding.

Section 6, B. C. Act V of 1873.

The definition of "owner" given in s. 6, clause (11), must not be lost sight of.

Owner to recover from the occupier rates paid by owner.

313. Whenever any rate shall be recovered from any owner of any holding under the provisions of the last preceding section, it shall be lawful for such owner if there shall be but one occupying tenant of such entire holding to recover from such tenant the entire amount of the rate which shall

have been so paid by such owner; and if there shall be one occupying tenant of a part of such holding or more than one occupying tenant of such holding then to recover from such tenant or each of such tenants such sum as shall bear to the entire amount of rate which may have been so recovered from such owner the same proportion as the value of the portion of such holding in the occupation of such tenant bears to the entire value of such holding subject however to the provisions of the next succeeding section.

Section 7, B. C. Act V of 1873.

Owner may recover rate so paid as rent.

314. Every owner who under the provisions of the last preceding section may be entitled to recover any sum from any occupying tenant of any holding or of any portion thereof, shall have, for the recovery of such sum, all such and the same remedies, powers, rights, and authorities as if such sum were rent payable to such owner by such tenant in respect of so much of such holding as may be in the occupation of such tenant.

Section 8, B. C. Act V of 1873.

Occupier liable to the rate for time of occupation only.

315. Every occupier shall be liable to the lighting-rate for the time of his occupation. When any person shall have been an occupier for a part only of any quarter, he shall be liable only for so much of the rate for that quarter as may be proportionate to the number of days during which he shall have been an occupier.

Excess paid in advance to be refunded.

If he shall have paid the rate in advance, the amount paid in excess of the sum due under this section shall be refunded.

No rate to be charged during vacancy.

No such rate shall be chargeable to any person on account of any unoccupied holding for the time during which it may remain unoccupied:

Notice of cessation of occupancy to be given within seven days.

Provided always that when any person ceases to be the occupier of any holding upon which the rate has been assessed, he shall give the Commissioners notice to that effect within seven days from the date of the cessation of his occupancy. If the occupier fail to give such notice within such period, he shall be liable to the rate assessed on such holding for the whole quarter, although he may have occupied for a part only of such quarter; and in cases to which the provisions of section three hundred and twelve apply,

the rate assessed on such holding for the whole quarter shall be recoverable from the owner, if such owner has failed to give notice that such holding is unoccupied, within seven days from the date on which it ceased to be occupied.

Section 9, B. C. Act V of 1873.

Unknown owner or occupier how to be designated.

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.

Section 10, B. C. Act V of 1873.

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

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 :

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 as to the person to whom such pipe or work belongs as to all other persons.

Section 11, B. C. Act V of 1873.

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

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 :

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

Section 12, B. C. Act V of 1873

"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 supplies an omission in the Act, and makes it clear that the lighting-rate must be credited to a separate fund, and is not available for general purposes.

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.

Provisions applicable to other systems of lighting.

This section is new, and obviously has reference to lighting by electricity.

PART IX.

This Part is taken from the Latrines Act [Act VI of 1878 (B. C.)].

Of the Construction and Cleansing of Latrines.

320. In any Municipality to which the provisions of this Part shall have been extended in the manner prescribed by section two hundred and twenty-two, 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.

Notice to be issued by the Commissioners.

Section 2, B. C. Act VI of 1878.

The changes made in this Part by the amending Act are thus referred to in the Final Report of the Select Committee:—

"After careful consideration we recommend that the present system of levying fees for the construction and cleansing of privies and cess-pools may be left unaltered. We have, however, proposed (*section 81 of the Bill*)

to exempt from taxation under this Part of the Act holdings which do not contain dwelling-houses. We have also exempted jails, reformatories and lunatic asylums, in which an establishment is maintained for the cleansing of privies and cess-pools (*section* 85 *of the Bill*), and we have allowed remission or refund on account of vacant holdings (*section* 83 *of the Bill*)."

The Bengal Government circulated the following opinion dated 29th December 1899 of the Advocate-General on the subject of the interpretation of s. 320 read with s. 221—"When the Local Government has, upon the application of the Commissioners of any Municipality, by order made under s. 221 of the Bengal Municipal Act, 1884, as amended, extended all or any of the provisions of Part IX of that Act to such Municipality, either in its entire extent or to the exclusion of certain places within such extent, and the Commissioners have published such order in the manner prescribed by s. 222, the provisions so extended came into force within the local limits of such Municipality either universally or to the exclusion of certain places within such limits as in the order of the Local Government is directed, and must, so long as such order remains uncancelled or modified under s. 223, be carried out by the Municipality:"

Section 320 enacts: "In any Municipality in which the provisions of Part IX have been extended in the manner prescribed by s. 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." 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 the general scope and object of the Act according to the well-established rule in *Julius* v. *The Bishop of Oxford* (5 App. cases, 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. Cap. 63, s. 89) a local board of health "may" make rates to pay charges within that section, an obligatory duty was thereby cast on such Board to make rates. (*Rex.* v. *Rotherham*, and E. & B., 906; and *Wellington* v. *Hatton*, L. R., 2 Q. B., 63, cited with approval in *Julius* v. *The 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 their Municipality in direct opposition to s. 222, which provides that in the issuing of the notice therein prescribed to be issued, and at the date therein fixed, the provisions of Part IX, extended under s. 221, shall come into force. Section 320, however, though imposing such obligatory duties on the Commissioners as those indicated above, gives them reasonable time within which to issue the notice in that section mentioned, such reasonable time being the time requisite for the due equipment of the establishment therein specified, a period which necessarily varies with the situation, size and condition of each Municipality.

The words " or any part thereof " in the latter part of the section are to be referred back to s. 221, and mean the part of the Municipality to which, when not extended throughout its entire local limits, the provisions of Part IX are extended by order of the Local Government.

For these reasons, I am of opinion that " the construction placed by the Commissioner of Chota Nagpur on s. 320 read with ss. 221 and 222, is erroneous, and that if the provisions of Part IX are, after having been extended and come into force in any Municipality under section 222, found, on good and sufficient reasons by the Commissioners to be unfitted to that Municipality or any part of it, or incapable of being efficiently worked therein, they should apply to the Local Government for such cancellation or modification of the order made under s. 221 as seems to them desirable."

The Legal Remembrancer has advised that under this section read with ss. 325 and 334A, the tax is leviable on Court buildings and Government has ordered its payment accordingly (Bon. Govt. Muncl. No. 1836-M. dated 20-4-00 to Commr. of Patna).

Commissioners may levy fees.

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 :

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

Section 3, B. C. Act VI of 1878.

'Twenty-five Rupees." The annual valuation of the holding is obviously referred to.

The alteration made by the Amending Act in this section is important. Formerly no class of holdings was exempted from assessment. Now only such holdings as contain dwelling-houses can be assessed. If the holding contains a dwelling-house, however, the annual value must be calculated on the whole holding, including tanks, gardens and arable lands, etc.

The maximum limit of latrine fees leviable from holdings under s. 321 is not applicable to the rate per head leviable under s. 326 (L. R.). See Govt. Cir. 44-M, dated 2nd October 1903. C. & O. p. 1000. Court buildings

are liable to latrine tax. See ss. 325 and 334A, Govt. order No. 1856-M, dated 26th April 1900. C. & O., Vol. III, p. 997. For assessment of taxes generally on Government buildings see Cir. No. 5-6-M, dated 30th January 1893, C. & O., Vol. III, p. 997 and Cir. No. 12-13, dated 25th May 1905, p. 998 (*ibid*) and No. 39-M, dated 2nd December 1905, pp. 998-999 (*ibid*). See also the note to section 89.

The levy and assessment of latrine tax when no scale has been fixed by the Commissioners at a meeting (s. 321) would be *ultra vires*. The meaning of the proviso to s. 322 is that when a shop-keeper lives elsewhere and pays latrine tax for his house, he shall not be made to pay again for the shop unless the shop contains a privy or cess-pool. Where the owner of a house lived in the upper storey and let out eight shops in the verandah of the ground floor none of which were thus occupied by himself—*Held* that he could not claim exemption under the proviso to s. 322 and the house including the shops was liable to be valued for the purpose of latrine tax. *Bechu Ram* v. *Chairman, Chapra Municipality*, 15 C. W. N., 519.

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 one hundred and ten 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 three hundred and fifty-four :

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."

It is to be noted that this section merely provides that the fees shall be recoverable in the manner prescribed for the recovery of the rate on holdings. The provisions for the assessment of the rate on holdings are not applicable.

By s. 15, clause (*e*), fees paid under this Part are to be reckoned in the amount of rates conferring a qualification to vote.

Clause (3) of this section makes it clear that the fees levied are to be credited to a separate fund.

Under the former section it was held that the owners of vacant houses could not be called on to pay the fees. Under the present section it is distinctly provided that they are liable to pay such fees. Under s. 110, which is now made applicable, half the fees are, however, to be remitted, if a holding has been vacant for sixty or more consecutive days during the year.

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 entire amount of 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 value of such holding.

Section 5, B. C. Act VI of 1878, *verbatim*.

"He that holds lands or tenements in *severalty*, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein."—1 *Steph. Com.*, 335.

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.

Section 6, B. C. of Act VI of 1878, *verbatim*.

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 depôt, school, hospital, market, courthouse, or other similar place for a certain sum to be paid by such occupier or owner in lieu of such fee.

Section 7, B. C. Act VI of 1878, *verbatim*.

Such a composition will be binding on the Railway under s. 131 (2), Act IX of 1890.

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 depôt, school, hospital, market, court-house, or other similar place.

Commissioners may levy a rate per head.

This section reproduces s. 8, B. C. Act VI of 1878, with the difference that the rate is to be fixed by the Commissioners instead of by the Lieutenant-Governor.

"In my opinion the maximum limit of fees leviable under s. 321 is not applicable to the rate per head under s. 326. (L. R., Circulated with Government letter No. 3130-M, dated 2nd December 1903.)"

327. *Repealed by Bengal Act IV of* 1894.

328. *Repealed by Bengal Act IV of* 1894.

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 two hundred and seventeen, clause (3).

Exemption from prosecution under section 217.

Section 11, B. C. Act VI of 1878.

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.

Powers of servants of Commissioners.

Section 12, B. C. Act VI of 1878.

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.

Commissioners may require nightmen to take out licenses.

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.

Section 13, B. C. Act VI of 1878.

By s. 355 all fines under this Act may be imposed by a Magistrate and may be levied under the provisions of the Code of Criminal Procedure.

By s. 29A the powers of the Local Government under this section may be delegated to Commissioners of Divisions.

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 Commissioners 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 three hundred and twenty-two.

Section 14, B. C. Act VI of 1878.

Commissioners may require list of persons in a holding.

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.

Section 15, B. C. Act VI of 1878.

Penalty.

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.

Section 16, B. C. Act VI of 1878, *verbatim*.

Exemption of jails &c.

"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 cess-pools therein."

The law does not permit a general exemption of all holdings the annual value of which is less than Rs. 6 from the payment of latrine tax. The general power to exempt was taken away by the repeal of s. 337 and in its stead power to exempt certain holdings and jails, etc. (Sec s. 321—334A) was introduced by Act IV of 1894. Cir. No. 5-M, dated 1st February 1904. C. & O., Vol. III, p. 1000.

PART X.

This Part corresponds with Part IX of the former Act.

Regulation of Markets.

Power to construct markets.

335. (300) In any Municipality to which this Part shall have been extended in the manner prescribed by section two hundred and twenty-two, the Commissioners at a meeting may provide land for the 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 one hundred and twenty to one hundred and twenty-nine, both inclusive.

Under the corresponding section of the former Act, the sanction of the Lieutenant-Governor was necessary for the establishment of a Municipal market.

It will be noticed that s. 301 of the former Act, which provides for a separate Market Fund, has not been reproduced in the present Act. The profits derived from a Municipal Market will, therefore, be credited to the General Municipal Fund.

Municipal markets are usually farmed out, but it does not appear that the Act gives any express sanction for such a practice.

The establishment of a Municipal market gives the Commissioners no power of prohibiting rival markets in the neighbourhood. The only class of markets with which the Commissioners have any power to interfere is that referred to in s. 337.

Definition of "a Municipal market."

336. (302) 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 created therein for the sale of goods.

The next section gives the Commissioners the power of ordering that within such limits as they may fix, no land shall be used as a market for the sale of certain highly perishable commodities without a license from them. From the present section it is obvious, that if the number of shops, stalls or standings is less than thirty, no such license is necessary

Commissioners may prohibit use of unlicensed markets.

*337. (303) 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 words "similar provisions" in this section refer to provisions of an equally perishable nature as those specified, and not to provisions generally (L. R.).

The object of the section is a sanitary one, and it empowers the Commissioners to order that certain kinds of provisions of a highly perishable nature, and which become highly offensive when decomposed, shall not be sold in a market which has not been duly licensed for the purpose.

There is consequently nothing in the section which renders it necessary for any one, under any circumstances, to take out a license for a market in which only provisions which are not of a highly perishable nature are sold. No license is required for a market in which only *dhan*, rice, pulses, or other grains, salt, sugar, *gur*, spices, and any other provisions not of a highly perishable nature are sold. The correct interpretation of this section is often overlooked.

"*Shall be used as a market.*"—The meaning of these words has been discussed in two Bombay cases.—*In re Raja Paba Khoji*, 9 Bom., 272, and *Queen-Empress* v. *Magan Harjivan and another*, 11 Bom., 106. In both cases it was ruled that the selling of articles in a private shop or shops, could not be held to be using such shops as a market. See also *Queen-Empress* v. *Baodar Bhai* (10 Mad., 216) in which it was held that a butcher's shop is not a private market.

The Municipal Commissioners of Madaripur at a meeting passed the following resolution:—"That the provisions of s. 337 of the Municipal Act III (Bengal Act) of 1889 be extended to this Municipality." A land-owner on whose land a market had been held for some years was prosecuted under s. 344 for using such market without having obtained a license under s. 338.

Held, that the resolution of the Commissioners was not an order such as is contemplated by s. 337, as it was not sufficiently precise to convey any definite meaning, and purported only to do what the Bengal Government had already done some time previously (*i.e.*, by extending Part X to the Municipality).

Held further, that the conviction and sentence must be set aside, there being no proper order under s. 337.—*Queen-Empress* v. *Mukunda Chunder Chatterjee*, 20 Cal., 654.

Power to grant licenses for markets.

*338. (304) When the Commissioners at a meeting shall have issued 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.

Provisions *as aforesaid*; that is to say, provisions of a highly perishable nature, such as meat, fish, etc.

Duration of licenses and terms on which granted.

339. (305) 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 Munici-

pality, 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.

The provision for the levy of a fee is new. It will be observed that although, under the following section, the Chairman is bound to grant the certificate if the land is fit for the purpose, the granting of the license is at the discretion of the Commissioners.

It is not a reasonable ground for the refusal of a license to a new market, to shew that its establishment will cause pecuniary loss to the proprietors of a neighbouring market. The interests of the public are what the Commissioners have to specially regard, and monopolies are inimical to those interests. The existence of two or more markets in the same neighbourhood ensures competition and reasonable prices.

It would appear from the preceding section, that the license must be granted or renewed at a meeting. This and the preceding section must be read together.

The addition to this section has been made in consequence of the remarks of the High Court in the case of *Moran* v. *Chairman of Motihari Municipality*, 17 Cal., 329. In that case while holding that the section as it previously stood left it optional with the Commissioners to grant or refuse the license, notwithstanding that the Chairman's certificate had been obtained, the Court remarked: " We think it 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 to be the study of every legislature that springs from English authority."

Chairman bound to certify fit places.

*340. (306) 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.

(307) 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 three hundred and thirty-nine, but in subsequent years the license shall not be renewed without such certificate.

In the case of markets existing at the time of the extension of this Part to the Municipality, the section compels the Commissioners to grant a license for the current year without a certificate. In subsequent years the certificate is absolutely necessary.

Licenses to be registered.

*341. (308) 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. (309) Every transfer of interest in any such market shall be registered within two months after the date of transfer.

Unregistered markets to be deemed unlicensed.

*343. (310) 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.

"Any market,"—that is to say, any market of the kind referred to in s. 337.

Penalty for using unlicensed market.

344. (311) 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 license under section three hundred and thirty-eight, 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.

For meaning of "similar provisions," see note to s. 337.

The further fine referred to must be adjudicated on a subsequent conviction after the offence. An order by a Magistrate imposing a daily fine for such time as an offence may be continued is bad in law, as imposing a penalty for an offence which has not yet been committed.—*In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See note to s. 156.

Power to close unlicensed places.

345. (312) 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.

In the former section "may appoint persons, or otherwise take order."

For definition of "the Magistrate," see s. 6, clause (8).

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PART XI.

The Bengal Births and Deaths Registration Act, 1873.

Of the Registration of Births and Deaths.

Registration of births and deaths.

346. (295) 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.

This section is practically unaltered.

By s. 11 of Act IV of 1873, the Commissioners must make such arrangements at a special meeting; and are empowered to do so of their own motion, that is to say, without a requisition from the Local Government. The Act will be found *post*. From time to time there has been adverse criticism on the unsatisfactory results attained in the past in the registration of vital statistics in the Municipalities of Bengal (*Vide* Circ. No. 48 dated the 31st December 1891). On the 1st January 1892 Government changed the system and transferred the work of registration to the Town Police. This registration work would however seem more properly to be the duty of the Municipality in whose hands it now rests. The passing of Act II of 1914 which now permits the appointment of Health Officers and Sanitary Inspectors will facilitate and improve the work of registration. (See notes to the new sections of this act 349c-349h *post*.) Health officers have to attend special courses in vital statistics and have to pay special attention to the registration of births and deaths in Municipalities. Sanitary Inspectors have a similar responsibility. (*Vide* model rules (post) prescribing the duties of these officers.)

On requisition of Government Commissioners to appoint Sub-Registrars at burning-ghâts and burial-grounds.

347. (296) The Local Government may require the Commissioners of any Municipality to appoint and maintain, at any burning-ghât and burial-ground, a Sub-Registrar for the registration of all corpses brought to such burning-ghât or burial-ground for cremation or interment.

The corresponding section contained the words "for natives" after the word "burial-ground." The section is therefore now applicable to burial-grounds of other nationalities also.

Information required by Bengal Act IV of 1873 to be given to such Sub-Registrar.

*348. (297) Whenever a Sub-Registrar shall have been appointed for any burning-ghât or burial-ground under the last preceding section, information of the particulars required by section eight 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-ghât 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.

Section nine of Bengal Act IV of 1873 shall be applicable to all Sub-Registrars appointed under this Act.

Section 9 of Bengal Act IV of 1873 is as follows: "Any Registrar who refuses or neglects to register any birth or death occurring within his district, which he is bound to register within a reasonable time after he shall have been duly informed thereof, or demands or accepts any fee or reward or other gratification as a consideration for making such registry, shall be punishable, at the discretion of the Magistrate, with fine which may extend to fifty rupees for each such refusal or neglect."

The particulars required by s. 8 of the Act are such as may be prescribed in the forms which the Lieutenant-Governor may, from time to time, sanction.

Information of deaths in hospitals.

349. (298) 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 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.

"Local Government" for "Lieutenant-Governor" otherwise unaltered.

PART XIA.

EXTINCTION AND PREVENTION OF FIRE.

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

Part XIA was added by Ben. Act IV of 1894.

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 house 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 XIB.

SANITARY OFFICERS.

Power to declare this Part to be in force in any Municipality.

349C. (1) The Local Government may, by notification published in the *Calcutta Gazette*, announce its intention to declare this Part to be in force in any Municipality.

(2) If the Commissioners or any ratepayer of any such Municipality object or objects to this Part being declared in force in the Municipality, they or he may, within a period of two months from such publication, submit such objection in writing, through the District Magistrate, to the Local Government; 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, make the proposed declaration.

(4) The substance of every notification under sub-section (1) or sub-section (3) shall be translated, deposited, posted and proclaimed, within the Municipality affected, in the manner prescribed by section 354.

Part XIB was added by Ben. Act II of 1914.

Appointment of Sanitary Officers.

349D. (1) Notwithstanding anything contained in section 46, the Commissioners of every Municipality in which this Part is in force shall from time to time, at a meeting, appoint for the Municipality—

(*a*) a Health Officer, or

(*b*) a Health Officer and one or more Sanitary Inspectors, or

(*c*) one or more Sanitary Inspectors,

as the Local Government may, by notification in the *Calcutta Gazette*, direct; such Health Officer to be of such class, and such Sanitary Inspectors to possess such qualifications, as may be so directed.

(2) The provisions of sub-section (1) shall not apply to any Municipality the income of which falls below ten thousand rupees a year.

Salary and allowances of Sanitary Officers.

349E. The Local Government shall from time to time fix the salaries to be paid to Health Officers and Sanitary Inspectors out of the Municipal Fund, and the allowances to be granted to them during absence on leave.

Power to make rules.

"349F. The Local Government may from time to time make rules prescribing—

(*a*) the qualifications of candidates for employment as Health Officers and Sanitary Inspectors respectively; and

(*b*) the division of Health Officers and Sanitary Inspectors into classes or grades according to their qualifications.

Unwholesome water.

349G. When a Health Officer has been appointed for any Municipality, the power conferred by section 199A shall be exercisable by him as well as by the Chief Civil Medical Officer of the district.

Application of Act to Sanitary Officers.

349H. Every section of this Act which relates to Municipal Officers or servants shall, so far as it may be applicable, apply to the officers referred to in section 349D:

Provided that no Health Officer appointed thereunder shall be dismissed without the sanction of the Local Government."

Act II of 1914 was published in the *Calcutta Gazette* on the 18th February 1914. It is entitled "An Act to provide for the appointment of Sanitary Officers for certain Municipalities outside Calcutta." See Introduction.

In their Resolution No. 921—36, dated 23rd May 1912, the Government of India pointed out that as a rule the Civil Surgeon is the only Health Officer of the towns in a district. It is difficult for him to give sufficient attention to the sanitary requirements of the Head-quarters town and it is impossible for him to make more than an occasional inspection of other towns. A Health Officer of the 1st class is required to have a registrable medical qualification and a British diploma in public health. The necessity for a British diploma will be done away with as soon as arrangements are made in India to give the required training. For Health Officers of the second class the main qualifications are a good general education supplemented by a course of training in public health approved by the Local Government. A salary of Rs. 300-20-500 was considered suitable for officers of the first class (with higher pay in exceptional circumstances) and of Rs. 150-10-300 for officers of the second class. India also pointed out that the subordinate supervising staff of the conservancy establishment also called for improvement and thought it desirable that a service of trained sanitary inspectors should be organized in Municipalities based on such standard of population, income and area as commends itself to the Local Government. The Government of India further discussed the problems of sanitation, etc., connected with towns in their Resolution Nos. 888-903, dated the 23rd May 1914, and this Resolution should be read by all interested in the welfare of mofussal Municipalities.

The Government of Bengal have issued instructions with regard to Health Officers and Resolution No. 2342, dated 28th October 1912, and order No. 601, dated the 2nd July 1914, should be read.

They have also issued instructions for the guidance of sanitary Inspectors with regard to the registration of vital statistics. See Resolution No. 445, dated the 7th February 1913.

Resolution No. 2342San., dated the 28th October 1912.—The Government of India Resolution draws attention to the weakness of the executive establishment of provincial sanitary services and the inadequacy of the staff of trained officers of health, and formulates proposals for a trained sanitary service, chiefly for employment in municipal towns, consisting of two grades of Health Officers and one or more grades of Sanitary Inspectors. The details of the nature of the service, the training and qualifications of candidates and the steps to be taken to ensure their employment in municipalities, have now to be determined.

2. Section 46 of the Bengal Municipal Act leaves the decision as to whether a Health Officer is necessary in a municipality to the Commissioners in meeting, but the advance in public opinion in regard to matters of sanitation and the importance of their bearing on the general prosperity of the province, render it desirable that the Local Government should be empowered to insist, where necessary, on municipalities realizing their responsibilities in the matter. It is proposed, therefore, to amend the Municipal Act so as to enable Government, after due notification, to require a municipality to appoint a Health Officer where this is shown to be necessary, and the offer of the Government of India to provide half the salary of such an officer obviates the possibility of any undue hardship on individual municipalities. The circumstances of municipalities differ widely, and the case of each will be dealt with on its own merits, but it is proposed as a broad rule that every municipality with a population of over 50,000 shall be required to appoint a Health Officer of the first class, and that where the population is over 16,000 and the municipal income is more than Rs. 40,000 a Health Officer of the second

class shall be appointed. Municipalities of the second class will, however, be at liberty to appoint a Health Officer of the first class should they wish to do so, and in that case Government will still contribute half the cost of his salary.

3. A candidate to be qualified as Health Officer of the first class must have a registrable medical qualification and, for the present, a British diploma in public health, and it is suggested that the pay of such an officer should ordinarily be Rs. 300—20—500, though it will be open to individual municipalities to offer a higher pay than this, should circumstances in their opinion demand it. It is not intended to form Health Officers into a provincial service or to make their service pensionable; each municipality will be left to appoint its own officer, subject to the conditions that he is fully qualified under the rules, that he is allowed to join the Municipal Provident Fund and that his appointment and removal are subject to the sanction of the Commissioner of the Division under section 61(*b*) of the Municipal Act. There will probably be no lack of qualified candidates immediately available for appointment as first class Health Officers, and His Excellency in Council trusts that all municipalities with a population of over 50,000, and such others as desire to do so, will at once take steps to appoint Health Officers of the first class: Provided these officers are fully qualified and the conditions set forth above are complied with, Government will be prepared to make a grant equivalent to half their salary for the remainder of the current year, and this promise is equally applicable to those municipalities who already employ fully qualified Health Officers.

4. The Government of India have defined the main qualifications for second class Health Officers to be a good general education supplemented by a course of training in public health. A medical qualification will not, therefore, be essential, but in view of the fact that it is part of the duties of a Health Officer to deal with disease conditions, and that in regard to the rest of his duties and more particularly the duty of prosecuting offenders against municipal health regulations, his opinion is likely to carry more weight with the public if he is a medical man. His Excellency in Council regards a medical qualification as eminently desirable even in the case of second class Health Officers. It is proposed that ordinarily the pay of such officers will be Rs. 150—10—300, and candidates, unless they possess a diploma in public health, will be required to undergo a training of 12 months, of which two months will be spent in inspecting the working of institutions in Calcutta, one month working with a Municipal Health Officer, two months in the laboratory of the Sanitary Commissioner, and seven months working with a Deputy Sanitary Commissioner. The training will thus be entirely practical, and will be under the direct supervision of the Sanitary Commissioner. If candidates are sent by a municipality for this training no charge will be made, but the candidate's eventual confirmation as a Health Officer will be subject to his obtaining a certificate of competency from the Sanitary Commissioner. In other cases a fee of Rs. 50 will be charged to candidates to cover expenses. Applications to join the training class should be submitted to the Sanitary Commissioner, Bengal, and arrangements will be made to start the training as soon as such applications are received, and a list of candidates who have obtained certificates of competency will be kept by the Sanitary Commissioner for the use of municipalities who are required to appoint Health Officers of the second class. Meanwhile, such municipalities can appoint second class Health Officers if they

can obtain qualified candidates on the same conditions as those prescribed above for the appointment of first class Health Officers.

5. As regards Sanitary Inspectors, section 91 of the Local Self Government Act III of 1885, as amended by Act V of 1908, requires District Boards to appoint properly qualified persons as Sanitary Inspectors unless they are specially exempted by order of the Local Government, and under section 138 of the same Act the Local Government can prescribe the qualifications of such Sanitary Inspectors, but there are no corresponding provisions in the Municipal Act. It is now intended to extend these provisions to municipalities; as in the case of Health Officers, the circumstances of each municipality will be considered separately, but as a rough working guide it is proposed that all towns with a population of 10,000 shall have one Sanitary Inspector, while two will be necessary where the population is 30,000, and at least three where the population is over 50,000, and in order to prevent undue hardship the Local Government will be prepared to give some assistance towards the cost of these officers in cases where the Commissioner of the Division reports that the municipalities are really unable to bear the increased expenditure.

6. There will be two grades of Sanitary Inspectors, one on a pay of Rs. 50—5—100 and the other on Rs. 100—5—150, and the higher grade will be recruited partly direct and partly by promotion from the lower. As in the case of Health Officers, there will be no provincial service, but each municipality or District Board will recruit for themselves and will admit Sanitary Inspectors to the benefits of their provident funds. The qualifications of a Sanitary Inspector will be mainly character, tact and driving power; his work will be entirely practical, and as it is undesirable that he should regard himself as either an unqualified medical man or a partially trained engineer, theoretical instruction will be avoided except in so far as it is necessary to a full understanding of the practical course. Candidates for the lower grade must have passed the matriculation or the middle vernacular examination, and must produce certificates of good character and a medical certificate of fitness from a qualified medical practitioner. Applications should be made to the Sanitary Commissioner, and if the applicants are admitted as candidates, they will be required to undergo an eight months' course in practical hygiene and minor Sanitary Engineering under the direct supervision of the Sanitary Commissioner and Sanitary Engineer. The course will consist of:—

I. Hygiene—
- (*a*) a course of hygiene;
- (*b*) a short course, with demonstrations, on the manufacture and preservation of calf vaccine;
- (*c*) a course of ten lectures and demonstrations on the common skin diseases and infectious diseases of animals;
- (*d*) a short course, with demonstrations, on the theory and practice of disinfection.

II. Minor Sanitary Engineering—
- (*a*) drawing office and simple surveying;
- (*b*) latrines, trenching-grounds, etc.;
- (*c*) elementary principles of building construction;
- (*d*) elementary principles of water-supply;
- (*e*) elementary principles of drainage;
- (*f*) practical demonstration of Sanitary Engineering works in Calcutta and neighbouring municipalities.

Instruction will be given in the vernacular. The vaccination class will be held at Entally and the lectures on the infectious diseases of animals will be given at Belgachia. The Hygiene course will be given by a specially selected Assistant Surgeon, while the Sanitary Engineering instruction will be imparted by the Assistant Sanitary Engineer. The major portion of the work will consist of practical demonstrations in and around Calcutta, but arrangements will be made to place at the disposal of the Sanitary Commissioner and Sanitary Engineer a room for the purpose of such lectures as are absolutely necessary. As the course is mainly practical, it is essential that the classes should be strictly limited in numbers and each class will therefore be restricted to 30. At the end of the course there will be written and oral examinations, and as far as possible practical examinations conducted by the Sanitary Commissioner and Sanitary Engineer, and the list of successful candidates will be published in the *Calcutta Gazette*. The classes will be started as soon as sufficient applications have been received, and candidates will be required to pay a fee of Rs. 30 for the course.

It is intended that a separate examination, and possibly a further course, shall be prescribed for certificates entitling a Sanitary Inspector of the lower grade to promotion to the higher grade, but it is desired to obtain some experience of the working of the present rules before taking steps to this end. Meanwhile, the Sanitary Commissioner has a list of 10 or 12 young men who have taken courses in England laid down by the Royal Sanitary Institute. These will be most suitable for the higher grade of Sanitary Inspectors, and it is unnecessary to require any further training from them. His Excellency in Council trusts that some of the larger municipalities will take the opportunity of securing at once the services of these men if they are available.

"For the rules laying down the qualifications of candidates for employment as Health Officers and Sanitary Inspectors and the model rules prescribing their duties *vide* Appendix *post*."

PART XII.

MISCELLANEOUS.

Power to impose penalties on breach of by-laws.

350. (313) 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 by-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, carcases 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 by-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.

The Bengal Government has passed new model by-laws in supersession of those issued with Circ. No. 17-M., dated 20th March 1896, *vide* post. With Govt. Cir. No. 26-M., dated 15th July 1910, were issued rules laying down the procedure to be followed in the making of by-laws. The procedure is as follows :—

Procedure to be followed in the making of by-laws under the Bengal Municipal Act, 1884.

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

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

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

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

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

6. The proposed by-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 by-laws as then approved and confirmed will be finally published in the *Gazette*.

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

"Bye-law," or perhaps more correctly "by-law" is derived from the Scandinavian "by" a town or borough, and therefore originally meant a town or borough law. It afterwards came to mean a rule or law passed by any Corporation. Wharton defines bye-laws as "the rules, regulations and constitutions of Corporations for the Government of their members." Blackstone remarks, that it is one of the inherent rights of Corporations "to make bye-laws or private statutes for the better government of the Corporation, which are binding on themselves, unless contrary to the law of the land, when they are void. This is also included by law in the very act of incorporation, for as natural reason is given to the natural body for the governing it, so bye-laws or statutes are a sort of political reason to govern the body politic."—(1 *Bl. Com.*, 476.) "And this is held to be a right so much of course, that when a charter of incorporation gave to a select body of the members a power to make bye-laws as to certain specified matters, it was held that the body at large was nevertheless at liberty to legislate with regard to all matters not so specified."—(4 *Steph. Com.*, 13.)

Grant, in his treatise on the law of Corporations, expounds the law on the subject as follows :—

"Where it is necessary for the accomplishment of the objects of their incorporation, a body politic has, as an incident to it, the power of making bye-laws, and of enforcing them by penalties ; and such bye-laws, in the case of Municipal Corporations, and of other corporations entrusted with local, popular, or territorial Government, will bind both members and strangers, and not members of the Corporation only."

"A bye-law is a rule obligatory on a body of persons or over a particular district, not being at variance with the general laws of the realm, and being reasonable and adapted to the purposes of the Corporation ; and any rule or ordinance of a permanent character, which a Corporation is empowered to make either by the common or statute law."

The following important provision contained in s. 313 has been omitted from the present section : "Provided that no fee or toll, which is not expressly sanctioned by this Act, shall be levied under any such bye-law." At first sight the effect of this omission would appear to legalise the levy by bye-laws of tolls and fees not expressly sanctioned by this Act. It seems, however, very improbable that the omission has been made with any such intention. The cases in which tolls and fees may be levied are distinctly specified in the Act, and it appears highly improbable that there should have been an intention of giving, in addition, a general power of levying other fees. Supposing, however, that such fees and tolls could be imposed by bye-laws, it does not appear that they could be recovered under the Act. They would not be recoverable under s. 360 as that section only provides for the recovery of fees due under this Act, and a distinction must obviously be drawn between fees due under this Act and fees due under bye-laws made under this Act.

It is more probable that the provision has been omitted on the ground that it embodied a legal principle so well-known and accepted, that it was not likely to be disputed.

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"It is, however, a rule of law, which has been designated as a 'legal axiom' requiring no authority to be cited in support of it, that no pecuniary burden can be imposed on the subjects of this country, by whatever name it may be called, whether tax, due, rate, or toll, except upon clear and distinct legal authority, established by those who seek to impose the burden" (*Broom's Legal Maxims*, 4th Ed., p. 4).

"So a bye-law may levy a toll or tallage on the *members* of the Corporation towards the necessary expenses of the Corporation; though clearly a bye-law to levy money of the subjects generally would be bad." (*Grant on Corporations.*)

The following provision of s. 313 has also been omitted: "The Commissioners may, from time to time, at a meeting as aforesaid, repeal, alter, or add to any such bye-laws." This has probably been omitted as unnecessary: "Every Corporation too has a right, as of course, to alter, or repeal, the bye-laws, which itself has made."—(3 *Steph. Com.*, 13.)

The object of the changes made in this section is to legalise a number of useful bye-laws which have been made from time to time, but for the making of which the section, as before worded, furnished no sufficient authority. Instead of the words which have been inserted, the section before simply contained the words "for giving effect to the objects of this Act." Now a large number of the bye-laws which have been passed from time to time, though very useful and necessary, had no reference whatever to the objects of the Act.

"*Continuing offence.*"—A person having been previously convicted under a bye-law for having built a party-wall not of the thickness prescribed by the bye-law, was some time afterwards again summoned and convicted in respect of the same wall, and adjudged to pay a penalty of five shillings a day for seven days as for a continuing offence. But the Court held that the conviction could not be supported. The words "continuing offence," the Court said, must be read to mean an offence which was from its nature susceptible of continuance, such as improper drainage, etc., and could not apply to the case of a party-wall when once finished. If the offence were within the bye-law, it would be more proper to hold the bye-law unreasonable than to allow a penalty to be enforced which might continue for the length of a man's life—*Marshall* v. *Smith*, L. R., 8 C. P., 416. Compare *Corporation of Calcutta* v. *Jadub Dooley*, 20 Cal., 605.

A bye-law can be made for the regulation of any trade carried on within the borough, but must not be in restraint of it. *Everett* v. *Grapes*, 3 L. J., N. S., 669.

In *Elwood* v. *Bullock*(6 Q. B., 383), a bye-law that no person should erect any booth, or place any caravan for the purpose of a show or public entertainment within the borough, without the license of the Mayor, and that any such license, given at any other than fair time, should be revoked by the Mayor, if three inhabitant house-holders, residing within 100 yards of the place for which it was granted, should memorialise the Mayor to revoke it, was held to be unreasonable and void.

A bye-law that "no person not being a member of Her Majesty's army auxiliary forces, acting under the orders of his Commanding Officer, shall sound or play upon any musical instrument in any of the streets in the borough on Sunday" was held to be unreasonable and therefore bad, as it was not confined to cases in which a nuisance was caused. *Johnson* v. *Corporation of Croydon*, L. R., 16 Q. B. D., 708.

In *Hopkins* v. *Mayor of Swansea*, Lord Abinger observed :—"The bye-law has the same effect within its limits, and with respect to the person upon whom it lawfully operates, as an Act of Parliament has on the subjects at large."

Per Pollock, C. B., with regard to bye-laws *ultra vires* : "Persons empowered to make bye-laws have no right to invest themselves with powers which the law will not sanction ;" and *per* Bramwell, B. : "It is about the same as a policeman who thinks that he is not entitled to a staff unless he breaks somebody's head with it."—*Brown* v. *Holyhead Local Board*, 1 H. & C., 601.

Bye-laws may be made under this section regulating the use of Municipal Parks and Gardens by the Public (L. R.).

With regard to clause (*aa*), see Bengal Government Municipal Cir. No. 1 T-M., dated 23rd September 1914. The Commissioner should consult the Superintendent of Police before granting or refusing permission to let off fire-works like bomb golas, etc., which are potentially dangerous.

With regard to the question as to what must be proved to establish the validity of a bye-law, Lord Alverstone, C. J. in *Robinson* v. *Gregory* (1905, 1 L. B., 534), held that the production of a written copy of the bye-law authenticated by the corporation seal is *primâ facie* evidence sufficient (until rebutted) that the bye-law was duly made and that all conditions such as the fixing of a copy of the bye-law for 40 days in the Town Hall had been complied with.

It would seem to be desirable that the power of making bye-laws should be extended so as to include the power to frame bye-laws penalising and discouraging cruelty to animals.

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."

In Darjeeling, section 20, Act I of 1900, substitutes the following :—

Additional power to make bye-laws.

"350A. (1) *The Commissioners, at a meeting which has been convened expressly for the purpose and of which due notice has been given, may from time to time, make bye-laws for enforcing, prohibiting or regulating the doing of any act which may, in the opinion of the Commis-*

sioners, affect the stability or security of any hillside or bank or any immovable property thereon.

(2) *In particular, and without prejudice to the generality of the foregoing power, the Commissioners at a meeting as aforesaid may make bye-laws for all or any of the following purposes, namely :—*

(*a*) *prohibiting or regulating the making of excavations, the cutting of hillsides or banks and the removal of soil from hillsides or banks;*

(*b*) *prohibiting or regulating quarrying ;*

(*c*) *prohibiting or regulating the removal of stones from hillsides, banks, jhoras or sites of landslips ;*

(*d*) *for preventing or regulating the grazing or straying of cattle on hillsides or banks ;*

(*e*) *for preventing the straying of poultry ;*

(*f*) *for enforcing or regulating the cutting, trimming or removal of trees, shrubs, bamboos, bushes or hedges bordering on, overhanging or obstructing any road or drain, or causing, or being likely to cause, damage or injury to any road or drain or to any person using any road ;*

(*g*) *for enforcing, regulating or prohibiting the cutting or destroying of trees, shrubs, bamboos or plants ;*

(*h*) *for enforcing, regulating or prohibiting the making of, or for regulating the maintenance of, gardens or garden-terraces ;*

(*i*) *for prohibiting or regulating the making of holes or the placing of loose earth for or around trees, shrubs, bamboos or plants ;*

(*k*) *for enforcing or regulating the planting and maintenance of particular kinds of trees, shrubs, bamboos or plants on land, where, in the opinion of the Commissioners, such enforcement or regulation is necessary or desirable with a view to the better protection of any hillside or bank from landslips.*

(3) *The word 'cattle,' as used in clause* (*d*), *shall have the same meaning as in the Cattle Trespass Act, 1871.*

"350*B*. *The Commissioners may, by any bye-law made under section 350A, declare that any person committing a breach of any such bye-law, or failing to comply with any notice issued thereunder, shall be liable to fine which may extend to fifty rupees and to further fine which may extend to twenty rupees for each day after conviction during which the offence is continued.*"

Fines for breach of bye-laws made under section 350A.

351. (314) 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—

Confirmation of bye-laws.

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.

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

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

This section is evidently based on section 184 of the Public Health Act, 1875, 38 and 39 Vict., c. 55.

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 meetings, 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.

(2) 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."

Insertion of new sections, 351B to 351H.

21. After section 351A of the said Act the following shall be inserted *in Darjeeling*—

Power to make rules for the amendment of Schedules A, B, C and D.

"351*B*. (1) *The Local Government may make rules to regulate any of the matters referred to in sections* 201*F*., 239*A*, 237 *and* 248*E*, *and may by such rules alter, add to or cancel any of the rules contained in Schedules A, B, C, and D, respectively.*

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(2) *All references in this Act to any of the aforesaid Schedules shall be construed as referring to such Schedule as for the time being amended in exercise of the powers conferred by sub-section* (1).

Power of entry to inspect, survey or execute work.

"351*C*. *The Commissioners, or any officer in receipt of a salary of not less than fifty rupees per mensem who may be authorised by them in that behalf, may enter into or upon any building or land, with or without assistants or workmen, in order to make any inspection, survey, measurement, valuation or inquiry or execute any work which is authorized by any of the clauses enacted by the Darjeeling Municipal Act,* 1900, *or by any rule or bye-law made under any such clause, or which it is necessary, for any of the purposes or in pursuance of any of the provisions of any such clause, rule or bye-law, to make or execute :*

Provided as follows :—

(*a*) *except when it is in this Act otherwise provided, no such entry shall be made between sunset and sunrise ;*

(*b*) *except when it is in this Act otherwise provided, no dwelling-house, and no hut which is used as a dwelling place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least six hours' previous written notice of the intention to make such entry ;*

(*c*) *sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed ;*

(*d*) *due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.*

Appeal to specially appointed Engineer.

"351*D*. (1) *The Local Government may, by notification in the Calcutta Gazette, appoint an engineer to hear appeals under this Act.*

(2) *An appeal shall lie to the said Engineer from any order* (*not being an order apportioning expenses*) *or requisition made under section* 201*C*, *sub-section* (4), *section* 210, 210*B*, *section* 210*C*, *section* 224*B*, *sub-section* (3) *section* 228, *section* 239, *clause* (*b*), *section* 243, *clause* (*b*), *section* 244*E* *sub-section* (2), *section* 244*H*, *sub-section* (1), *or sub-section* (3), *section* 244*L* *clause* (*b*), *section* 244*Q*, *sub-section* (2), *section* 244V, *section* 248A, *section* 248*B*, *section* 248*C or section* 248*D*.

Appeal to Commissioner of the Division.

"351*E*. *An appeal shall lie to the Commissioner of the Division from any order apportioning expenses incurred in pursuance of section* 228, *section* 248*B*, *section* 248*C or section* 248*D*.

Limitation of time for appeal.

"351*E*. *Every appeal under section* 351*D or section* 351*E must be presented within a period of thirty days after the date of the order or requisition against which the appeal is made :*

Provided as follows :—

(*a*) *if in any case the said period expires on a day when the office of the aforesaid Engineer or Commissioner is closed, the appeal may be presented on the day that the said office is re-opened.*

(*b*) *any appeal may be admitted after the expiration of the said period when the appellant satisfies the appellate authority that he had sufficient cause for not presenting the appeal within such period.*

Assessors in appeals to Commissioner of the Division.

"351*G*. (1) *In dealing with any appeal preferred to him under section* 351*E*, *the Commissioner shall be assisted by two assessors, who shall be selected and summoned by him for each appeal or group of appeals from a list to be prepared annually by the Deputy Commissioner:*

Provided that, if any assessor so summoned fails to appear, the appeal may be heard in his absence.

(2) *The assessors, if present, shall be consulted by the Commissioner, and their opinion shall be recorded in writing; but the Commissioner shall not be bound to conform to their opinions.*

Record of decision on appeal or reference.

"351*H*. (1) *If the Engineer appointed under section* 351*D*, *or the Commissioner of the Division, rejects any appeal preferred to him under this Act, he shall by written order specifically state the grounds for such rejection.*

(2) *The said Engineer shall, when deciding any reference made to him under this Act, specifically state in writing the grounds for his decision.*

(3) *A copy of all orders passed by the said Engineer or Commissioner on any such appeal or by the said Engineer on any such reference shall forthwith be forwarded by him to the Commissioners, who shall thereupon inform the appellant, or the person who made the reference, as the case may be, of such orders.*"

Commissioners may direct prosecution for public nuisance.

352. (316) 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 persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the Municipal Fund.

Practically unaltered. A complaint filed by a Municipal officer is exempted from stamp-duty—Act VII of 1870, section 19, clause (18).

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

353. (317) 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 the notice of the Chairman of the 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.

The only evidence of a public authority is a writing under the seal and signature of that authority. When the Vice-Chairman in starting two prosecutions under section 271 and a bye-law merely signed two forms called "Forms of Prosecution" adding in the remarks column of one "I have seen myself" and of the other "Prosecute"—Held that neither of these documents disclosed any authority written or otherwise showing the Consent of the Commissioners or the Vice-Chairman on their behalf, to a prosecution. *Rasul Baksh* v. *Municipal Board of Chapra*, 14 C. W. N., 934.

Under section 44, the Chairman shall exercise all the powers vested by this Act in the Commissioners, except such powers as are directed to be exercised by the Commissioners. at a meeting. Under section 45, the Chairman may by a written order delegate all or any of his duties and powers to the Vice-Chairman, provided that nothing done by the Vice-Chairman which might have been done under such a written order shall be invalid if done with the express or implied consent of the Chairman. In the case of *Kheroda Prosad Pal* v. *The Chairman of the Howrah Municipality*, the Calcutta High Court held that a general delegation by the Chairman of his powers under this section must be in writing. The judgment is as follows:—

"It is unnecessary, in the view we take of this matter, to consider more than the first objection raised to the conviction and sentence under section 218 of the Municipal Act of 1884. That objection is that the prosecution has been instituted without proper authority within the terms of section 353 read with sections 44 and 45 of the Act. It is not denied that no order or consent of the Commissioners was previously obtained before prosecution, nor has it been contended that the Chairman, exercising the powers of a Commissioner under section 44, ordered this prosecution, nor that the Chairman by any written order delegated to the Vice-Chairman this duty. But it has been stated by the District Magistrate who heard the appeal—and this has been repeated in the explanation given on the issue of the rule—that for some months past the Vice-Chairman had his express consent to institute proceedings under section 353 of the Act. It seems to us that the law requires not express consent, but a written order where such general powers are delegated by the Chairman. No doubt the proviso sets out that nothing done by the Vice-Chairman which might have been done under the authority of a written order from the Chairman shall be invalid for want or defect of such written order if it be done with the express or implied consent of the Chairman previously or subsequently obtained. But we do not understand that proviso to altogether override the body of the section to which it is annexed. It seems to us rather that the proviso relates to specific acts in which an express or implied consent may have been given or held to have been given. In this particular instance the authority contended for is a general authority which had been given many months previous. We think, that is not the authority contemplated by the Act. We think, therefore, that the prosecution has been improperly instituted and that the conviction and sentence should be set aside."—*Kheroda Prasad Paul* v. *The Chairman of the Howrah Municipality*. 20 Cal., 448.

A report having been made by the out-door Inspector of a Municipality the accused was prosecuted under section 271 of the Bengal Municipal Act for having disobeyed a requisition under section 230 of the Act. In the remarks column of that report, which bore an eight-anna stamp, occurred a remark by the Chairman of the Municipality by which he submitted it to the District Magistrate with a recommendation to prosecute the party under sections 230 and 271 of the Act. The out-door Inspector was subsequently examined before the Magistrate. The accused was then convicted of the offence. *Held* that, the Chairman of the Municipality was not in the position of the complainant, and the report could not be regarded as a petition of complaint, although it bore an eight-anna stamp. *Held* also, it was clearly an order or consent by the Chairman as representing the Commissioners, within the meaning of this section, inasmuch as the sanction for prosecution of a public authority need not be under the seal of that authority. *Rasul Buksh* v. *Municipal Board of Chapra* (16 C. W. N., 934) dissented from. *Held* further, that although in the case notice against the accused was issued on the authority of the Vice-chairman, there was a sufficient compliance of the law as express consent of the Chairman was subsequently obtained as indicated in the remarks column aforesaid. *Kheroda Prosad Paul* v. *The Chairman of the Howrah Municipality* (20 Cal., 441) distinguished.—*Chairman of Hoogly-Chinsurah Municipality* v. *Kristo Lall Mallik*, 24 C. L. J., 57.

"Continuing offence." A sentence imposing a daily fine until such time as an accused person shall desist from an offence is bad in law, as being an adjudication in respect of an offence not yet committed.—*In re Sagur Dutt*, 1 B. L. R., O. Cr., 41, See also 9 B. L. R., App., 35.

Publication of order.

354. (365) 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 position 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. (366) 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.

Section 555 of the Criminal Procedure Code, 1882, enacts that a Judge or Magistrate shall not, except with the permission of the Court to which an appeal lies, try or commit for trial any case in which he is a party, or personally interested, but provides that such Judge or Magistrate shall not be deemed to be a party or personally interested merely because he is a Municipal Commissioner. (Now see s. 556 of Act V of 1898.)

Notwithstanding anything contained in section 555 of the Criminal Procedure Code, a conviction for an offence against any Municipal law or regulation, tried before a Bench of Magistrates which includes a salaried officer of the Municipality, is bad.—*Nobin Krishna Mukerjee* v. *The Chairman of the Suburban Municipality*, 10 Cal., 194; *Wood* v. *Municipality of Calcutta*, 8 Cal., 891.

In a case decided on the 22nd August 1884—*In the matter of Kharak Chand Pal* (*Petitioner*) v. *Tarak Chunder Gupta, Municipal Overseer* (*Opposite Party*), 10 Cal., 1030,—the Court, *per* Prinsep. J., ruled as follows :—"The petitioner has been convicted under section 188 of the Penal Code of having disobeyed an order of the Municipal Commissioners of Comillah under s. 256, Bengal Act V of 1876, dated the 29th March, 1883.

"On enquiry we have ascertained that the District Magistrate, who tried and convicted the petitioner, was present as Chairman of the Municipal Commissioners at the meeting of the 29th March, 1883, when the order was passed, the disobedience of which forms the subject of the present case.

"S. 555 of the Code of Criminal Procedure, 1882, provides, that no Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested.' (No permission has been applied for in the present case.) The explanation to s. 555 further declares that 'a Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.'

"That explanation, however, does not, in our opinion, apply to any case in which a Magistrate may have been personally concerned as a Municipal Commissioner in the matter which forms the subject of trial before him. It is rather intended to prevent an objection being raised that from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some municipal matter was involved. It is a very different matter when in the present case we find that the Magistrate is practically one of the prosecutors and the judge."—*Conviction set aside.*

The question arises as to whether the above ruling would be held applicable to the case of a Magistrate trying offences against bye-laws, in the passing of which he had been personally concerned as a Municipal Commissioner. The distinction, on the score of personal interest, between a bye-law and such a general order as the one in question, is not very obvious. It is at least open to question whether the above ruling does not carry the doctrine of disqualification by interest too far, especially as the current of the more recent English decisions appears to have set in the opposite direction. The Court followed *Surgeant* v. *Dale*, (L. R., 2 Q. B. D., 558), a precedent of a very general nature. In a more recent case, however (*Reg.* v. *Handsley*, 8 Q. B. D., 833), it was held that when by statute a member of the council of a borough may act as a Justice of the Peace in matters arising under the Act (34 and 35 Vict., c. 154), in order to disqualify him from so acting, it is not sufficient to shew that, as a member of the council, he has a pecuniary interest in the result of the information or complaint or that the corporation of which he is the member are the prosecutors; but it must be established that he has such *a substantial*

interest in the result of the hearing as to make it likely that he has a real bias in the matter.

The Court in this case (*Reg.* v. *Handsley*) intimated their disapproval of *Reg.* v. *Gibbon* (6 Q. B. D., 168), the facts in which were as follows: By a Local Improvement Act the Corporation was made the authority for the execution of the Act with power to direct prosecutions for this purpose. An information for an offence under the Act having been preferred by an officer on behalf of the Corporation, a summons was issued upon it by a Justice who was also an alderman and member of the Corporation, but came on for hearing before Justices, none of whom were connected with the Corporation. *Held*, notwithstanding, that such Justices could not proceed with the hearing of the summons, for it had been issued by one who was virtually prosecutor.

In *Rex.* v. *Milledge* (4 Q. B. D., 322), and *Reg.* v. *Lee* (9 Q. B. D., 394), it was held that when a councillor has taken part in *passing a resolution directing a prosecution*, he is disqualified from acting as a Justice in respect thereof. These rulings do not appear necessarily to conflict with *Reg.* v. *Handsley*, above cited.

In *Reg.* v. *Justice of Great Yarmouth* (8 Q. B. D., 525), the Mayor of Yarmouth was the Chairman of the Magistrates at a special sessions for appeal against poor rates, and was himself an appellant in one of the cases. After taking part in the decision of the other cases, he left the bench, when his own case came on, and conducted it himself. On *a certiorari* to bring up all the orders for the purpose of quashing them, *held*, that the Chairman being a litigant in a case similar to the other cases before the Court, was disqualified from acting as a Justice, and that the orders were bad. In this case the disqualification arose out of a personal and pecuniary interest.

Another case in which it was held that the interest is not a disqualification, unless it is sufficient to cause a real bias, is *Reg.* v. *Mayor and Justices of Deal* (45 L. T. N. S., 439). In that case the petitioner had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Society for the Prevention of Cruelty to Animals. Some of the Justices who took part in the conviction were subscribers to a branch of the said Society. *Held*, upon rule for *a certiorari*, that there was nothing in these facts to create a real bias in the minds of the Justices which could amount to a disqualifying interest.

An objection was taken to a conviction under an order made by the town council of a borough in pursuance of the Dogs Act, 1871, that the convicting Justices had been parties to the making of the order; but the conviction was upheld. *Reg.* v. *Huntingdon*, L. R., 4 Q. B. D., 522.

On an information laid under a Local Improvement Act by order of a Corporation who were the local board, for violating a bye-law in deviating from a plan of building, it was held that the convicting Justices were not disqualified merely because they were members of the Corporation. *Harding* v. *Stockton*, 31 J. P., 420.

See Rawlinson's "Municipal Corporation Act" Eighth Edition, p. 246, where the strict rule of disqualification is spoken of as the "old rule."

In *Nistarini Debi* v. *Ghosh* (22 Cal., 44), the High Court, held that the District Magistrate, if Chairman of the Municipality, ought not to try or hear an appeal from a conviction in respect of offences under the Act. It did not expressly decide whether he is disqualified under s. 555 of the Criminal Procedure Code.

By s. 4, clause (*p*) of the Criminal Procedure Code "offence" means any act or omission made punishable by any law for the time being in force. By clause (*r*) of the same section "bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force. Under the schedule referred to, all "offences against other laws" (*i.e.*, not under the Penal Code) which are punishable with fine only or with imprisonment for less than three years, are bailable. It follows that all offences under the present Act, with the exception of that punishable under s. 366, are bailable offences within the meaning of the Criminal Procedure Code; and that the provisions of that Code referring to such offences apply to them. By the same schedule they are, with the same exception, cases in which a summons shall ordinarily issue in the first instance.

By s. 1, Act V of 1867 (B.C.), the word "Magistrate" includes all persons exercising all or any of the powers of a Magistrate.

Objections have been raised to this section to the effect that it is at variance with Government orders regarding Municipal Benches. The orders in question direct that at least two Honorary Magistrates must form a Bench for the trial of Municipal cases. The present section enacts that a Magistrate may try such cases. Therefore, it has been alleged, the section and the orders are contradictory. The answer to the objection is that a Bench of Magistrates is a Magistrate within the meaning of this section and of the Criminal Procedure Code, and that Honorary Magistrates are not usually vested with jurisdiction to try cases singly. Were they vested by Government with the necessary local jurisdiction they could of course do so.

"*Fines under this Act.*"—There is an obvious distinction between fines under this Act, and under bye-laws made under this Act. This fact is recognized by s. 353 which refers to a "prosecution for an offence under this Act or any bye-law made in pursuance thereof," thus obviously implying that the former does not include the latter. The same distinction was observed in 5 and 6 Will, 4, c. 76, s. 91, which provided that all the provisions thereinafter contained relative to offences *against the Act* shall be taken to apply to all offences committed in *breach of any bye-law* or regulation made by virtue of the Act. Act III of 1864 contained a practically similar provision, which was re-enacted in the Bill of 1872, but omitted from the Act of 1876.

The omission is probably accidental, but does not appear to be of much consequence, as the general provisions of the Code of Criminal Procedure appear to apply to offences against bye-laws and are to the same effect as the section under consideration. In fact the section is clearly redundant, having regard to the provisions of the Criminal Procedure Code. The breach of a bye-law comes under the definition of an offence in section 4, clause (*p*), and the general provisions of the Code therefore apply to it.

It may be noted, however, that by the common law of England penalties under bye-laws are ordinarily only recoverable by action of debt or *assumpsit*, and that an indictment does not lie with regard to them.

By s. 67 all fines paid or levied in any Municipality under this Act, shall be credited to the Municipal Fund. The following circular relates to certain other classes of fines :—

Municipal—No. 25T—M., dated the 6th April 1885.

"I am directed to acknowledge the receipt of your letter No. 126L—GM., dated the 3rd February last, in which you suggest that, as the charge of maintaining the police in Municipalities is now borne by Government the following fines realized within the Municipal limits through the action of the police should no longer be credited to Municipalities, but should form assets of the Provincial Revenues :—

(*a*) Fines levied under s. 14 of the Gambling Act II (B. C.) of 1867 ;

(*b*) Fines levied for neglect of duty, absence, &c., from Police-officers paid by Municipalities ; and

(*c*) Fines levied under s. 34 of the Police Act V of 1861. for nuisances committed within Municipal limits.

2. In reply, I am directed to say that, after a full consideration of the question, the Lieutenant-Governor is pleased to direct that fines levied under the Gambling Act, and those realized from the police in Municipalities for neglect of duty, &c., should be credited to Government with effect from the 1st instant. Proceeds from fines levied for nuisances committed within Municipal limits should, however, be made over to Municipalities as heretofore."

In Home Department Letter No. 132, dated 3rd October 1900, the Government of India renewed for a further period of 5 years the arrangement sanctioned by that Government in 1895 whereby fines under Act I (B. C.) of 1869 (for the Prevention of Cruelty to Animals) within the Mofussil Municipalities of Bengal and within the jurisdictions of the Calcutta and Howrah Societies for the Prevention of Cruelty to Animals were granted to the Municipalities and Societies respectively.

Since 1905 fines realised under Act I (B.C.) of 1869 and Act XI of 1890 have been permanantly transferred to municipalities (in Howrah to a special Committee.)

See note to section 67.

How notice, &c., may be served.

*356. (367) 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 :

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.

Service of notice on owner or occupier of land.

*357. (368) 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.

Query.—Can an agent, manager or trustee be considered as equivalent to "owner" for the purpose of serving notices ? See ss. 6 & 15, as to meaning of owner and especially the ruling in *Biswas* v. *Biswas* (1911), 38 Cal., 501.

Tax not invalid for want of form.

*358. (369) 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.

It is to be noted that this section merely provides that "error or defect of form" shall not render an assessment invalid. The section will not apply to any case where the property is not liable to assessment.

*359. (370) 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 authorized by them in that behalf, produce such license to the said authorities or to the person so authorized.

Holder of license to produce it when required.

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.

Penalty.

360. (371) 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 one hundred and twenty to one hundred and twenty-nine, both inclusive

Recovery of moneys due to the Commissioners.

That is to say, by presentation in the first place of a bill, to be followed, if necessary, by a notice of demand in the form marked (A) in the Fourth Schedule, and finally by distress and sale of movable property. S. 129 affords the alternative course of bringing a suit in a Civil Court.

Due under this Act.—If, therefore, fees could be levied under bye-laws made under s. 350, such fees would not be recoverable under this section. Fees due under bye-laws could not be held to be fees due under this Act. Compare notes to s. 350.

It is obvious that the Commissioners have no power to levy fees without distinct authority to do so. The practice, therefore, said to prevail in some Municipalities of levying fees for the consecration of pipal or other sacred trees on the sides of the public roads, is absolutely illegal.

361. (372) 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.

Power to sell unclaimed holdings for money due.

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 establishes 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.

Under the corresponding section, the surplus proceeds were repayable, within three years, and if not claimed could then be credited to the Municipal Fund. Under the present section they will be credited at once to the Fund, and the ordinary law of limitation is the only restriction on their repayment. Similar alterations have been made in all the sections of the Act which deal with the matter of surplus proceeds.

There is no objection to the Municipal Commissioners buying in a holding put up to sale under s. 361, provided the holding is required for any of the purposes specified in s. 69, or for any of the other purposes of the Act, and that the Commissioners determine to make the purchase for such purpose.

The Commissioners are not, however, authorized to buy in holdings put up for sale for arrears of taxes unless the purchase is made under s.34 for the purposes of the Act (B. G. Cir., Mun. 2250 M., dated 6th August 1902 to Commissioner, Burdwan).

Compensation for Damages.

362. (373) 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" is defined by Wharton to be "a loss or injury by the fault of another, *e.g.*, by an unlawful act or omission; any hurt or hindrance that a person receives in his estate; also the compensation to be fixed by the jury when they find a verdict for the plaintiff." The object of the section appears to be to give local authorities the power of compromising civil suits to recover damages which may be brought against them. The next section provides that they must always have an opportunity of so doing. It does not appear that the section is intended to confer a power of giving compensation in cases of *damnum absque injuria* where no action would ordinarily lie.

By the Railway Clauses Consolidation Act, 1845, s. 6, it is provided that the Company shall make full compensation for all damages sustained by reason of the exercise in regard to matters specified of the powers vested in the Company. In *Ricket* v. *Metropolitan Railway Company* (L. R., 2 H. L., 175), it was held "that no case comes within the Statute unless when some damage has been occasioned . . . . . in respect of which, but for the Statute, the complaining party might have maintained an action . . . . . Any other construction would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature." *Semble*, therefore

that the present section would apply to cases where in consequence of the statutory powers not having been properly exercised or having been exceeded, an action would lie, and also to cases where damage had been occasioned by the proper exercise of the statutory powers, for which an action would lie save for their existence.

A person who sustains injury from the execution of works authorized by a Statute is not, generally speaking, entitled to compensation under the compensation clauses of the Statute, unless the injury sustained is such as had the works not been authorized by the Statute, would have given the claimant a right of action. Therefore, where a company on the execution of works authorized by a local Act which incorporated the Waterworks Clauses Act, 1847, intercepted water from percolating underground into a well, and also abstracted from the well water which had already so percolated into it, it was held that inasmuch as, apart from the Statute, no action could have lain against the person who executed the works in respect of either the interception or abstraction of such water, the Statute gave no right to compensation in respect of either.—*New River Company* v. *Johnson*, 1. L. T. (N. S.), 295.

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

363. (374) 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.

To what classes of suits similarly worded provisions in other Municipal Acts apply, is a point which has given rise to a considerable amount of judicial discussion, and to some conflicting decisions. Thus, in *Poorno Chunder Roy* v. *Balfour* (9 W. R., C. R., 535) Bayley, J., held, that similar provisions contained in s. 87 of Act III of 1864 applied to a suit to recover possession of land. Phear, J., questioned this, but concurred in dismissing the suit on other grounds. In *Abhoyanath Bose* v. *The Chairman of the Municipal Committee of Kishnagar* (7 W. R., C. R., 92), Norman, J., held, that the same section applied to a suit brought to restrain the Commis-

sioners from interfering with a road claimed to be a private one. In *Price* v. *Khilat Chandra Ghose* (5 B. L. R., App. 59), it was held that the same section did not apply to suits to recover possession of immovable property, but only to actions for damages. In *The Municipal Committee of Moradabad* v. *Chatri Singh* (1 All., 269), a similar view was taken. In *Mayandi* v. *Mcquhae* (2 Mad., 124), it was held that a similar provision in Madras Act III of 1871 (s. 68) did not apply to a suit to recover money due under a contract, a breach of a contract not being a *thing done* under the Act. In *Manni Kasanudhan* v. *Crooke* (2 All., 296), it was held that such provisions only apply to suits in which relief of a pecuniary nature is claimed for something done under the Act, and for which the persons performing them are personally liable for damages.

It may be now accepted as established law that the provisions in question only apply to suits arising out of a pecuniary claim for acts done by the Commissioners or their subordinates in excess of their statutory powers.

The leading Bengal ruling on the subject will be found in the Full Bench decision in *Chunder Sikur Bandapadya* v. *Obhoy Charan Bagchi* (6 Cal., 8), from which the following extract may be quoted :—

"As the relief which has been decreed in these suits is for the specific recovery of land, irrespective of any damages for the plaintiff's dispossession, we consider that the 87th section of Bengal Act III of 1864 does not apply.

"That section, as it seems to us, is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise, or the honestly supposed exercise, of their statutory powers.

"The notice in the earlier part of the section is meant to give the defendant the opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation."

In a case reported in 8 Bom., 421, a somewhat wider interpertation is placed on a similar provision in Bombay Act VI of 1873. It was held that "S. 86 of the Act is not confined to an action for damages, but is applicable to every claim of a pecuniary nature arising out of the acts of Municipal bodies or officers, who, in the *bonâ fide* discharge of their public duties, may have committed illegalities not justified by their power."

No cause of action will be allowed to be raised in a suit to which this section applies, unless disclosed in the notice of action required to be given. —*Ullman and others* v. *The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

Municipal Commissioners are entitled to the notice referred to in this section only when they have been acting *bonâ fide* in the belief that they were exercising powers given to them by the Act. Where their proceedings are not *bonâ fide*, and are only done colourably under cover of the Act, they are not entitled to any notice.—*Gopee Kishen Gosain* v. *Ryland*, 9 W. R., C. R., 279.

A distinct notice of action is absolutely necessary. A notice objecting to and asking for reconsideration of the order complained against is not sufficient.—*Abhoynath Bose* v. *Chairman of the Municipal Committee of Krishnaghur*, 7 W. R., C. R., 92

In a suit for the recovery of damages on account of the detention of an omnibus, and of a daily fine imposed by the Municipality of Howrah, such detention having been pronounced to be illegal, and such fine having been set aside by the High Court. *Held*, that if the plaintiff had any cause of action, it accrued upon the seizure of the omnibus, and not upon the order of the High Court which allowed the conviction to stand as to one rupee and that he could not under the circumstances treat the continued detention of the omnibus as a fresh cause of action from day to day, and his suit not having been brought within three months was barred.—*Hughes* v. *Municipal Commissioners of Howrah*, 19 W. R., 339.

"The plaintiff on April 1888 sued the defendants for damages for injuries caused by the defendants' works to his house. On the case coming on for hearing, it appeared that the notice of action served upon the defendants was defective in form, and the suit was, on the 11th December 1888, dismissed, with liberty to the plaintiff to bring a fresh suit for the same cause of action."

On the 15th December 1888 the plaintiff served the defendants with a fresh notice, and on the 15th March 1889 instituted the present suit. It appeared from the plaintiff's evidence that in the beginning of December 1888 the house had been reduced to such a condition that it was incapable of sustaining further damage. *Held*, that the right to sue accrued to the plaintiff on the happening of damage by reason of the subsidence arising from the defendants' act; that the plaintiff had not shown that a right to sue upon which the suit could be maintained had accrued within three months before the institution of the suit as required by s. 359 of the Municipal Act (IV of 1876), and within the terms of the notice of the 18th December; and that the suit was therefore barred.—*Dwarkanath Gupta* v. *Corporation of Calcutta*, 18 Cal., 91.

The following reported cases may also be referred to with regard to the interpretation to be put on this section.—*Joshi Kalidas* v. *The Dakor Town Municipality*, 7 Bom., 399; *Joharmal* v. *The Municipality of Ahmednagar*, 6 Bom., 580; *Sorabji Nassarvanji* v. *The Justices of Peace of Bombay*, 12 Bom. H. C. Rep., 250.

There is no objection to serving the notice referred to in this section by registered letter (I. R.).

Anything done under this Act.—In the English Municipal Corporations Act, 1882, s. 226, the words used are "for any act done in pursuance or execution or intended execution of this Act, *or in respect of any alleged neglect or default in the execution of this Act.*" In a memorandum prefixed to the Bill when introduced into Parliament, it was stated that the words in italics had been inserted with reference to the ruling in *King* v. *Burrell*, 12 A. & E., 460. In that case it was held that a notice of action, in a suit for an omission or neglect was not necessary under s. 135 of the Act of 1835, as, by that section, such notice was required only in actions for anything *done* in pursuance of the Act. This ruling, if correct, is evidently applicable to the present section. It seems, however, to have been differed from in *Wilson* v. *Mayor of Halifax* (L. R., 3 Ex., 114). See Rawlinson's "Municipal Corporations Act," 6th Edition, p. 314.

It is important to notice that when duties and powers are conferred by Statute, no action will lie for damages resulting from the exercise of those powers or the performance of those duties unless there has been negligence in such exercise or performance. Thus it has been more than once held that a Railway Company is not liable without proof of negligence for injury

by sparks from a locomotive engine, as under its statutory powers it is authorised to run locomotive engines.—*Halford* v. *East Indian Railway Company*, 14 B. L. R., 1. But if it neglects to avail itself of all such contrivances as are known in practical use to prevent the emission of sparks from engines, it will be responsible for such neglect. (*Addison on Torts*, 5th Edition, 342.) On the same principle it was held that a Corporation authorised by Statute to make excavations for drainage purposes was not liable to damages thereby caused to a neighbouring house, when it had entrusted the execution of the work to skilled and competent contractors. *Ullman and others* v. *The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

The following circular has reference to civil litigation carried on by the Commissioners :—

No. 2424T—M., dated Darjeeling, the 26th October 1885.

I am directed to acknowledge the receipt of your memorandum No. 43 MM., dated the 10th June last, submitting, for the orders of Government, a copy of a correspondence between the Magistrate of the 24-Pergannahs and the Chairman of the Naihatty Municipality, in which the question has been raised as to whether Municipal Commissioners should, in future, conduct their civil litigation themselves without reference to the Magistrate of the district. With reference to Rule 51, section I of the rules for the conduct of Civil suits of Government, you ask for instructions whether Municipalities generally, and specially those which elect their own Chairman, should, in future, conduct their civil litigation at their own discretion, or in accordance with the Civil Suit Rules, and under the control and advice of the Legal Remembrancer.

2. In reply, I am directed to say that, in Municipalities with non-official Chairmen, or with Chairmen who, though officials, are elected by the Commissioners, and not appointed by Government, civil litigation should be conducted at the direction of the Commissioners. Should the Commissioners desire it, they may consult the Magistrate of the district who has control over their proceedings, under s. 63 of the Bengal Municipal Act; and the Magistrate may, if he considers it necessary, obtain the advice of the Legal Remembrancer. In the case of other Municipalities the rules for the conduct of civil suits of Government should apply.

With regard to appeals in the High Court in Land Acquisition cases undertaken by Government on behalf of, or at the instance of, Municipalities, Government has ruled that the Legal Remembrancer will at once advise the Collector, in each instance, of any sums advanced or required. That officer will at once deposit the amount required into the litigation fund from the funds placed at his disposal by the Municipality concerned and present the Legal Remembrancer with a duplicate challan. If he has not sufficient funds in his hands, he will at once obtain the amount required from the party interested. The Accountant-General will also be advised by the Legal Remembrancer so that he may watch the recoveries. Govt. Cir., Muni. 1733—367M., dated 17th October 1901 to Legal Remembrancer.

S. 363 corresponds to s. 363 of Act III of 1864 and applies only to cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise or the honestly supposed exercise of statutory powers. It does not apply to suits to set aside illegal assessment. *Shudangsu Bhusan Rai Chaudhuri* v. *Chairman of the Taki Municipality*, 3 C. L. J., (1905).

Chaukidari *chakran* lands.

364. (375) Notwithstanding anything contained in section three 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* land, 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 punchayat 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 punchayat 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.

S. 3 of Act VI of 1870 (B. C.) provides that no panchayat shall be appointed in any village to which the provision of Act III of 1864 (B. C.), or of Act VI of 1868 (B. C.) shall have been extended. Under s. 2 of Act V of 1876 (B. C.) and s. 2 of the present Act, s. 3 of Act VI of 1870 (B. C.) applies to all villages to which the present Act shall have been extended or in which it may be in force.

The following extract explains the object of this section :—

The Hon'ble Mr. Dampier, in moving the introduction of the corresponding section of Act V, said, that "Hon'ble Members were aware that Bengal Act VI of 1870 provided a system for securing the payment and control of chaukidars in mofussil villages. And one of the chapters of that Act was to the effect that *chakran* lands, which had been assigned to provide for the performance of Police duties, might be assessed at half rates and given up to the zemindars entirely, the zemindars paying revenue on such land at half the usual rates only, instead of their being held as before by a chaukidar who, as a condition of his tenure, was bound to give a certain amount of Police service and a certain amount of service to the zemindar. It was assumed that the interest of the zemindar and the public in the chaukidar's service was half and half. There was a provision in the Act that Commissioners might be appointed to value these *chakran* lands, and it enacted that the rent payable by the zemindar should be paid over to the panchayat, who should devote it to the purpose of paying chaukidars . . . . . But, on looking at the law, Act VI of 1870, it was found that in s. 3 there was a provision of which the effect was to prevent that being done within the limits of Municipalities . . . . The subsequent sections of the law said that the sections which dealt with *chakran* lands should not be applied in any place where there was not a panchayat. But under s. 3 you might not appoint a panchayat in Municipalities, and therefore you could not apply the *chakran* provisions to such places. He thought it was obvious that it would be very desirable to deal with *chakran* lands within the limits of Municipalities in the same manner as they were dealt with in villages under Act VI of 1870." — (*P. C., March* 23, 1876.)

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

365. (376) 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."

In revising this section it was thought desirable to adopt the language of the Criminal Procedure Code, so that there might be no possibility of any conflict with the provisions of the Code.—(*P. C., March* 1, 1884.)

The addition of the words "or any bye-law made in pursuance thereof," made by the amending Act is very necessary, as an offence against a bye-law made under the Act is not an offence against the Act. Compare notes to s. 355.

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

366. (377) If any person employed under this Act (not being a public servant within the meaning of section twenty-one 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 fifty-three 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.

It being somewhat doubtful as to what classes of Municipal servants can be considered to be public servants within the meaning of s. 21 of the Indian Penal Code, this section has been enacted in order to make them similarly punishable, for certain offences. Such offences are punishable when committed by public servants, under ss. 161, 163, Indian Penal Code.

The only classes of Municipal servants who can be held to be public servants are those who come under clause (10) of s. 21 of the Indian Penal Code. The clause in question declares the following classes of persons to be public servants :—" Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district."

It is clear that Municipal assessors, tax collectors and other subordinates entrusted with the collection or disbursement of money are public servants under this definition. It does not appear probable that any other classes of Municipal subordinates would be held to be public servants. Labourers or menial servants employed to work on behalf of Government have been held not to be public servants.—*Queen* v. *Nachimattu and others*, 7 Mad., 18.

Saving clause.

*367. (378) 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.

Nuisances in law are divided into public or common nuisances and private nuisances. The former are punishable under the criminal law. The remedy for the latter is ordinarily a civil suit.

" And nuisances are of two kinds, public or common nuisances which affect the public and are annoyances to all the King's subjects ; for which reason we must refer them to the class of public wrongs or crimes and misdemeanours. And private nuisances which are the objects of our present consideration and may be defined as anything done to the hurt or annoyance of the land, tenements or hereditaments of another."—(3 *Bl. Com.*, 216.)

A public nuisance is defined by the Penal Code as " Any act or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right." (Section 268.)

The punishment for any public nuisance in any case not specially provided for by the Code is fine to the amount of Rs. 200. (Section 290.)

"And here I must premise that the law gives no private remedy for anything but a private wrong. Therefore no action lies for a public or common nuisance but an indictment only; because the damage being common to all the King's subjects, no one can assign his particular proportion of it; or if he could, it would be extremely hard if every subject in the kingdom were allowed to harass the offender with separate actions . . . . . Yet this rule admits of one exception, where a private person suffers some extraordinary damage, beyond the rest of the King's subjects, by a public nuisance, in which case he shall have a private satisfaction by action. As, if by means of a ditch dug across a public way, which is a common nuisance, a man or his horse suffer any injury by falling therein; there, for this particular damage, which is not common to others the party shall have his action."—(3 *Bl. Com.*, 219.)

The principle here laid down has been adopted by the Indian Courts.—*Baroda Pershad Mustafi* v. *Gora Chand Mustafi*, 3 B. L. R., 295 : 12 W. R., ; C. R., 295 *Satku Valad Kadir* v. *Ibrahim Valad Mirza*, L. L. R., 2 Bom., 457.

FIRST SCHEDULE.

(*See sections* 8 *and* 17.)

NOTE.—The names of the Municipalities as shown in the schedules annexed to the original Act have been changed for time to time with reference to notifications issued under section 8 the lists now given show the Municipalities to which sections 8,17 and 22 apply at the present time.

At present all the Commissioners are appointed by the Local Government only in the following Municipalities:

Bengal.—

Raniganj.	Arambagh.	Tittagarh.
Dhulian.	Netrokona.	Nalchiti.
Cox's Bazar.	Jhalakati.	Pirojpur.
Nawabganj.	Garulia.	

Bihar and Orissa.—

Lalganj.	Roserha.	Samastipur.
Katihar.	Forbesganj.	Madhupur.
Jajpur.	Lohardaga	Daltanganj.
Jhalda.	Raghunathpur.	

Assam.—

Hailabandi Union.	Habiganj Union.	Shillong.
Barpeta.	Nowgong.	Jorhat.
Golaghat Union.	Nazira.	

SECOND SCHEDULE.

(*See sections* 8 *and* 23).

At present Chairmen are appointed by Government only in the following Municipalities.

BENGAL.

DISTRICTS.	MUNICIPALITIES.
Burdwan	Asansol. Dainhat.
Bankura	Sonamukhi.
24-Parganas ..	Baruipore. Budge-Budge. Garden Reach. Garulia. Halishahar.
Nadia	Birnagar. Chakdah.
Murshidabad ..	Kandi.
Jessore	Mahespore.
Chittagong ..	Cox's Bazar.
Tippera	Chandpur.
Darjeeling ..	Darjeeling.
Malda ..	Nawabganj.

BIHAR AND ORISSA.

Patna	Patna. Dinapur Nizamat. Gaya. Tikari. Daudnagar. Bhabhua.
Tirhut	Siwan. Bettiah. Sitamarhi. Dumka.

SECOND SCHEDULE—(*contd*).

BIHAR AND ORISSA—*contd*,

DISTRICTS.	MUNICIPALITIES.
Bhagalpur ..	Madhupur. Forbesganj.
Orissa	Kendrapara. Jajpur.
Chota Nagpur ..	Hazaribagh. Chatra. Giridih. Ranchi. Lohardaga. Daltonganj. Jhalda. Chaibassa. Raghunathpur.

ASSAM.

Cachar	Hailakandi Union.
Sylhet	Habiganj. Karimganj. Sunamganj. Moulvi Bazar Union.
Khasi and Jaintia Hills	Shillong.
Goalpara	Dhubri. Goalpara.
Kamrup	Barpeta.
Darrang	Tezpur. Mangaldai.
Sibsagar	Sibsagar Station. Jorhat. Golaghat Union. Nazira Union.
Lakhimpur ..	North Lakhimpur Union Doom Dooma Union.

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 one hundred and twelve 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 movable 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.

FORM B.—(*See section* 112.)

Notice to be published of the preparation of the Valuation and Rating List of Holidngs.

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 one hundred and twelve 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 movable 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.

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 charges 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* 122.)

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 further costs of this distraint as specified below, within ten days from the day of the date of this notice the property will be sold.

Costs of Distraint—

Date.

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

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 realised.
6. Inventory of property seized under distress.
7. Date of distress.
8. Date of sale.
9. Detail of articles sold.
10. Amount realised on each article.
11. Purchaser's name.
12. Total amount realised.
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 unrealised, if any.
18. On what date such remaining balance was realised or written off by authority.
19. Remarks (explaining why the property seized was released without sale if not eventually sold, &c., &c.)

FIFTH SCHEDULE.

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

TAX ON CARRIAGES AND ANIMALS.

	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 thirteen hands	3	0
For every 2-wheeled carriage	2	8
For every horse	2	0
For every pony under thirteen hands, and for every mule and donkey	0	12
For every elephant	6	0
For every camel	2	0
For every 4-wheeled carriage drawn by one pony under thirteen hands	2	8

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

SIXTH SCHEDULE.

(*See sections* 2 *and* 4.)

Acts of the Lieutenant-Governor of Bengal 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.

SIXTH SCHEDULE.—contd.

Acts of the Lieutenant-Governor of Bengal in Council.—(contd.)

Number and year.	Subject.	Extent of repeal.
V of 1873 ..	To provide for the levy of a lighting rate in Howrah.	The whole Act.
V of 1876 ..	To 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.

Here follow the schedules to the Darjeeling Municipal Act (1 of 1900 B. C.).

SCHEDULE A.

RULES AS TO PRIVATE ROADS AND BRIDGES.

(*See sections* 201*C*, 201*F and* 351*B*.)

Part I.—Roads.

Application for permission to construct, reconstruct or alter a private road.

(1) Every application for permission to construct, reconstruct or alter a private road other than a footpath must be accompanied by—

(*a*) a plan of the road, showing cross-sections.

(*b*) type-drawings of all bridges to be provided or already provided for the road, and

(*c*) a description of the provision which it is intended to make or which already exists in respect of retaining walls and revetments (if any) and drainage.

(2) Every application for permission to construct, reconstruct or alter a private footpath must be accompanied by a full description of the path.

Slopes.

2. (1) A private road must be so constructed as to have a slope inwards towards the hillside.

(2) Such slope must be not less than the gradient of the road.

Retaining walls and revetments.

3. (1) Whenever the Commissioners so direct, the outer edge of a private road must be protected by retaining-walls, and the inner cutting by revetments.

(2) Such walls and revetments must be of such number and must be placed in such positions as the Commissioners may direct, and must be constructed in accordance with the rules contained in Schedule D.

Drain.

4. A stone-lined drain must be provided on the inner side of a private road, where such side is not rock.

Part II.—Bridges.

Application for permission to construct, reconstruct or alter a private bridge.

5. Every application for permission to construct, reconstruct or alter a private bridge must be accompanied by drawings of the bridge.

Waterway.

6. A private bridge must be constructed so as to leave a sufficient water-way to pass the *maximum* discharge of the channel spanned by the bridge.

Slope of flooring under bridge.

7. The flooring placed in the bed of the channel under a private bridge must, as far as practicable, be laid at the same slope as that of the channel.

Pocket above bridge.

8. When a pocket for the deposit of *débris* is cut in the hillside above a private bridge, otherwise than in solid rock, such pocket must be lined with masonry walling.

Substitution of gratings for culverts.

9. Where a small drain is crossed by a private road, a wooden or iron grating must, if the Commissioners so direct, be laid over the drain, instead of a covered culvert.

SCHEDULE B.

RULES AS TO PRIVATE DRAINS.

(*See sections* 224*B*, 229*A* *and* 351*B*.)

Construction of drains for sullage water.

1. Drains for sullage water must be constructed—

(*a*) with round or half-round tiles bedded in concrete.

or

(*b*) with U-shaped stone masonry set in lime mortar and plastered over the inner surface with Portland cement, or

(*c*) with U-shaped stone concrete.

Construction of drains for surface water.

2. (1) Drains for surface water only may be constructed either of dry rubble masonry or of any other material approved by the Commissioners, and may be either rectangular or U-shaped or V-shaped in section.

(2) Such drains shall not be connected with any drain carrying sullage water or sewage.

Drains to be open.

3. Except with the written permission of the Commissioners no covered drain shall be constructed, and no open drain shall be covered in.

Sectional area.

4. The sectional area of every drain shall be subject to the approval of the Commissioners.

Discharge.

5. (1) Drains must discharge into the nearest water-channel or public drain, unless in any case the Commissioners otherwise direct.

(2) The outfall of a drain into a water-channel or public drain must be protected and guided in such manner as the Commissioners may direct.

(3) Where the drain of a private road joins the drain of a public road, the former drain must be so directed or so protected by strike-boards as to minimise the risk of damage to the public drain or road.

Drain round masonry or framed building.

6. A masonry drain must be placed round every masonry or framed building or block of such buildings, and the site must be sloped from all sides towards such drain.

SCHEDULE C.

RULES AS TO THE USE OF BUILDING-SITES AND THE EXECUTION OF BUILDING-WORK.

[*See sections* 238, 339, 240, 243, 244*B*, 244*C*, 244*J*, 244*L*, 244*O*, 272*E* *and* 351*B*.]

Part I.—Definitions.

Definitions.

1. In this Schedule, unless there is anything repugnant in the subject or context—

(*a*) the word "base," as applied to a wall, means the under-side of the course immediately above the footings of the wall;

(*b*) "nogging" means lime or cement concrete, or brick work in lime or cement mortar, which is filled in between the frames of iron or wood in a framed building;

(*c*) "party-wall" means a wall forming part of a building and used or constructed to be used for the support and seperation of adjoining buildings belonging to different owners or constructed or adapted to be occupied by different persons; and

(*d*) "topmost storey" means the uppermost storey in a building, whether constructed wholly or partly in the roof or not and whether constructed, used or adapted to be used for human habitation or not.

Part II.—Building-sites.

Certificates by Engineer as to site.

2. (1) When any application is made for approval of a site for the erection, re-erection or material alteration of a masonry or framed building, or when any application for permission to erect, re-erect or materially alter a hut involves the approval of a site, the Commissioners shall refer the application to the Municipal Engineer, who shall certify—

(*a*) whether, in his opinion, the site is reasonably secure from danger from hillside slips either from above or from below, or could be made secure as aforesaid by the addition of protective works, and

(*b*) whether, in his opinion, if the site be built upon as proposed, the stability or security of any

hillside or bank or any immovable property thereon would be threatened by the building, or could be ensured by the addition of protective works.

(2) If the said Engineer certifies that the site is not secure as aforesaid, or that the stability or security of any hillside, bank or property would be threatened by the proposed building, or that the addition of protective works is necessary,

and if the Commissioners consider that the site ought nevertheless to be approved or that the said protective works need not be added,

the Commissioners shall refer the matter to the Engineer appointed under section 351D, and shall deal with the application in accordance with his decision.

(3) If protective works have to be added as aforesaid to any site, the site shall not be approved until such works have been constructed and have received the written approval of the Commissioners.

Part III.—Buildings generally.

Architecture.

3. Every building erected or re-erected, and every material alteration made to a building, must have such architectural features as to prevent the building being, in the opinion of the Commissioners, unslightly or unsuitable to its surroundings.

Shops.

* 3A. No shop shall be erected or re-erected in the vicinity of dwelling-houses without the written sanction of the Commissioners.

Building in crowded localities.

* 3B. No building shall be erected or re-erected in any locality which, in the opinion of the Commissioners, certified in writing, is so crowded with buildings as to be prejudicial to sanitation.

Compensation to owner debarred from re-erecting a building.

* 3C. The Commissioners shall make full compensation to the owner for any damage which he may sustain in consequence of being debarred by rule 3A or rule 3B from re-erecting a building.

* Rules 3A, 3B and 3C were inserted by Notification No. 1262 M., dated 29th February, 1904, published in *Calcutta Gazette*, 1904, Part IB., p. 44, which runs as follows :—

"In exercise of the powers conferred by s. 351B of the Bengal Municipal Act, 1884 (III of 1884), as amended by the Darjeeling Municipal Act.

Buildings of more than three storeys.

4. (1) Except with the special sanction of the Commissioners, no building shall be erected or re-erected so as to have more than three storeys.

(2) When any such sanction is given, the materials and method of construction of the building must be such as may be prescribed by the Commissioners.

Level of floor.

5. The floor or lowest floor of every building erected or re-erected from the ground level must be constructed at such level as will admit of—

(*a*) the construction of a drain sufficient for the effectual drainage of the building and placed at such level as will admit of the drainage being led into some drain at the time existing or projected, and

(*b*) there being a ventilated air space of at least six inches in depth between the underside of the floor joists and the ground level.

Building over drain.

6. A building shall not be placed over any drain, except with the written permission of the Commissioners.

Part IV.—Masonry buildings and framed buildings generally.

Foundation.

7. The foundation of a mosonry or framed building must rest on solid ground or rock.

Footings for walls.

8. (1) The projection of the bottom of the footings on each side of each wall of a masonry or framed building must be at least one-fourth of the thickness of the wall at its base.

(2) The height from the bottom of such footings to the base of each wall must be at least two-thirds of the thickness of the wall at its base.

(3) Except where the foundation is a rock, the bottom of such footings shall not be less than three feet below the ground level.

(4) When a wall is built on rock, footings may be omitted if the surface of the rock is properly cleaned and stepped to receive the first course of masonry.

1900 (I of 1900), the Lieutenant-Governor is pleased to make the above rules as to the erection and re-erection of buildings in the Darjeeling Municipality, and to direct that they be inserted after rule 3 in Schedule C to the said Bengal Municipal Act, 1884, as so amended.

External and cross walls of a one-storeyed building.

9. The external and cross walls of a masonry or framed building of one storey must be built of—

(*a*) stone or brick bedded in lime or cement mortar,
(*b*) stone or brick bedded in mud mortar, or
(*c*) timber or iron framing filled in with nogging, or covered with corrugated or plain iron, or planked :

Provided that, when stone or brick bedded in mud mortar is used, those portions of the walls around doors and windows and under the wall-plates for one foot in depth, and in the foundations up to plinth level, must be of stone or brick bedded in lime or cement mortar.

External and cross walls of a two-storeyed building.

10. (1) The external and cross walls of the lower storey of a mosonry or framed building of two storeys must be built of—

(*a*) stone or brick bedded in lime or cement mortar, or
(*b*) timber or iron framing filled in with nogging or covered with corrugated or plain iron :

Provided as follows :—

(*i*) if any of the said external walls do not support any masonry wall in the upper storey, they may be built of nogging instead of as prescribed in clause (*a*) ; and

(*ii*) if any of the said cross walls are intended for partitions only, and do not support any wall in the upper storey, they may be built of nogging or of timber framing planked with boards.

(2) The external and cross walls of the upper storey of a masonry or framed building of two storeys must be built of the materials specified in clause (*a*) or clause (*c*) of rule 9.

External and cross walls of a three-storeyed building.

11. (1) The external and cross walls of the lowest storey of a masonry or framed building of three storeys must be built of

(*a*) stone bedded in lime or cement mortar, or
(*b*) iron framing covered with corrugated iron, or filled in with nogging ;

and the external and cross walls of the storey next above the lowest storey of such a building must be built of

(*i*) stone or brick bedded in lime or cement mortar, or
(*ii*) timber or iron framing filled in with nogging or covered with corrugated iron :

Provided that if any of the cross-walls in either of the said storeys are intended for partitions only, and do not support any wall in the storey above, they may be built of planked timber framing.

(2) The external and cross walls of the topmost storey of a masonry or framed building of three storeys must be built of—

(*i*) stone or brick bedded in lime or cement mortar, or

(*ii*) timber or iron framing, filled in with nogging, or covered with corrugated or plain iron, or planked.

Party-walls.

12. The party-walls of a masonry or framed building must be built of stone or brick bedded in lime or cement mortar for their full height; and, if the Commissioners so direct, must be carried up, of a thickness of not less than nine inches, above the roof, flat or gutter to such a height as will give a distance of at least eighteen inches measured at right angles to the slope of the roof above the highest part of the roof, flat or gutter.

Damp-proof course.

13. (1) Every wall of a masonry or framed building must have a damp-proof course at or above the level of the ground floor.

(2) Such damp-proof course may consist of sheet lead, asphalt, slates laid in cement, vitrified bricks or any other durable material impervious to moisture.

Roofs.

14. (1) The roof of every masonry or framed building must be constructed of corrugated or plain iron, lead, slates or tiles:

Provided that, with the written permission of the Commissioners, any such roof may be constructed of shingles securely attached to a frame of iron or timber.

(2) The rise of the roof shall not in any case be less than one-eighth of the span.

Floors.

15. The floors of every masonry or framed building must be constructed to bear safely the maximum load to be carried, such load being taken, in the case of planked floors, as not less than sixty pound *per* square foot, including the weight of the floor.

Beams and girders.

16. (1) All beams and girders in a masonry or framed building must be supported by a breadth of brick-work, stone or other solid substance sufficient to secure their stability.

(2) The bearing of a beam or girder on a wall shall not, without the sanction of the Commissioners, be less than three-fourths of the thickness of the wall.

Iron-work.

17. All iron posts, girders or joists or other iron work used for the support of any portion of a masonry or framed building must be of such quality and strength as are approved by the Commissioners.

Part V.—Dwelling-houses.

Free passage about dwelling-houses.

18. (1) Except with the written permission of the Commissioners, no dwelling-house or part thereof shall be erected, re-erected or extended so that any external wall thereof is in any direction at a distance less than—

(*a*) twenty feet from any part of any adjacent building, or

(*b*) ten feet from the boundary of the holding on which the house stands, or

(*c*) four feet from the side of any public road, or

(*d*) three feet from the toe of any bank or retaining-wall.

(2) The said permission shall not be granted unless the Commissioners are satisfied that notice of the intention to apply for it has been given to the neighbouring proprietor or his agent, and shall not be refused except on sanitary or other public grounds.

(3) If the said permission be granted, the Commissioners shall send a copy thereof both to the applicant and to the said neighbouring proprietor.

Out-houses.

19. Every person who erects or re-erects out-houses, or ranges or blocks of out-houses, whether the same are to be used as dwellings or stables or for any other purpose in connection with a dwelling-house, must build the same—

(*a*) so that they may stand in regular lines, with a free passage or way, in front of and between every two lines, of such width as the Commissioners may direct, for ventilation and for facilitating scavenging; and

(*b*) with such and so many privies, latrines or urinals, and such means of drainage, as the Commissioners may require; and

(*c*) at such level as will suffice for the means of drainage required by the Commissioners.

Ventilation of rooms of dwelling-house.

20. Every room in a dwelling-house—

(*a*) must be so constructed that the whole of at least one side of the room either is an external wall or abuts on a verandah, or

(*b*) must have suitable and sufficient sky-lights and roof ventilation.

Size and ventilation of inhabited rooms.

21. Every room in a dwelling-house which is intended to be used as an inhabited room—

(*a*) must be in every part not less than eight feet in height from flooring to ceiling, or, in the case of a room in the roof, must have an average height of not less than seven feet from floor to ceiling;

(*b*) must have a clear superficial area of not less than eighty square feet; and

(*c*) must be ventilated by means of doors or windows which open directly into a verandah or the external air, and which have an aggregate opening, clear of the framing, equal to not less than one-tenth of the superficial area of the floor of the room.

Part VI.—Applications for approval of sites for, and for permission to erect, re-erect or materially alter, masonry buildings or framed buildings.

Application for approval of site for erection, re-erection or material alteration of a masonry or framed building.

22. (1) Every application for approval of a site for the erection or re-erection of a masonry or framed building must be written on a printed form (to be supplied by the Commissioners free of charge), and must state the position of the site, the number assigned to it in the valuation and rating list, its dimensions, and such other particulars as may be prescribed by the commissioners.

(2) The site-plan sent with such an application must be drawn to a scale of not less than one-fiftieth of an inch to a foot, must be sent in duplicate, and must show—

(*a*) the boundaries of the site;

(*b*) the position of the site in relation to neighbouring roads, hillsides and banks;

(*c*) the angle and the character of the hill-sides or banks occupied by and abutting on the site;

(*d*) whether the site is wooded or not ;
(*e*) what springs and *jhoras* (if any) there are on the site ;
(*f*) what excavations (if any) it is proposed to make on or near the site ;
(*g*) what protective works (if any) it is proposed to construct on, or for the support of, the site ;
(*h*) the name of the road (if any) in which the building is proposed to be situated ;
(*j*) the position of the building in relation to—
(*i*) the boundaries of the site, and
(*ii*) all adjacent roads, buildings and premises within a distance of forty feet of the site, or
(*iii*) (if there is no road within a distance of forty feet of the site) some existing or projected road ;
(*k*) the means of access to the building from the road ;
(*l*) the position, form and dimensions of privies, urinals, drains, stables, cattle-sheds, cow-houses and other appurtenances of the building, and the inclination of such drains ;
(*m*) free passage or way in front of the building ;
(*n*) space to be left about the building to secure a free circulation of air, admission of light, and access for scavenging purposes ;
(*o*) the width and level of the road (if any) in front and of the road (if any) at the rear of the building ; and
(*p*) such other particulars as may be prescribed by the Commissioners.

(3) The foregoing sub-rules shall apply also in the case of applications for permission to materially alter a masonry or framed building in the manner indicated in clause (*b*) of s. 238, in so far as the said sub-rules are capable of application to the intended alteration.

Application to be sent and particulars furnished by person intending to erect, re-erect or materially alter a masonry or framed building.

23. (1) Every application for permission to erect or re-erect a masonry or framed building must be written on a printed form (to be supplied by the Commissioners free of charge), and must state the description of the building, its dimensions, and such other particulars as may be prescribed by the Commissioners.

(2) The plan of the building and the elevations and sections accompanying such an application must be neatly and

accurately drawn to a scale of not less than one-eighth of an inch to a foot, must be fully dimensioned, and must be sent in duplicate, and the said plan must show—

(*a*) the levels and width of the foundation of the building ;

(*b*) the level of the lowest floor of the building ; and

(*c*) the level of all open spaces in the building or premises, and the plinth level of buildings with reference to the level at the centre of the nearest road.

(3) The specification accompanying such an application must comprise full information as to the following particulars, namely :—

(*i*) the materials and method of construction to be used for external walls, party-walls, foundations, roofs, floors, fire-places and chimneys ;

(*ii*) the manner in which roof and house drainage and the surface drainage of land will be disposed of ;

(*iii*) the manner, if any, in which it is proposed to pave the open spaces in the building or premises, and the slope to which the surface is to be made in each case ;

(*iv*) the purpose for which it is intended to use the building ;

(*v*) if the building is intended to be used as a dwelling-house for two or more families, or as a place for carrying on any trade or business in which more than twenty people may be employed, or as a place of public resort, the means of ingress and egress ; and

(*vi*) such other particulars as may be prescribed by the Commissioners.

Explanation to clause (iv).—If it is intended to use the building or any part thereof for any of the purposes specified in section 261, or as a stable, cattle-shed or cow-house, the fact must be expressly stated.

(4) The foregoing sub-rules shall apply also in the case of applications for permission to materially alter a masonry or framed building, in so far as they are capable of application to the intended alteration.

Signature of plans, elevations and sections.

24. (1) The plans, elevations and sections referred to in s. 240 must be signed clearly and in a prominent place by the owner of the building.

(2) If the said documents have been prepared by an Architect or an Engineer, they may be signed by him as well as by the owner.

Power to require further information.

25. (1) Within thirty days after the receipt of any application under s. 238 or s. 240, the Commissioners may require the applicant to furnish them with any information which has not already been given in the documents received.

(2) If any information required under sub-rule (1) is, in the opinion of the Commissioners, incomplete or defective, they may, within thirty days after the receipt of the same, require further information to be furnished.

(3) If any requisition made under sub-rule (1) or sub-rule (2) is not complied with within three months, the application received under s. 238 or s. 240, as the case may be, shall be deemed not to have been made.

Modification, signature and disposal of plans.

26. (1) When the Commissioners have approved any site-plan or given permission to execute any work, any modifications which they may have directed to be made in such site-plan or in any of the approved plans of the work shall be entered on both copies of the plan, and the copies shall be signed on behalf of the Commissioners.

(2) One of the signed copies of each plan shall then be returned to the applicant, and the other shall be kept in the office of the Commissioners.

Part VII.—Huts.

Prohibition of projections or dropping of water over road or passage.

27. Every hut abutting on a road or passage, whether public or private, must be constructed so as not to project over, or admit of water from the roof falling upon or injuring, the road or passage.

Part VIII.—Applications for permission to erect, re-erect or materially alter huts.

Application or permission to erect, re-erect or materially alter a hut.

28. (1) Every application for permission to erect, re-erect, or materially alter a hut must be written on a printed form (to be supplied by the Commissioners free of charge) and must contain a description of the site.

(2) If it is intended to use the hut or any part thereof for any of the purposes specified in s. 261, or as a stable, cattle-shed or cow-house, the fact must be expressly stated in the said application.

Power to require further information.

29. (1) When any application under s. 244J has been received, the Commissioners may require the applicant to furnish them with any additional information which they may consider it necessary to obtain.

(2) If any information required under sub-rule (1) is, in the opinion of the Commissioners, incomplete or defective, they may require further information to be furnished.

(3) If any requisition made under sub-rule (1) or sub-rule (2) is not complied with within two months, the application received under s. 244J shall be deemed not to have been made.

SCHEDULE D.

RULES AS TO REVETMENTS, RETAINING-WALLS, TOE-WALLS, TURFING AND SLOPING.

(*See ss.* 248*E and* 351*B and Schedule A, rule* 3.)

Part I.—Revetments, retaining-walls and toe-walls.

Foundation and bed-line.

1. (1) The foundation of every revetment, retaining-wall or toe-wall must be taken down to original and firm soil or rock; and the bed-line must be cut at right angles with the face of the revetment or wall.

(2) The building of any revetment, retaining-wall or toe-wall shall not be commenced until the foundation and bed-line have been inspected and approved by the Commissioners.

Materials.

2. (1) A revetment, retaining-wall or toe-wall may be made of dry rubble masonry, but must, in any case in which the Commissioners so direct, be made of lime masonry.

(2) No stone used shall be of greater height than its length or breadth.

Laying of stones.

3. All stones used must be laid on their natural beds, and must be arranged so as to break joint as far as may be possible.

GSL

Bonding.

4. (1) One through bonding-stone or line of bonding-stones must be inserted at intervals of five feet in each course, and at points intermediate between the corresponding bonding-stones of the course below.

(2) Any of the bonding-stones which do not extend right through the wall must overlap each other for one-third of their length.

Solidity.

5. Every revetment, retaining-wall or toe-wall must be built up solid to full section; and spawls or chips shall not be used for filling the courses unless their use is unavoidable.

Weep-holes.

6. Weep-holes must be provided at intervals of four feet horizontally and four feet vertically, beginning with the course immediately above ground-level.

Sections.

7. (1) Where a revetment, retaining-wall or toe-wall does not exceed twenty feet in height and is not surcharged, the mean thickness of the revetment or wall above the footings shall not be less than one-third of the vertical height of the revetment or wall, measured from the top of the footings:

Provided that the width at the top shall in no case be less than one foot six inches and need not in any case exceed three feet six inches.

(2) Where a revetment, retaining-wall or toe-wall does not exceed twenty feet in height and is surcharged, sub-rule (1) shall apply, the height being assumed, for the purposes of that sub-rule, to be one-and-a-half times the vertical height.

(3) Where a revetment or retaining-wall exceeds twenty feet in height, detailed designs must be submitted to the Commissioners, and the sections must be such as the Commissioners may approve.

Part II.—Sloping.

Angle.

8. When, in pursuance of any requisition or direction made or given by the Commissioners, any slope is to be reduced, the angle to which the slope is reduced shall not be greater than 37°.

Appendix.

RULES AND ORDERS ISSUED BY THE LIEUTENANT-GOVERNOR UNDER THE ACT.

NOTIFICATION FIXING NUMBER OF COMMISSIONERS.

The 4th August 1884.—Under section 13 of the Bengal Municipal Act III (B.C.) of 1884, the following list, showing the number of Commissoners fixed by the Lieutenant-Governor for each Municipality constituted before the passing of the said Act, is published for general information.

Division.	District.	Name of Municipality.	Number of Commissioners.
		Bengal.	
Burdwan ..	Burdwan ..	Burdwan	22
		Dainhat	12
		Kalna	15
		Katwa	12
		Ranigunge	12
		Asansol	12
	Bankura ..	Bankura	15
		Bishnupore	12
		Sonamukhi	10
	Beerbhoom ..	Soory	16
	Midnapore ..	Midnapore	18
		Tumlook	12
		Ghatal	15
		Kheerpoy	9
		Chunderkona ..	12
		Ramjibanpore ..	9
		Kharar	16
	Hooghly ..	Hooghly and Chinsurah	18
		Serampore	18
		Utterparah ..	12
		Bansberia	9

Note.—The above lists are take from the Annual Reports for 1914-15.

Division.	District.	Name of Municipality.	Number of Commissioners.
		BENGAL—*contd.*	
Burdwan ..	Hooghly ..	Bydabatty ..	12
		Bhuddresur ..	12
		Kotrung	9
		Arambagh	12
	Howrah ..	Howrah	30
		Bali	21
Presidency ..	24-Pergunnahs ..	Cossipore and Chitpur ..	12
		Maniktola	12
		Garden Reach ..	12
		Baranaggar	13
		South Suburban ..	10
		Rajpore	18
		Baruipore	9
		Joynugger	12
		Tollyganj	9
		Baraset	18
		Bussecrhat	15
		Taki	9
		Budge Budge ..	9
		South Barrackpore ..	12
		North Barrackpore ..	15
		Tittaghar	10
		Baduria	12
		Nyehatty	9
		Goburdanga ..	9
		North Dum-Dum ..	9
		South Dum-Dum ..	9
		Kamarhatti ..	12
		Panihati	10
		Garulia	10
		Halisahar	12
		Bhatpara	15
	Khoolna ..	Satkhira	12
		Khoolna	15
		Debhatta	12
	Nudia ..	Krishnagar ..	21
		Nudia	12
		Ranaghât	18
		Santipore	15
		Kooshtea	12
		Beernagger ..	12
		Meherpore	9
		Comercolly ..	15
		Chakdaha	13
	Jessore ..	Jessore	18
		Moheshpore ..	16
		Kotchandpore ..	10

NOTE.—The above lists are taken from the Annual Reports for 1914-15.

Division.	District.	Name of Municipality.	Number of Commissioners.
		Bengal—*contd.*	
Presidency ..	Moorshedabad ..	Berhampore ..	25
		Kandi	11
		Moorshedabad ..	15
		Azimgunj	15
		Jungypore	18
		Dhulian	9
	Dinagepore ..	Dinagepore ..	15
	Rajshahye ..	Rampore Beauleah ..	21
		Nattore	18
	Rungpore ..	Rungpore	18
	Bogra ..	Bogra	15
		Sherepore	12
Rajshahye ..	Pubna ..	Pubna	18
		Serajgunge ..	18
	Jalpaiguri ..	Jalpaiguri	16
	Darjeeling ..	Darjeeling	25
		Kurseong	12
	Malda ..	English Bazaar ..	18
		Old Malda	12
		Nawabganj	12
	Dacca ..	Dacca	21
		Naraingunge ..	12
	Furreedpore ..	Furreedpore ..	18
		Madaripore	12
Dacca ..	Backergunge ..	Burrisal ..	15
		Jhallacatti	9
		Nulchitti	9
		Patuakhali	10
		Pirojpur	11
	Mymensingh ..	Mymensingh ..	18
		Tangail	15
		Sherepore	12
		Netrakona	16
		Kishoregunge ..	15
		Bazitpore	9
		Jamalpore	15
		Mooktagacha ..	9

Note.—The above lists are taken from the Annual Reports for 1914-15.

Division.	District.	Name of Municipality.	Number of Commissioners.
		Bengal—*concld.*	
Chittagong	Chittagong	Chittagong	18
		Cox's Bazar	13
	Tipperah	Comillah	19
		Brahmunberia	12
		Chandpur	9
	Noakholly	Noakholly	12
		Bihar and Orissa.	
Patna	Patna	Patna	30
		Dinapur	18
		Bihar	12
		Barh	9
		Khagaul	9
	Gaya	Gaya	24
		Tikari	15
		Daudnagar	12
	Shahabad	Arrah	18
		Buxar	12
		Doomraon	9
		Sasseram	21
		Jagdishpore	9
		Bhubhooah	9
	Mozufferpore	Mozufferpore	18
		Hajipore	12
		Lalgunge	10
		Seetamarhi	11
	Durbhunga	Durbhunga	21
		Rosera	15
		Madhubani	15
		Samastipur	11
	Saran	Chuprah	18
		Sewan	9
		Revilgunge	12
	Chumparun	Bettiah	12
		Motihari	12
Bhagulpore	Bhagulpore	Bhagulpore	21
		Colgong	12

Note.—The above lists are taken from the Annual Reports for 1914-15.

Division.	District.	Name of Municipality.	Number of Commissioners.
		Bihar and Orissa—*contd.*	
Bhagalpore ..	Monghyr ..	Monghyr	18
		Jamalpore	18
	Sonthal Pergunnahs.	Deoghur	15
		Sahebgunge ..	9
		Dumka	12
		Madhupur	10
	Purneah ..	Purneah	18
		Kishanganj	12
		Katihar	12
		Forbesganj ..	12
Orissa ..	Cuttack ..	Cuttack	21
		Jajpore	13
		Kendraparah ..	13
	Balasore ..	Balasore	18
	Pooree ..	Pooree	15
	Sambalpur ..	Shambalpur ..	16
Chota Nagpore	Hazaribagh ..	Hazaribagh	15
		Chuttrah	12
		Giridih	12
	Ranchi ..	Ranchi	18
		Lohardugga ..	10
	Palamau ..	Daltonganj ..	12
	Singbhoom ..	Chyebassa	12
	Manbhoom ..	Purulia	18
		Jhalda	9
		Raghunathpur ..	9
		Assam.	
Surma Valley and Hill Districts.	Cachar ..	Silchar	15
		○ Hailakandi Union ..	6
	Sylhet ..	Sylhet	15
		Habiganj	12
		Karimganj ..	12
		Sunamganj	12
		○ Moulvibazar Union ..	6
	Khasi and Jaintia Hills.	Shillong	15

The Municipalities marked with a circle are constituted under Act V of 1876, the rest under Act III of 1884.

Note.—The above lists are taken from the Annual Reports for 1914-15.

Division.	District.	Name of Municipality.	Number of Commissioners.
		ASSAM—*contd.*	
ASSAM VALLEY DISTRICTS.	Goalpara ..	Dhubri	12
		Goalpara	10
	Kamrup ..	Gauhati	15
		○ Barpeta	10
	Durrang ..	Tezpur	14
		○Mangaldai ..	4
	Nowgong ..	Nowgong ..	12
	Sibsagar ..	○ Sibsagar station ..	10
		Jorhat	11
		○ Golaghat Union ..	6
		○ Nazira Union ..	6
	Lukhimpur ..	Dibrugarh	16
		○North Lakhimpur Union.	6
		○Doom Dooma Union..	6

The Municipilities marked with a circle are constituted under Act V of 1876, the rest under Act III of 1884.

NOTE.—The above lists are taken from the Annual Reports for 1914-15.

RULES FOR THE ELECTION OF MUNICIPAL COMMISSIONERS.

NOTIFICATION No. 4345M.

The 21st November 1896.—It is hereby notified for general information that, in supersession of all previous rules on the subject, the Lieutenant-Governor is pleased to lay down the following rules under sections 15* and 69 of the Bengal Municipal Act III of 1884 as amended by Bengal Acts IV of 1894 and II of 1896, for the conduct of all future elections of Commissioners of Municipalities :—

1. In these rules—

(*a*) The term "the Magistrate" has the meaning defined by section 6, sub-section (8) of the Act.

(*b*) A "general election" means an election held under section 14 of the Act.

(*c*) A "by-election" means an election held under section 27 of the Act.

(*d*) A person shall be deemed to be resident within the limits of a Municipality if he—

(1) ordinarily lives within those limits ; or

(2) has his family dwelling-house within those limits, and occasionally visits it ; or

(3) maintains within those limits a dwelling-house ready for occupation in the charge of servants, and occasionally occupies it.

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

* 2 M., dated Calcutta, the 14th January 1897.

From—H. H. RISLEY, ESQ., C.I.E. Secy. to the Govt. of Bengal, Municipal Dept.,

To—All Commissioners of Divisions.

DURING the general election of Commissioners of Municipalities held in December 1893, a case came under the notice of the Lieutenant-Governor, in which certain Government servants voted twice in the elections, once in respect of their private residences and again on behalf of Government, as owner of the public buildings in the town. The matter was referred to the Advocate-General, who expressed the opinion that no person can vote at a municipal election for holdings of which Government is the registered proprietor, and on account of which Government pays rents and taxes. It was clear, he added, from the terms of section 15 of the Bengal Municipal Act III of 1884, that the qulifications required to entitle any person to vote were personal qualification, and could not be exercised by any person in respect of Government buildings. With a view to prevent similar irregularities taking place during the next general election, I am to request that this opinion may be circulated for the information and guidance of all Chairmen of Municipalities and Government officers residing in the municipalities of your division.

Of the qualification of voters.

2. Every male person shall be eligible to vote who has attained the age of 21 years, has been resident within the limits of the Municipality for not less than 12 months, immediately preceding the election, has been duly registered as provided in rules 4 to 12 inclusive, and who—

(i) has, during the year immediately preceding such election, paid an aggregate amount of not less than Re. 1-8 (Rs. 3 in Howrah, and Cossipore-Chitpur) in respect of any one or more of the rates specified in section 15 of the Act, or in respect of the fees for the registration of carts under section 143 of the Act : or

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

(iii) being a graduate or licentiate of any University, or having passed the Intermediate Examination in Arts and Science or the Final Commercial Class Examination of the Calcutta University or the corresponding standard of any other University, or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorising him to practise as a pleader or as a mukhtar or as a revenue agent—occupies a holding, or part of a holding, in respect of which there has been paid, during the year aforesaid, in respect of any rates specified in section 15 of the Act, an aggregate amount of not less than Re. 1-8 (Rs. 3 in Howrah, and Cossipore-Chitpur) ; or

(iv) has, during the same period, paid not less than Rs. 20 as rent in respect of the occupation by him of a holding or part of a holding which is assessed with the rate under section 85, clause (*b*) of the Act.

By Notification No. 529-T. M., dated 17th June 1909), the words "the intermediate examination in Arts and Science or the final commercial class examination" were substituted for the words "The First Arts Examination" in clause (iii) of rule 2 and in clause (3) of rule 3.

Any one qualified under rule 2 and duly registered as a voter as provided by rules 4 to 12 is eligible for election as a commissioner and the fact that such person is registered as a voter under rule 8 as a representative of a corporation instead of being registered in his own capacity

does not disqualify him for election. *Rash Bihari Ghosal* v. *J. C. Stulhart*, 16 C. W. N., 710.

3. At elections held in newly-created Municipalities before municipal taxation has been imposed, every male person shall be eligible to vote, who has attained the age of 21 years, has been resident within the limits of the Municipality for not less than 12 months immediately preceding the election, has been duly registered as provided in rules 4 to 11 inclusive, and who—

(1) prior to the creation of the Municipality was qualified under the rules framed under section 138(*a*) of the Bengal Local Self-Government Act, 1885, to vote at an election of members of a Local Board in respect of the area within the limits of the newly-created Municipality; or

(2) has during the year immediately preceding the election, paid an amount of not less than 12 annas on account of chaukidari tax; or

(3) being a graduate or licentiate of any University, or having passed the Intermediate Examination in Arts and Science or the Final Commercial Class Examination of the Calcutta University or the corresponding standard of any other University, or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorising him to practise as a pleader or as a mukhtar or as a revenue agent—occupies a holding, or part of a holding in respect of which there has been paid during the year aforesaid, an amount of not less than 12 annas on account of chaukidari tax.

By Notification No. 529 T. M., dated 17th June (1909), the words "the intermediate examination in Arts and Science or the final commercial class examination" were substituted for the words "The First Arts Examination" in clause (iii) of rule 2 and in clause (3) of rule 3.

Of the registration of voters.

4. In every Municipality a register in Form A of all persons qualified to vote shall be prepared by or under the orders of the Chairman as soon as may be after these rules shall have come into force, and shall from time to time be corrected and added to as the Chairman may direct, and shall be thoroughly revised by him at least three months before the date fixed for any general election as hereinafter provided. Such register shall be open to inspection at the Municipal Office by any resident of the

Municipality at any time between 11 A.M. and 5 P.M., Sundays and holidays excepted.

5. Not less than 60 days before the date fixed for any general election, the Chairman shall publish the register, as revised by him under the last preceding rule at the Municipal Office and at such other places as he may think fit or as the Commissioners in meeting may direct.

6. Any person whose name does not appear in the register, and who claims the right of voting, may, within fifteen days of the publication thereof, apply to the Chairman in writing to have his name added to the register or substituted for any name in the register.

7. Any person who considers that any name in the register of voters prepared under rule 4 ought to be omitted, may, within fifteen days after the publication of the register, apply to the Chairman in writing to have such name omitted.

8. The Chairman shall, not less than 30 days before the date of election, send a letter to every incorporated Company entitled to vote, requesting it to fill in a form, which shall accompany such letter, with the name of the person authorised to vote on behalf of such Corporation, and to return the same within seven days. Upon receipt of the form the Chairman shall cause the name stated therein to be entered in the register revised under rule 9, and the person whose name is thus entered shall be deemed to be duly authorised to vote on behalf of the said Corporation.

9. Every application for the revision of the register under rules 6 and 7 shall be considered and decided by the Chairman with all reasonable despatch on some date of which three days notice shall have been given by publication in the Municipal Office : and not less than fifteen days before the date of the election, the Chairman shall publish a revised register in the same manner as the original register containing all the alterations or amendments made in such original register by his order or by order of the Magistrate under the next succeeding rule.

10. Any person whose application under rule 6 or 7 has been refused may, within eight days after such refusal, apply to the Magistrate for an order to have his name inserted in or a name omitted from, the register of voters, and such Magistrate shall, after enquiry, make such order as to the insertion or omission of the name as appears to him to be just ; and the Chairman shall, upon receipt of a copy of such order, give effect to the same, and such order shall be final.

11. The register thus prepared and amended shall be deemed to be the final register of persons entitled to vote whether at a general election or at any bye-election :

Provided that at any time any person whose name is not in the register may apply to the Chairman to enter his name therein, and rules 9 and 10 shall be held applicable to such claim. If such application is made not less than fifteen days before a bye-election, it shall be decided in time for such bye-election, but not otherwise.

12. It shall not be necessary to publish the register or extracts from the register on the occasion of bye-elections, provided that the register shall at all times be open to inspection by rate-payers at the Municipal Office, and that all persons whose claims have been admitted under the preceding rules shall be entitled to vote at such elections. The Chairman shall in the case of each bye-election publish a notice stating the latest date upon which claims to be registered will be received.

Of the qualification and the nomination of candidates.

13. "Any person qualified to vote under these rules, and not disqualified under section 57 of the Act, shall be qualified to be elected a Commissioner."—*Notification No.* 44 *T—M. the* 30*th May* 1898.

14. Every person who is a candidate for election shall send his name to the Chairman in writing in Form B, with the necessary particulars filled up in columns 2, 3, 4 and 5, not less than 21 days before the day fixed for the election, supported by the signatures in columns 6, 7 and 8 respectively of two electors in each ward in which he proposes to stand, who propose and second his nomination, and of eight electors in each such ward who approve his nomination. The Chairman shall publish a list of all candidates in the same form at the Municipal Office not less than fifteen days before the day fixed for election.

The figures "5, 6, 7" were altered to "6, 7, 8" by Notification No. 1322-M., dated 31st August 1909. See the heading of the columns in Form B.

Of the manner of holding elections.

15. The elections and bye-elections shall be held on such dates as may be fixed by the Commissioner of the Division, and notified by him in the *Calcutta Gazette*.

The Advocate-General has held that no Civil Court has authority to issue an injunction (*ad interim* or permanent) against the holding of

municipal elections, Cir. No. 33-M., dated 3rd July 1897. C. & O., Vol. III, p. 1025.

16. In the event of the number of candidates for election in a Municipality or in any ward of a Municipality not being greater than the number of vacancies, such candidates shall be deemed to be elected. If the number of candidates exceeds the number of vacancies, a poll shall be held.

"17. The poll shall be held at such time and place as the Commissioners in meeting or the Chairman may determine, and place at which and the hours between which the votes will be recorded shall be notified by beat of drum and by the publication of notices, at the same time as the list of candidates is published under rule 14.

"17A. After the second hour mentioned in the notice referred to in the last preceding rule no elector shall be admitted within the building or enclosure within which the election proceedings are being held, but the votes of all duly-registered voters who are already within the building or enclosure shall be recorded."

[Clauses 17 and 17A have been added by Notification No. 2959 M., dated 23rd November 1903.]

18. Each voter shall be entitled to vote for the ward in which he ordinarily resides, and for no other, and to give as many votes as there are vacancies for such ward: Provided that where the Municipality has not been divided into wards, each voter shall be entitled to vote for as many candidates as there are vacancies in the entire number of Commissioners: Provided also that he may give all or any number of the votes to which he is entitled to any one candidate.

The Advocate-General expressed the opinion that no person can vote at an election for holdings of which Government is the registered proprietor and on account of which Government pays rents and taxes. Section 15 shows that the qualifications required are *personal* qualifications. Therefore Government servants cannot vote twice, once in respect of their private residences and once as working in public buildings. Cir. No. 2-M., dated 14th January 1897, C. & O., Vol. III, p. 1025.

19. All votes must be given in person, and no votes will be received by proxy or in writing.

20. The Chairman or other fit and proper person, not being himself a candidate for election, deputed by the Chairman for the purpose, shall preside at the election for each ward assisted by a Committee of not less than three and not more than five rate-payers of the ward, nominated by the Chairman. If any of the members of such Committee fail to attend, their places

may be filled by the presiding officer from the rate-payers present at the polling station.

21. The presiding officer shall read out the list of candidates and state the number of vacancies, and the names of the voters and the votes given by them shall then be recorded by him, or by the members of the Election Committee under his personal supervision, in Form C.

22. No objection to a voter shall be entertained except on the ground that he is not the person under whose name as entered in Register A he claims to vote. Such objections shall be summarily decided by the presiding officer.

23. The presiding officer shall then and there declare such candidates as have the largest number of votes to be duly elected and shall report accordingly to the Chairman, if he is not himself the Chairman.

Provided that, if the majority for any candidate consists only of votes to which objections have been raised, and if the presiding officer has been unable to decide such objections summarily as provided by rule 22, he shall adjourn the proceedings and report the matter to the Magistrate. The Magistrate shall hold such enquiry regarding the disputed votes as shall be necessary, and his decision shall be final. On the termination of such enquiry, he shall declare such candidates as have the largest number of votes to be duly elected.

24. If there be an equality of votes for the same vacancy, and if the number of vacancies does not admit of all the candidates who have obtained an equality of votes being elected, the presiding officer, or, in the case prescribed in the proviso to rule 23, the Magistrate, shall give a casting vote or votes.

25. In the event of any candidate being elected for two or more wards, such candidate shall be at liberty to choose the ward which he will represent, and in every other ward in which the said candidate has been returned, the result of the election shall be determined as if no votes had been recorded for him: Provided that, if there is no other candidate for whom votes have been recorded to fill the vacancy thus caused, a fresh election shall be held.

26. The list of duly returned candidates for the whole Municipality shall be forwarded by the Chairman through the District Magistrate to the Commissioner of the Division for publication by him in the *Calcutta Gazette*.

"26A. When a Municipal Commissioner is after election found to be disqualified under section 57 of the Act, a bye-

election shall be held as if his place."—*Notification No. 447—M, the 30th May 1906.*

27. In Municipalities where the Magistrate is the Chairman, the duties assigned to the Chairman in the foregoing rules shall be discharged by the Vice-Chairman.

28. If in any case such a course appears to the Local Government to be necessary, it may direct that the Magistrate or any of the duties assigned by the foregoing rules to the Chairman or the Commissioners in meeting:

Provided that the Magistrate shall always remain entrusted with the duties for the purposes of the first general election in newly created Municipalities.

General.

29. All disputes arising under these rules shall be decided by the Magistrate

Number rule 27 as rule 27, sub-rule (*1*), and *add* the following as sub-rule (*2*) :—

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"The Chairman of the Howrah Municipality may, by a written order, delegate his functions under the foregoing rules to the Vice-Chairman."

In *Subhapal Singh* v. *Abdul Gafur* (24 Cal., 107) the Magistrate set aside the election on the ground that the plaintiff was not qualified to stand. The suit was brought to declare that the plaintiff was a person qualified to vote and stand as a candidate for election and for a declaration that he was duly elected. In *Nataraja Mudaliar* v. *Municipal Council of Mayavaram* (31 Mad., 130), the Madras High Court held that an order of a Collector declaring the invalidity of an election of a candidate was final and could not be questioned in a Civil Court if it was passed after due inquiry and in conformity with the requirements of the rules. The Madras Court quoted Maxwell on "Interpretation of Statutes" 5th Edn., p. 315. "Where a new duty or cause of action is created by Statute and a special jurisdiction out of the course of the ordinary law is prescribed, there is no matter of the jurisdiction of the ordinary Courts *for they shall have* any. The Madras Court went on to criticise the judgment of the Calcutta High Court saying with reference to the case quoted above (Subhapal's case). "We quite agree that a suit would lie as regards the declaration. The second declaration was refused. No doubt the Civil Judge do not refer to objections to the election which was put the basis of the Magistrate's order and say they ought not to do anything to validate an election which they held to be grave an objection. This certainly suggests that they deemed the Civil Courts to have power to consider the Magistrate's order and all grounds on the validity of an election. Inasmuch as they refused to exercise the power, the [illegible] such as it is, is of the utility of candidate desires and the Court appears to have had in mind the special provision of [illegible] apparently reserve the jurisdiction of Civil Courts." See Notes to s. 12.

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of such enquiry, he shall declare such candidates as have the largest number of votes to be duly elected.

24. If there be an equality of votes for the same vacancy, and if the number of vacancies does not admit of all the candidates who have obtained an equality of votes being elected, the presiding officer, or in the case prescribed in the proviso to rule 23, the Magistrate, shall give a casting vote or votes.

25. In the case of any candidate being elected for two or more wards, such candidate shall be at liberty to choose the ward which he will represent, and in every other ward in which the said candidate has been returned, the result of the election shall be determined as if no vote had been recorded for him: Provided that, if there is no other candidate for whom votes have been recorded to fill the vacancy thus caused, a fresh election shall be held.

26. The list of duly returned candidates for the whole Municipality shall be forwarded by the Chairman through the District Magistrate to the Commissioner of the Division for publication by him in the *Calcutta Gazette*.

"26A. When a Municipal Commissioner is after election found to be disqualified under section 57 of the Act, a bye-

election shall be held to fill his place."— *Notification No. 447—M, the 30th May* 1898.

27. In Municipalities where the Magistrate is the Chairman, the duties assigned to the Chairman in the foregoing rules shall be discharged by the Vice-Chairman.

28. If in any case such a course appears to the Local Government to be necessary, it may direct that the Magistrate shall perform all or any of the duties assigned by the foregoing rules to the Chairman or the Commissioners in meeting:

Provided that the Magistrate shall always perform such duties for the purposes of the first general elections in newly created Municipalities.

General.

29. All disputes arising under these rules shall be decided by the Magistrate, and his decision shall be final.

Query.—Is the Magistrate a Court within the meaning of s. 195(*b*), Cr. P. Code, and is his sanction required before a prosecution for perjury can be had.' The point seems to depend on the question whether the Magistrate can take evidence to enable him to arrive at a decision, *e.g.*, regarding an election dispute. In 17 Cal. 872, it was held that the word 'court' in s. 195, Cr. P. Code., has a wider meaning than the term "court of justice" as defined in s. 20, Cr. P. C. See *in re Namchand* v. *Mirchand*, 37 Bom. 365.

In *Subhapat Singh* v. *Abdul Gufur* (24 Cal., 107) the Magistrate set aside the election on the ground that the plaintiff was not qualified to stand. The suit was brought to declare that the plaintiff was a person qualified to vote and stand as a candidate for election and for a declaration that he was duly elected. In *Nataraja Mudaliar* v. *Municipal Council of Mayavaram* (36 Mad., 120), the Madras High Court held that an order of a Collector declaring the invalidity of an election of a candidate was final and could not be questioned in a Civil Court if it was passed after due inquiry and in conformity with the requirements of the rules. The Madras Court quoted Maxwell on "Interpretation of Statutes" 5th Edn., p. 215. "Where a new duty or *cause of action* is created by Statute and a special jurisdiction out of the course of the ordinary law is prescribed, there is no ouster of the jurisdiction of the ordinary Courts *for they never had any*. The Madras Court went on to criticize the judgment of the Calcutta High Court saying with reference to the case quoted above (Subhapat's case)." We quite agree that a suit would lie as regards the first declaration. The second declaration was refused. No doubt the learned judges do go into an objection to the election which was not the basis of the Magistrate's order and say they ought not to do anything to validate an election which was open to so grave an objection. This certainly suggests that they deemed the Civil Courts to have power to override the Magistrate's order and adjudicate on the validity of an election. But inasmuch as they refused to exercise the power, the pronouncement such as it is, is of the nature of an *obiter dictum* and the Court appears to have had in mind the special provision of s. 15 of the Act which apparently reserves the jurisdiction of Civil Courts."[1] See Notes to s. 15.

30. No person in the employment or pay of the Municipality shall, directly or indirectly, engage in canvassing for votes or otherwise assist in the election of any candidate, otherwise than by giving his own vote. Any breach of this rule will render him liable to dismissal.

31. All costs incurred in the preparation of the regist of voters, the publication of notices, the holding of electio or taking any other necessary action under these rules, s be payable by the Commissioners out of the Municipal Fund. In the case of a newly-created Municipality, in which no Municipal Fund has been formed, the Magistrate of the district shall advance such sums as may be required; and such sums shall be recoverable from the Municipal Commissioners within six months.

FORM A.

Register of persons qualified to vote in Ward of Municipality.

Serial number.	Number in assessment list.	Name of voter.	Father's name.	Age.	Period of residence.	Address.	Particulars of qualification.	Remarks.
1	2	3	4	5	6	7	8	
1	19	Hari Das.	Lachimi Das.	34	2 years.	Muchipara.	Pays Rs. 2 house tax.	

FORM B.

Serial number.	Name of candidate.	Address.	Particulars of qualification as a voter.	Ward or Wards in which election is sought.	Signature of elector proposing.	Signature of elector seconding.	Signature of eight electors supporting.	Serial number of candidate as a voter in the register of voters (Form A).	Remarks.
1	2	3	4	5	6	7	8	9	10

N.B.—Columns 1 and 9 to be filled up in the Municipal Office.

FORM C.

Register of votes given at the poll in Ward of Municipality on the

Serial number as in Form A.	Names of voters.	Names of Candidates.				Remarks.
		N. K. Das	Abdul Kadir.	N. N. Chatterjee	S. N. Banerji.	
1	2	3	4	5	6	7
1	Hari Das..	....	....	1	1	Two vacancies.
2	Fakir Ali	....	2	....	....	

H. H. RISLEY,
Secy. to the Govt. of Bengal.

MUNICIPAL DEPARTMENT.

MUNICIPAL—CIRCULAR No. 11 M.

Calcutta, the 24th February 1916.

FROM—The Hon'ble Mr. K. C. DE, C.I.E., I.C.S.,
Offg. Secretary to the Government of Bengal,

TO—ALL COMMISSIONERS OF DIVISIONS.

SIR,

THE attention of Government has recently been drawn to the fact that some students in *statu pupilari* vote at municipal elections on an incorrect construction of section 15 of the Bengal Municipal Act, 1884. The legal position is this: Under sections 14 and 15 of the Act a student who has passed the Intermediate or any higher examination of an Indian University, and who has attained 21 years of age, is entitled to vote, provided—

(*a*) that he has been resident within the limits of the municipality for not less than twelve months immediately preceding the election, and

(*b*) that he occupies a holding or part of a holding in respect of which there have been paid during the year aforesaid certain prescribed rates and taxes, although he may not have paid them himself.

A superficial examination may lead to the inference that the requisite qualification as occupier of a holding or a part thereof would be conferred on a person otherwise entitled to the franchise on the grounds specified if he lives with his parents or guardians in the house of such parents or guardians or in a hostel or mess when the specified rates have been paid in respect of the tenement in which he resides, even though the payment has not been made by himself.

The Hon'ble the Advocate-General of Bengal, who was consulted by Government on the subject, has expressed the opinion that a student living with his parents or guardians, who does not pay for the rooms or portion of rooms in which he lives, and has no right to the exclusive occupation of the premises, any room or a portion of a room, but is merely allowed to live there, does not" occupy " a holding or part of a holding within the meaning of section 15, proviso (*iii*) of the Bengal Municipal Act, III (B.C.) of 1884, as amended by Act II (B.C.) of 1896. As regards a student who lives in a hostel, in which he resides during terms only and has no right to reside during vacations, he cannot be said to occupy the holding or part of the holding within the meaning of the provisions cited. Moreover, the condition of residence within the municipality for the twelve months preceding will be infringed ordinarily in such a case. Government are further advised that having regard to the University Regulations, although the control over hostels is stricter than that over messes, the control in the latter case also is sufficient to negative legal occupation required by the law as an essential qualification of a municipal voter. It is thus apparent that students who reside either in a mess or in a hostel, or live with their parents or guardians in the houses of such parents or guardians, are not entitled to vote at municipal elections under the existing law.

I am therefore to suggest that the above interpretation of the law may be communicated to municipalities in your division with a request that they may correct their voters' lists accordingly.

I have the honour to be,

SIR,

Your most obedient Servant,

K. C. DE,

Offg. Secretary to the Govt. of Bengal.

MUNICIPAL DEPARTMENT.

MUNICIPAL—CIRCULAR No. 10-T.—M.

Dated Darjeeling, the 24th October 1916.

FROM—L. S. S. O'MALLEY, ESQ., I.C.S.,
Secretary to the Government of Bengal,

TO—ALL COMMISSIONERS OF DIVISIONS.

SIR,

I AM directed to refer to your * (1) Letter No. 475-T.—M., (2) ,, ,, 25-M., dated (3) ,, ,, 2201-J. ,, (4) ,, ,, 3765-G. ,, (5) ,, ,, 1596-M. ,,

dated 19th August 1916 / 28th April 1916 / 2nd March 1916 / 26th May 1916 / 12th June 1916, submitting a report on the four questions relating to the nominaion and election of Municipal Chairman which were raised in this department circular No. 10-M., dated the 17th February 1916, *viz.*—

(1) What municipalities included in Schedule II are desirous of being removed from that schedule, and which of them can be allowed to elect their own Chairman without injury to the welfare of the rate payers whom they represent.

(2) Whether in the event of any municipality included in Schedule II not desiring or not obtaining removal from that schedule, it would prefer the powers of nomination vested in Government to be exercised solely in the appointment of a non-official as Chairman.

(3) Whether the Commissioners of Municipalities not included in Schedule II desire to retain the option of electing officials to the post of Chairman.

(4) Whether for the purposes of election to the post of Chairman, professional gentlemen whose services are retained by Government, such as Government Pleaders, should be classed as officials or non-officials.

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*(1) Burdwan. (2) Presidency. (3) Dacca. (4) Chittagong. (5) Rajshashi.

I am now to communicate the following orders of the Governor in Council on these questions.

2. The case of every municipality in Schedule II of the Bengal Municipal Act has been carefully considered, and orders have been issued removing from that Schedule II municipalities which can, in the opinion of the Governor in Council, be allowed to elect their own Chairmen without injury to the welfare of the rate-payers. Consequently, only 14 municipalities will be left in Schedule II, of which eight have at present officials as Chairmen. The circumstances of these municipalties are exceptional, and it is considered undesirable to make any change in their constituiton. The Commissioners of some of these municipalities are averse to exclusion from the schedule, and the Governor in Council does not wish to force on them an autonomy which they themselves do not desire.

3. As regards the question whether officials should be elected as Chairmen in municipalities not included in Schedule II, the Royal Commission upon Decentralization in India were of opinion that Government officers should not be allowed to stand for election, since this would, in many places, virtually imply their return. The Governor in Council considers, however, that such an argument cannot apply to the large number of Government servants who exercise no executive control; and he is of opinion that it will be sufficient to lay down that in future District and Sub-divisional Officers are not to be allowed to stand for election as Chairmen. At the same time he recognizes that cases may arise in which the Municipal Commissioners may consider that the appointment of a District Officer or Sub-divisional Officer as Chairman is in the best interests of the municipality. In such cases it will be open to the Municipal Commissioners to request the Local Government to appoint a Chairman under section 23 (2), Bengal Municipal Act, and to recommend the appointment of the District Officer or Sub-divisional Officer. Due weight will be given by Government to such recommendations.

4. I am to add that if the District Officer or Sub-divisional Officer is a Municipal Commissioner without being Chairman, a position may be created which will lead to difficulty, and that therefore Government propose in future not to appoint any District or Sub-divisional Officer as a Municipal Commissioner.

5. I am also to state that the Governor in Council desires that those Sub-divisional Officers who have already been elected Chairman after being appointed Municipal Commissioners by

Government should continue to serve as Chairman till the expiry of their term of office. Similar instructions are not required in the case of District Magistrates, as no District Magistrate is at present an elected Municipal Chairman.

6. With regard to the question whether in the case of municipalities included in Schedule II Government should appoint only non-officials as Chairmen, there is a good deal of difference of opinion on the subject among the Commissioners of the municipalities concerned, and Government consider it advisable that their choice should not be restricted either to officials or to non-officials.

7. As regards the fourth question, whether gentlemen who serve Government in a professional capacity, such as Government Pleaders, should be placed in the category of officials or non-officials, I am to say that Government have no objection to their offering themselves for election and being elected as Municipal Chairmen.

I have the honour to be,

SIR,

Your most obedient Servant,

L. S. S. O'MALLEY,

Secretary to the Govt. of Bengal.

APPOINTMENT DEPARTMENT.

APPOINTMENTS—NOS. 3384-3438 A.

Darjeeling, the 8th May 1916.

FROM—The Hon'ble Mr. J. H. KERR, C.I.E., I.C.S.,
Offg. Chief Secretary to the Government of Bengal,

TO—(1) ALL COMMISSIONERS OF DIVISIONS.
(2) ALL DISTRICT OFFICERS.
(3) ALL DISTRICT AND SESSIONS JUDGES.

SIR,

I AM directed to refer to the circular No. 851-A.—D., dated the 21st July 1915, on the subject of the attitude to be adopted by Government officials in the matter of popular elections. It has been represented to Government that an order debarring ministerial officers from participation in anything

of the nature of an electoral campaign would practically have the effect of preventing them from standing for election to local bodies. The Governor in Council has had under careful consideration the question whether ministerial officers of Government should be deprived in this way of this right, which those of them who are qualified under the election rules at present possess in common with other rate-payers. He has come to the conclusion that it is in most cases unobjectionable for such officers to stand for election, but that it is not unreasonable that, before doing so, they should be required to obtain the permission of the Head of the office in which they serve. Such permission might be withheld on such grounds as that the legitimate work of the officer as a Government servant would be interfered with, or that local circumstances rendered it undesirable that he should have any connection with municipal affairs. An officer who has obtained such permission will not be precluded from the exercise of reasonable electioneering activities in a private capacity on his own behalf, but will be held strictly responsible that no advantage is taken of his official position in order to extend his influence at the poll. I am to request that these instructions may be conveyed to ministerial officers of Government in modification of those communicated in the circular already quoted.

I have the honour to be,

SIR,

Your most obedient Servant,

J. H. KERR,

Offg. Chief Secretary to the Govt. of Bengal.

MUNICIPAL DEPARTMENT.

LOCAL SELF-GOVERNMENT—CIRCULAR No. 2-T.—L S.-G.

Dated Darjeeling, the 14th June 1916.

FROM—L. S. S. O'MALLEY, ESQ., I.C.S.,
Secretary to the Government of Bengal,

TO—THE COMMISSIONER OF THE DIVISION.

SIR,

I AM directed to refer to this department letter Nos. 429-33-L.S.-G., dated the 1st October 1915, regarding

the question whether Police-officers below the rank of Assistant Superintendent of Police and Deputy Superintendent of Police should be appointed members of District Boards, Local Boards, Municipalities, Union Committees, School and Dispensary Committees. The Governor in Council has carefully considered the reports of the local officers of Government and the opinions received from various local bodies in the Province, and has arrived at the following conclusions :—

2. In the case of District Boards the number of official members who may be appointed by Government is limited ; and, if a Police-officer is appointed. he should be the Superintendent of Police. It will be impracticable to appoint a subordinate Police-officer to be a member of a District Board, both on this account and also because it is not desirable to appoint a subordinate Police-officer to be a co-member with the Superintendent of Police.

3. In the case of Local Boards it is believed that the local knowledge and experience of Police Inspectors would be of value to those bodies ; and the Governor in Council is therefore of opinion that in making nominations for the appointment of members of Local Boards, District Officers should, if they do not nominate an Assistant Superintendent or Deputy Superintendent of Police, consider whether Inspectors can be appointed, provided that the Superintendent of Police consents to their serving and that their appointment does not involve the exclusion of local representatives who may be likely to be more useful members.

4. As regards the proposal to appoint subordinate Police-officers as Commissioners of Municipalities, the Governor in Council considers that if an Inspector or Sub-Inspector of Police takes an active part in the municipal administration, there is a danger that he may neglect his police-duties and become involved in party factions. It cannot also be contended that the local knowledge of Inspectors or Sub-Inspectors would be superior to that of ordinary commissioners, or that their experience would be of special value in the deliberations of Municipal Boards. It is not likely therefore that their appointment would be of any special benefit to the Municipalities, and I am accordingly to say that it is not considered desirable to appoint Inspectors or Sub-Inspectors of Police as Municipal Commissioners.

5. As regards the constitution of Union, Dispensary and School Committees, I am to observe that Inspectors and Sub-Inspectors of Police would be useful members of those bodies,

and that it is desirable that they should interest themselves in the medical, educational, and other needs of the villages and unions in which they are stationed. District Officers should therefore be asked to consider the desirability of appointing Police Inspectors and Sub-Inspectors to those Committees when appointments are made, subject in each case to the previous consent of the Superintendent of Police.

I have the honour to be,

SIR,

Your most obedient Servant,

L. S. S. O'MALLEY,
Secretary to the Govt. of Bengal.

MUNICIPAL DEPARTMENT.

MUNICIPAL—CIRCULAR No. 4-T.—M.

Dated Darjeeling, the 20th June 1916.

FROM—L. S. S. O'MALLEY, ESQ., I.C.S.,
Secretary to the Government of Bengal,

TO—ALL COMMISSIONERS OF DIVISIONS.

SIR,

I AM directed to communicate to you a recent decision of Government that, when the election of a Municipal Commissioner at a general election is declared void by a Civil Court, the fresh election necessitated thereby should be treated as a general election and not as a bye-election, as defined in rule 1 of the election rules.

2. This decision was given in the following circumstances :—Certain irregularities occurred during the course of polling in one of the wards of a Municipality in which a general election was held. It was alleged that the Presiding Officer closed the poll without recording the votes of several duly registered voters, and the party affected instituted a civil suit asking for a declaration that the election of that ward be declared void. The suit having been decreed in favour of the plaintiffs, it was necessary to hold a fresh election for the ward in question.

3. The following legal questions were raised in connection with the holding of the new election, *viz.* (1) whether the new election should be a bye-election, (2) whether notice under rule 12 of the municipal election rules inviting claims for registration

MODEL RULES FOR MUNICIPALITIES UNDER SECTION 351A, ACT III (B.C.) OF 1884.

(*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.*

RULE 1.—An ordinary meeting of the Commissioners shall be held on the day* of every month: Provided that if the day of any month falls on a gazetted holiday, or if for any other reason it is deemed inconvenient, the Chairman may fix another day for the ordinary meeting.

* *e.g.*, "first Monday," "last Saturday."

RULE 2.—Meeting shall be held at the office of the Commissioners, or at such place as the Chairman may from time to time determine.

RULE 3.—Notices of motions, accompanied by *verbatim* drafts, must be sent to the Chairman, or, in the case of there being a Secretary, to the Secretary, in time to be included in the list of business for the next meeting. Notices received too late shall be inserted in the list of business of the next succeeding meeting.

RULE 4.—A notice book shall be kept by the of the Commissioners in which all notices of motions shall be entered. All such notices shall be dated and numbered as received.

RULE 5.—At least one week's notice of all meetings shall be given to every Commissioner.

RULE 6.—The notices shall set forth clearly and fully the business to be transacted at the meeting, and no business other than that so stated shall be transacted, except with the consent of all the Commissioners present.

RULE 7.—The notice shall be sent by post or by such other method as may be convenient: Provided that if a local newspaper be published in the Municipality, the Commissioners, by a resolution duly passed, may decide that the publication of a general notice in the newspaper in question shall be sufficient.

as voters should be issued, and (3) whether fresh nominations of candidates were permissible under rule 14. On the advice of the Legal Remembrancer, Government issued orders that the new election would be a continuation of the general election and not a bye-election, and that new proceedings should commence from the point where the former proceedings were found to be faulty. As the proceedings up to and including nomination of candidates under rule 14 had not been impugned, it was not considered necessary to issue a notice under rule 12 or to call for fresh nominations.

4. I am to request that the above orders of Government may be communicated to the District Officers and Municipalities in your Division for their guidance.

I have the honour to be,
SIR,
Your most obedient Servant,
L. S. S. O'MALLEY,
Secretary to the Govt. of Bengal.

MODEL RULES FOR MUNICIPALITIES.

CIRCULAR No. 5-T.—M.

Dated Darjeeling, the 8th September 1894.

From—C. W. BOLTON, Esq., Offg. Secretary to the Government of Bengal, Municipal Department,

To—ALL COMMISSIONERS OF DIVISIONS.

WITH reference to paragraph 39 of Government Circular No. 34M., dated 27th August 1894, I am directed to forward herewith copies of model rules of business framed under section 351A of the Bengal Municipal Act, III of 1884, as amended by Act IV of 1894, for circulation to the Municipalities of your Division. These rules will be found useful as a guide. The Commissioners will not be bound to adopt any of them which they may deem unsuited to their Municipality; but whenever the rules adopted differ materially from these on any point, the reason for the variation should be explained when they are submitted for the sanction of the Local Government under section 351A(2) of the Act.

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

ORDER OF BUSINESS.

RULE 8.—At ordinary meetings the business shall be conducted in the following order :—

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

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

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

(*d*) Letter and reports of Committees shall be read and accounts and statements shall be considered and passed.

(*e*) Motions of which due notice has been given to be discussed.

RULE 9.—At a special meeting, only the business for which the meeting was called shall be considered: Provided that, with the consent of all the Commissioners present, any other business may be considered.

RULE 10.—In the event of any objection being raised to the manner in which any resolution has been recorded, the Chairman shall decide the question after reference to the original draft of the resolution, and if he finds the minute to be inaccurate, shall make the necessary correction in the minute book.

RULE 11.—Unless by permission of the majority of the meeting, all subjects shall be discussed in the order in which they appear in the notice paper.

RULE 11-A.—"Any Commissioner who has given notice to the Secretary two clear days before the day of meeting, may before other business commences, ask a question or questions of the President relating to the affairs of the Municipality. The questioner may briefly explain his question when putting it, and it shall be at the discretion of the President to explain his answer; but no debate shall be allowed on any answer. The President shall, when he thinks it advisable, have the answer to such question printed and laid before the meeting."

NOTE—See Bengal Circ. No. 28-T. M., dated 29th June 1904, C. & O., Vol. III p. 1059.

There is no law under which the Chairman can be compelled to answer questions and a rule to compel him to answer all questions would not be authorized by s. 351-A. But members have a right to ask questions which should be answered courteously. There is no objection to a rule such as rule 11-A., which will be made applicable to any municipality which submits an application under s. 351-A.(2).

Of Motions and Amendments.

Rule 12.—Every motion and amendment duly moved must be seconded, and until seconded, no debate thereon can take place.

Rule 13.—Every motion or amendment duly made and seconded, and pressed to a division, shall be reduced to writing and signed by the proposer and seconder before being put to the vote. Every such resolution or amendment shall be recorded in full in the proceedings, together with the number and names of voters for and against it.

Rule 14.—Every amendment shall be so worded as to be capable of making an intelligible sentence either alone or in its proper place in an original motion, as the case may be: Provided that no amendment can merely negative the original motion.

Rule 15.—The President of the meeting may, for reasons to be recorded in writing and entered in the minutes of the proceedings—

(*a*) rule that a motion or amendment is illegal or out of order, and

(*b*) make such alterations in a motion or amendment as shall in his opinion render it legal and in order;

and may in case (*a*) refuse to put the motion or amendment to the meeting, and in case (*b*) refuse to put the motion or amendment to the meeting unless and until the proposer and seconder accept and sign the alterations made.

And the decision of the President shall be final.

Rule 16.—After a motion has been moved and seconded, an amendment may be moved at any stage of the debate thereon.

Rule 17.—On the discussion being concluded, in the event of several amendments having been proposed, the President shall put the last amendment to the vote first; if it is negatived, he shall put the last preceding amendment; and lastly, the first amendment; and if all the amendments are lost, the original proposition shall be put to the vote.

RULE 18.—When a motion or an amendment has been put from the chair, and been declared by the President to be duly carried, no further proposals for amending the motion or amendment can be entertained.

OF THE RIGHT TO SPEAK.

RULE 19.—The President may require members to stand when they address the meeting.

RULE 20.—The member who first rises to address the meeting shall be entitled to be heard first, and should more than one member rise to address the meeting at the same time, the order of precedence shall be determined by the President.

RULE 21.—Any member shall be at liberty to call the attention of the President to a point of order, even when a member is speaking. On a point of order being raised, the member addressing the meeting shall resume his seat until the question has been decided by the President. After the decision of the President, the same point of order cannot be raised again. Except as provided by this rule, no member shall interrupt a speaker in possession of the meeting.

RULE 22.—Except as provided in the last preceding rule, no member shall speak except to move or second a motion or amendment, or to support or oppose a motion or amendment which has been duly moved and seconded.

RULE 23.—A speaker who has exhausted his right to speak on an original motion, may speak on any amendment being moved, as that raises a new question.

RULE 24.—The mover of a motion or amendment shall, in all case, shave a right of reply, but otherwise no member shall speak more than once on the same motion or amendment, unless in explanation of some part of his original speech.

OF PROTESTS OR DISSENTS.

RULE 25.—Protests must be limited to a concise and definite statement of the motives which prompted the votes of members who voted in the minority on a given question.

RULE 26.—Protests must be handed to the Chairman before the conclusion of the meeting at which the resolution protested against was passed.

RULE 27.—Protests duly made shall be appended to and published with the minutes.

Of Adjournments.

Rule 28.—It shall be competent to any member to move the adjournment of the debate or of the meeting in a speech not exceeding five minutes in duration.

Rule 29.—When a motion for the adjournment of the meeting or of a debate is made, it shall be seconded without a speech, and put by the Chairman to the vote without debate or amendment.

Rule 30.—No motion for the adjournment of the meeting or of a debate shall be admissible which proposes an adjournment beyond the next ordinary meeting.

Adjourned Meetings.

Rule 31.—An adjourned meeting is not competent to transact any business save that which the original meeting left unfinished.

Rule 32.—An adjourned meeting being merely a continuation of the original meeting, does not require any fresh notice.

Miscellaneous.

Rule 33.—Unless not less than two-thirds of the commissioners consent by signing a requisition, no subject once finally disposed of can be reconsidered within six months.

Rule 34.—When any business, of which notice has not been given, is considered at a meeting, the decision recorded or resolution adopted at such meeting shall be of no effect unless and until it is confirmed at the next succeeding ordinary meeting, or at a special meeting called expressly for the purpose.

Rule 35.—For the purpose of taking into consideration business involving many details, the meeting may resolve itself into a Committee of the whole body. When this has been determined on, the rule prohibiting any person from speaking more than once on the same question shall be deemed suspended until the meeting resumes.

Rule 36.—When a motion or amendment is put to the vote, the President or Secretary shall record against it *first*

the names of members voting for it, and then the names of those voting against it.

RULE 37.—Voting by proxy is prohibited ; and no member may vote upon any motion or amendment unless he be present in person at the time when it is put to the vote.

RULE 38.—The minutes shall contain a brief abstract of the discussion preceding each resolution.

RULE 39.—A copy of the minutes of the proceedings of any meeting of the Commissioners shall be supplied to every Commissioner who may apply for it. An abstract of the minutes shall be affixed in some conspicuous spot accessible to the public at the place of meeting of the Commissioners.

ELECTION OF CHAIRMAN AND VICE-CHAIRMAN.

RULE 40.—At a meeting called to elect a Chairman, the Commissioners shall first proceed to elect a President of the meeting. Such President shall not be a candidate for the office of Chairman.

RULE 41.—If the number of votes for two Commissioners proposed as President of the meeting is equal, the selection of one of them shall be decided by lot.

RULE 42.—The Chairman and Vice-Chairman shall be elected, after such discussion as may be necessary, by each Commissioner handing to the President a signed voting-paper containing the name of the person for whom he votes ; the President also voting similarly.

RULE 43.—The President, as soon as all the voting papers have been delivered to him, shall openly produce and read them, and count the votes.

RULE 44.—The candidate for whom there is the largest number of votes shall be declared by the President to be, and thereupon shall be elected. In case of equality of votes the President shall give the casting vote.

(c) *The Custody of the common seal.*

RULE 45.—The common seal shall remain in the custody of the Chairman : Provided that if a Secretary has been appointed, the Chairman may by a written order delegate the custody of the seal to the Secretary.

(*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.*

DIVISION OF DUTIES AMONG THE COMMISSIONERS.

RULE 46.—The Commissioners may, from time to time, appoint out of their number such and so many Committees, either of a general or special nature, and consisting of such number of persons as they think fit, for any purposes which in their opinion can be conveniently regulated and managed by means of such Committees; but the acts of every such Committee shall be submitted to the Commissioners for their approval.

RULE 47.—The members of the General Committees shall hold office for one year only, but shall be eligible for re-appointment.

RULE 48.—Save in the case of illness, a member of a General Committee who, without the previous permission of the Commissioners, shall fail to attend six consecutive meetings of such Committee, shall thereby cease to be a member, and the Committee shall apply to the Commissioners to appoint another member in his place.

RULE 49.—The Commissioners may, from time to time, delegate to one or more of its members the duty of inspecting any work which is being carried out under their orders or any institution under their control and management.

PROCEEDINGS OF COMMITTEES.

RULE 50.—A Committee may meet and adjourn as it thinks proper.

RULE 51.—The quorum of a Committee shall be three members.

RULE 52.—A Committee may elect a Chairman of its meetings.

RULE 53.—If no Chairman is elected, or if the Chairman elected is not present at the time for holding any meeting, the members present shall choose one of their number to be Chairman.

RULE 54.—Every question at a meeting shall be determined by a majority of the votes of the members present and voting on that question.

RULE 55.—In case of an equal division of votes, the Chairman shall have a second or casting vote.

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

(This matter may be left to the Account Rules.)

CIRCULAR No. 10-M.

Dated Calcutta, the 5th February 1895.

From—J. A. BOURDILLON, Esq., Offg. Secretary to the Govt. of Bengal, Municipal Department,

To—All Commissioners of Divisions.

It has recently been brought to the notice of Government that the Commissioners of a Municipality granted to an employé in their service leave allowances which were much in excess of the amount admissible to an officer of Government of the same standing under the rules contained in the Civil Service Regulations. Action of this kind is opposed to the policy of the Government of India, and the Lieutenant-Governor has no doubt that, if the matter is properly represented to them, all Commissioners of Municipalities will admit the inexpediency of spending municipal money by granting to their employés allowances which they would not have received had they been in the service of the State. A new model rule has therefore been framed in continuation of the model rules circulated with Mr. Bolton's letter No. 5T.—M., dated 8th September 1894, and I am to forward for your information, and circulation to all the Municipalities in your Division, reprint of the rules (Rule 56 *et seq.*) regarding the grant of leave to municipal employés.

2. I am to request that you will be so good as to invite the Commissioners of all Municipalities in your Division to consider these rules and to signify their adoption of them for the sanction of Government.

(f) *The duties, appointment, leave, suspension, and removal of the officers and servants of the Board.*

Rule 56.—The Chairman may suspend any officer or servant of the Commissioners for misconduct or incompetence: Provided that, in every case in which the officer's salary exceeds twenty rupees per mensem, the matter shall be laid before the Commissioners at their next ordinary meeting.

Rule 57.—Casual leave for a period not exceeding seven days at any one time, or 15 days in 12 months, and leave on medical certificate for any period not exceeding a month, may

be granted by the Chairman with or without pay, and with or without the appointment of a substitute, to any officer or servant of the Commissioners.

RULE 58.—All other leave must be granted by the Commissioners at a meeting, provided that the leave and leave-allowances granted to any employé of the Municipality shall in no case exceed that or those to which he would be entitled if he were a Government servant.

NOTE.—The appointment and removal of officers and servants are provided for in the Act, and rules may be dispensed with. As to the duties of municipal servants they vary so much in different municipalities that it is not desirable to deal with them in a set of model rules. Each Municipality can make its own rules, if they are needed.

MUNICIPAL ADMINISTRATION REPORT.

(*See section* 81.)

RESOLUTION No. 442T.—M., DATED THE 11TH JUNE 1913.

READ—

Bengal Government Circular No. M. $\frac{1R}{50}$ 2, dated 18th January 1890.

Bengal Government Circular No. 23T.—M., dated 11th October 1901.

Eastern Bengal and Assam Government Circular Orders Nos. 2837-41-F., dated 6th April 1906.

On the reconstitution of the Presidency of Bengal on the 1st April 1912, the question of assimilating the instructions for the preparation of the Annual Reports on the working of the Municipalities in the Eastern and Western Divisions, as contained in the circulars referred to in the preamble, came under the consideration of Government ; but the issue of orders was then deferred in order to avoid confusion in the submission of the Divisional Reports for 1911-12. An examination of the reports and the appendices and statements attached thereto reveals the existence of numerous differences, as detailed below in the methods of compilation obtaining in the two parts of the Province.

2. In Statement II showing the income of the Eastern Bengal Municipalities there are several columns,—*viz.* 35 (*a*)—Process-fees ; 35 (*c*)—Fees for posting bamboos on the roadside ; 35 (*d*)—Sale-proceeds of unserviceable materials ; 35 (*e*)—Sale-proceeds of cowdung ; and 35 (*f*)—Other fees,—which do not

appear in the corresponding statement of the Western Bengal reports. On the other hand, in Statement II in the Western Bengal reports there are certain columns which are wanting in the Eastern Bengal reports, *viz.* 26 (*d*)—Miscellaneous, and 35 (*a*)—Sale-proceeds of night-soil, etc. In Statement III showing the expenditure of the Municipalities in Eastern Bengal there are two columns—21 (*a*)—"Other sanitary requirements" and 45 (*c*)—"Rents of lands"—which find no counterpart in the corresponding statement for the Western Bengal Municipalities. Certain appendices prescribed for the Western Bengal reports were discontinued by the late Government of Eastern Bengal and Assam: these are Appendix B, showing results of general election; Appendix E, showing educational expenditure; Appendix J, summary of local works; and Appendix K, memorandum of investments. The statement showing outstanding liabilities on account of current bills which was brought into force by the old Bengal Government Circular No. 8T.—M., dated the 9th May 1905, was abolished in Eastern Bengal. The Western Bengal reports also contain a statement of fines realized under the Acts for the Prevention of Cruelty to Animals under instructions contained in Mr. Tanner's Circular No. 26M., dated the 22nd March 1911, and also a statement in Form LL showing the progress of the collection of municipal taxes during the year. Further, the reports themselves are written on different lines; the Eastern Bengal reports are drawn up in accordance with a skeleton form prescribed in Mr. Kershaw's Circular Order Nos. 2837—41-F., dated the 6th April 1906; while under Circular No. 23T.—M., dated 11th October 1901, the Western Bengal reports follow the method of treatment adopted in the Government resolution reviewing them. The dates on which the reports are submitted to the various authorities are different in the two parts of the Province. In Western Bengal the reports are forwarded to the District Officer on the 15th May, to the Commissioner on the 15th June, and to Government on the 31st July; while in Eastern Bengal the corresponding dates of submission are respectively the 1st June, the 1st July, and the 15th August.

3. It is now considered expedient to prescribe a uniform procedure for the whole of the Province for the preparation and submission of municipal reports, and His Excellency the Governor in Council is accordingly pleased to issue the following instructions in modification of all previous orders on the subject. Effect should be given to these orders in the preparation of the reports for 1912-13.

4. Attention is invited to Government Circular No. M. $\frac{1n}{59}$ 2, dated 18th January 1890, in which it was stated that the preparation of the reports should not be reduced to a mere mechanical labour which serves to make them uninteresting and unprofitable, and it was directed that the Divisional Reports should follow the order and, as far as possible, the method of treatment adopted in the Government Resolution. These orders should be borne in mind in preparing reports in future.

5. The statistical returns I, II, and III, showing the constitution, income, and expenditure of Municipalities, should be submitted in the forms in which they have been appended to the Government Resolution on the working of Municipalities during 1911-12. These tables being Imperial, no additional columns can be inserted in them without the specific sanction of the Government of India, except under the heads where the authority to do so has already been given by that Government.

6. In addition to these Imperial forms, the following appendices in the forms annexed, and no others, should be attached to the Annual Divisional Reports :—

Appendix A.—Statement showing the date of establishment of each Municipality, population within municipal limits, number of rate-payers, and percentage of rate-payers to population.

Appendix B.—Statement showing the results of general elections held in Municipalities during the year.

Appendix C.—Statement showing the mode of assessment in vogue in each Municipality, the rate at which each form of tax is levied, and the result of any revision of assessment made during the year.

Appendix D.—Statement showing the demand, collections, remissions, and outstanding balance of each Municipality on account of municipal taxes.

Appendix E.—Statement showing the details of educational expenditure incurred by Municipalities during the year.

Appendix F.—Statement showing the percentage of total expenditure incurred on some of the principal items of expenditure in each Municipality during the year.

Appendix G.—Statement showing the financial position of Municipalities which were in debt during the year.

Appendix H.—Statement showing the grants and contributions made to Municipal Funds during the year.

Appendix I.—Memorandum of Investments.

Appendix J.—Statement showing the outstanding liabilities of Municipalities on current bills on the 31st March.

The statement submitted by the Commissioner of the Rajshahi Division showing the working of the Porters and Dandiwallas Act in the Municipalities of Darjeeling and Kurseong should continue to be submitted in its present form. The present Western Bengal Appendix J (Summary of local works), the statement of fines realized under the Acts for the Prevention of Cruelty to Animals, and the statement in Form LL of the progress of the collection of municipal taxes will be omitted altogether in future.

7. The reports of Municipal Commissioners should reach the District Officer by the 15th May, the consolidated report of the Municipalities of the district should reach the Commissioner by the 15th June, and the Divisional Report should be submitted to Government by the 31st of July. In order, however, to enable Government to compile statistics for the Provincial Resolution an advance copy of the prescribed returns to be appended to the Divisional Report should be submitted to the Municipal Department not later than the 15th July, *i.e.*, about a fortnight earlier than the date on which the report is due. If the appendices are not all ready by the 15th July, Forms I, II, and III should in any case be submitted by that date, the Provincial appendices being forwarded thereafter as soon as possible.

APPENDIX A.

Statement showing the date of establishment of each Municipality in the *Division, the population within municipal limits, the number of rate-payers and percentage of rate-payers to population during the year*

Name of Division.	Name of District.	Serial No. of Municipality.	Name of Municipality.	Date of establishment.	Population.	Number of rate-payers.	Percentage of rate-payers to population.	REMARKS.
1	2	3	4	5	6	7	8	9

GSL

APPENDIX B.

Statement showing the results of general elections held in Municipalities in the *Division* *during the year* .

Serial No. of Municipality.	Name of Municipality	Number of voters in the Ward or Municipality, if not divided into Wards.	Number of persons who actually voted.	Percentage of attendance of voters.	Number of Commissioners to be elected.	Number of candidates for election in successful cases.	REMARKS
	2	3	4	5	6	7	8

GSL

APPENDIX C.

Statement showing the mode of assessment in vogue in each Municipality in the Division, the rate at which each form of tax is levied, and the result of any revision of assessment made during the year

Serial No. of Municipality.	Name of Municipality.	Mode of assessment in vogue.	The rate at which the assessed tax is levied.	Result of any general or partial revision of assessment made during the year.		Remarks.
				Increase in income.	Decrease in income.	
1	2	3	4	5	6	7

APPENDIX D.

Statement showing the demand, collections, remissions and outstanding balance at each Municipality in the Division on account of municipal taxes for the year .

Serial No. of Municipality	Name of Municipality.	Demand.			Collections.				Remissions.				Outstanding balance.	Remarks.
		Arrear.	Current.	Total.	Arrear.	Current.	Total.	Percentage of total collections (column 8) on current demand (column 4).	Arrear.	Current.	Total.	Percentage of total remissions (column 12) on current demand (column 4).		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.		Rs.	

APPEN

Statement showing the details of educational expenditure incurred by

Serial No.	Name of Municipality.	Inspection (including salaries, travelling allowances, and contingencies of inspecting pandits.	Maintained or managed by Municipalities.							Aided by Municipalities.								
			Technical and other special schools.	Arts Colleges.	High Schools, including Schools managed by Joint Committees.	Middle schools.		Primary schools for boys.	Grand total of Municipal schools.	Technical and other special schools.	High English.	Middle schools.		Primary schools for boys.		Primary schools for girls.	Total primary schools	Grand Total for aided schools.
						English.	Vernacular.					English.	Vernacular	Upper.	Lower.			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

DIX E.

the Municipalities in the *Division during the year*

Scholarships held in-				Miscellaneous.													
				Buildings and furniture.			Payment to abolished schools.		Examination prizes and rewards.		Contingent charges.						
Primary schools.	Secondary schools.	Special schools.	Total.	Secondary schools.	Primary schools.	Total.	Secondary.	Primary.	Secondary schools.	Primary schools	Secondary schools.	Primary schools.	Total miscellaneous charges.	Grand Total	Total expenditure on primary schools.	Ratio of expenditure on primary schools to total ordinary income.
20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

APPEN

Statement showing the percentage of total expenditure incurred on in the Division

Serial No. of Municipality.	Name of Municipality.	Total expenditure (excluding debt and extraordinary heads and expenditure from loan funds.)	General establishment.	Lighting.
1	2	3	4	5

APPEN

Statement showing the Financial position of Municipalities in the

Serial No. of Municipality.	Name of Municipality.	Amount of loan sanctioned.		Receipts.					Expenditure.				
		From Government.	Outside Government account.	I.—Opening balance.	II.—Ordinary income.	III.—Income under "Extraordinary and Debt" excluding loan receipts.	IV.—Loan receipts.	V.—Total.	1.—Ordinary expenditure.	2.—Expenditure from loan funds.	3.—Payment on account of loans		4.—Expenditure under "Extraordinary and Debt" excluding payment on account of loans.
											Principal.	Interest.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
		R	R	R	R	R	R	R	R	R	R	R	R

DIX F.

some of the principal items of expenditure in each Municipality during the year

Water-supply.	Drainage.	Conservancy.	Medical.	Vaccination.	Public Works.	Education.
6	7	8	9	10	11	12

DIX G.

Division which were in debt during the year

		Results.							
5.—Closing balance.	6.—Total.	A.—Excess (+) or deficit (−) of ordinary income over ordinary expenditure (II—I).	B.—Annual payments due on account of loans.		C.—Excess (+) or deficit (−) of A as compared with B.	D.—Outstanding on loan account at beginning of year, including interest.	Amount of loan during the year.	E.—Outstanding on loan account at end of year including interest.	Remarks.
			Principal.	Interest.					
15	16	17	18	19	20	21	22	23	24
R	R	R	R	R	R	R	R	R	

APPENDIX H.

Statement showing the grants and contributions made to Municipal Funds in the Division during the year .

Municipalities.	Previous year.	Year under report	For what purpose.
1	2	3	4
A—From Provincial Funds.			
(a)—For General purposes.	Rs.	Rs.	
(b)—Education.			
(c)—Medical.			
B—From Local Funds.			
(a)—For General purposes.			
(b)—Education.			
(c)—Medical.			
C—From other Sources.			
(a)—For General purposes.			
(b)—Education.			
(c)—Medical.			

APPENDIX I.

Memorandum of investments.

Serial No. of Municipality.	Name of Municipality.	Investment.	
		Amount.	Description of security and purpose.
1	2	3	4
		Rs.	

NOTE—Appendix I as it now stands was approved in India's letter No. 40 dated the 27th February 1912.

APPENDIX J.

Statement showing the outstanding liabilities of the Municipalities in the Division on current bills on the 31st March

Name of Municipality.	Current demand.	Closing balance.	Outstanding liabilities.	Percentage of column 4 on column 2.
1	2	3	4	5
	Rs.	Rs.	Rs.	

1. *Appendices B to H are the same for Bengal and for B. and O. The B. and O. Appendix A has the following additional columns.*

The number of Commissioners.	Number of meetings held.	Number of meetings adjourned or at which no quorum was obtained.	Average percentage of attendance at each meeting.
9	10	11	12

2. *Appendix I of the B. and O. reports is not found in the Bengal reports. Its headings are as follows:—*

	Summary of Local Works.		
Serial number of Municipality.	Name of Municipality.	Nature of work.	Amount.
1	2	3	4

3. Bengal Appendix I corresponds with B. and O. Appendix J and Appendix J with Appendix K. B. and O. in addition have Form LL showing the collection of taxes and a statement giving the amount of fines realized under Act I (B. C.) of 1869 and XI (B. C.) of 1890.

4. Assam Appendices :—

A	is	identical	with	A	of	B. & O.			
B	,,	,,	,,	C	of	Bengal and	B.	&	O.
C	,,	,,	,,	D	,,	,,	,,	,,	,,
D	,,	,,	,,	F	,,	,,	,,	,,	,,
E	,,	,,	,,	G	,,	,,	,,	,,	,,
F	,,	,,	,,	H	,,	,,	,,	,,	,,

MUNICIPAL CIRCULAR No. 17-M.

Calcutta, the 11th April 1915.

FROM—The Hon'ble Mr. H. P. SAMMAN, C.I.E., I.C.S.,
Secretary to the Government of India,

TO—ALL COMMISSIONERS OF DIVISIONS

SIRS,

I AM directed to refer to Circular No. 2-T.—M., dated the 11th June 1913, forwarding a copy of Government Resolution No. 442-T.—M. of the same date, which embodied instructions for the preparation of the annual reports on the working of the municipalities in Bengal, and to communicate the following further instructions which should be followed in the preparation of those reports :—

(*a*) In the body of the report a special paragraph should be added (as is at present done in the reports from the Burdwan and Presidency Divisions) regarding the inspections of municipalities made by local officers during the year to which the report relates.

(*b*) The percentage figures for column 4 of Appendix F (statement showing the percentage of total expenditure incurred on some of the principal items of expenditure) under the heading "General Establishment" should be calculated on the total

"General Administration and Collection" charges shown in column 11 of Form III of Municipal Accounts.

(c) The figure to be shown in column 16* of Form I Statement showing the constitution of Municipalities is the percentage of the average number of officials present at each meeting on the total number of officials. To obtain the average number of officials present at each meeting, it is necessary to divide the total number of attendances of official members during the year by the number of meetings held.

* Average percentage of officials present at each meeting.

Thus if the number of meetings held is 20 (column 14), the number of official members 4 (column 10), and the total number of attendances put in by official members 60, then the average number of officials present at each meeting will be $\frac{60}{20}$, *i.e.*, 3, and the average percentage of officials present at each meeting will be $\frac{3}{4} \times 100$, *i.e.*, 75.

The percentage for column 17 (average percentage of non-officials present at each meeting) and column 18 (average percentage of all members present at each meeting) should also be calculated on the same principle.

2. I am to request that the above instructions may be communicated to the Chairmen of all Municipalities in your division.

No. 210, *dated Delhi, the* 22*nd November* 1915.

FROM—The Hon'ble Mr. H. SHARP, C.I.E.,
Offg. Secretary to the Government of India, Department of Education (*Municipalities*),

To—The Secretary to the Government of Bombay, General Department.

SIR,

WITH reference to your letter No. 8341, dated the 27th October 1915, I am directed to say that the Government of India accept the suggestion of the Government of Bombay that Statement No. I, showing the constitution of municipalities, which is appended to the annual reports on the working of those bodies.

should be amended so as to show in separate columns figures in respect of meetings which proved abortive for want of a quorum, and those in respect of meetings adjourned owing to the prolongation of the sitting or for any other reason. They have accordingly expanded the form, the opportunity being taken to alter the wording of the heading of column 13 to bring it into conformity with the orders contained in the Home Department letter Nos. 2495—2506, dated the 31st October 1912, and of columns 14 to 16, so as to avoid any possible mistakes in tabulation. A revised form is enclosed; and I am to request that, with the permission of the Governor in Council, it may be adopted for reports commencing with the year 1915-16.

FORM I.

Statement showing the constitution of the Municipalities in *during the year* 19 - 19 .

Serial number of Municipality.	Name of Municipality.	Act under which constituted.	Population within Municipal limits.	NAMES OF MEMBERS OF COMMITTEE.								Total number of meetings held ——, including those specified in columns 15 and 16.	Number of meetings out of the total in column 14 which proved abortive for want of a quorum.	Number of meetings out of the total in column 14 which were adjourned.	Average percentage of officials present at each meeting.	Average percentage of non-officials present at each meeting.	Average percentage of all members present at each meeting.	REMARKS.
				Ex-officio.	Nominated.	Elected.	Total.	Officials.	Non-officials.	Europeans.	Indians.							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

MUNICIPAL DEPARTMENT.

MUNICIPAL CIRCULAR No. 29-M.

Calcutta, the 28th November 1916.

FROM—C. W. GURNER, ESQ., I.C.S.,
Under-Secretary to the Government of Bengal,

TO—(1) THE COMMISSIONER OF THE BURDWAN DIVISION.
(2) ,, ,, ,, PRESIDENCY
(3) ,, ,, ,, DACCA ,,
(4) ,, ,, ,, CHITTAGONG ,,
(5) ,, ,, ,, RAJSHAHI ,,

SIR,

IN continuation of Government Order Nos. 500—504-M., dated the 11th February 1916, I am directed to forward copies of the letters from the Government of India, Department of Education, noted in the margin, sanctioning the abolition of the rule in foot-note (ii) to Form III prescribed for the exhibition of the annual expenditure of municipalities. I am to request that the municipalities in your division may be instructed to follow the procedure laid down in the Order of the Government of India, dated the 19th September 1916, in their reports commencing with the year 1916-17.

(1) Letter from the Government of India, No. 146, dated the 19th September 1916, and its enclosures.
(2) Letter from the Government of India, No. 158, dated the 19th October 1916.

No. 147, *dated Simla, the* 19*th September* 1916.

Endorsement by—The Secretary to the Government of India, Department of Education.

Copy of the following correspondence forwarded to the Government of Bengal for information and favour of necessary action.

No. 146, *dated Simla, the* 19*th September* 1916.

FROM—The Hon'ble Sir E. D. MACLAGAN, K.C.I.E., C.S.I.,
Secretary to the Government of India, Department of Education,

TO—The Secretary to the Government of the United Provinces, Municipal Department.

SIR,

IN reply to your letter No. 1994, dated the 10th June 1916, I am directed to say that, for the reasons given therein, the

Government of India agree to the abolition of the rule in foot-note (ii) to Form III prescribed for the exhibition of the annual expenditure of municipalities requiring that if the public works establishment be employed partly upon works connected with any of the other heads, the share of the charges debitable to those heads should be shown under those and not under item 31, *viz.*, "Public Works Establishment." They also accept the proposal that the cost of the whole of the engineering establishment not entertained exclusively for a particular department or work should be shown under item 31 referred to above.

2. I am to request that, if there is no objection, the above procedure may be followed in reports commencing with the year 1915-16.

No. 1994, *dated Naini Tal, the* 10*th June* 1916.

FROM—The Hon'ble Mr. A. W. PIM, I.C.S.,
Secretary to the Government of the United Provinces, Municipal Department,

TO—The Secretary to the Government of India, Department of Education (Municipalities).

IN paragraph 6 of Mr. Hose's letter No. 2889, dated the 20th September 1909, it was stated that Sir John Hewett agreed with the view of the Royal Commission on Decentralization that the accounts of municipal boards could be materially simplified and that action to effect this simplification had only been deferred pending a settlement of the general question of octroi taxation. This matter was again referred to in paragraph 9 (ix) of the despatch of the Governor-General in Council to the Secretary of State, a copy of which was forwarded with your letter No. 190—200, dated the 1st November 1913.

2. Action in this direction was further delayed pending the passing of the new United Provinces Municipalities Act which introduces radical changes in the procedure for the work of boards. As soon as the Bill was passed into law, steps were taken to simplify the accounts procedure and considerable progress has already been made. A difficulty has, however, been experienced in connection with the forms prescribed by the Government of India for exhibiting the expenditure of boards. In foot-note (ii) to Form III, which was forwarded with Resolution Nos. 14—26 of the Government of India in the Home Department (Municipalities), dated the 29th January 1907, it is stated that "if the public works establishment be employed

partly upon works connected with any of the other heads, the share of the charges debitable to those heads should be shown under those and not under item 31." Where any portion of the public works establishment is entertained exclusively for that particular department as, for example, for water-works, the cost of such portion of the establishment is shown by boards under the appropriate head, but it is impossible to distribute the cost of the general public works establishment between the different departments according to the work in which they are employed. Even if the work of the staff were confined entirely to works, the cost of which is shown in Form III, a proportionate distribution of the cost of the establishment according to the cost of works debited to each head would not be accurate as the amount of time which the engineering establishment has to devote to the supervision or execution of a particular work does not vary in proportion to the cost. But it is to be noted that the general engineering establishment of a board is not employed exclusively on works, the cost of which is shown in Form III. On the contrary, a very considerable proportion of the time of the municipal engineering staff is devoted to work carried out by private individuals, as, for example, in connection with building applications and plans for the construction of houses, drains, latrines, etc. Most boards have not attempted to carry out this rule, and any attempt to do so would result in figures which would not correspond with actualities. The Lieutenant-Governor would therefore suggest, for the consideration of the Government of India, that the rule should be abolished as unduly complicating the accounts of municipal boards, and that the cost of the whole of the engineering establishment not entertained exclusively for a particular department or work should be shown under item 31.

No. 158, *dated Simla, the* 19*th October* 1916.

FROM—KUNWAR MAHARAJ SINGH, C.I.E.,

Assistant Secretary to the Government of India. Department of Education,

To—The Secretary to the Government of Bengal, Municipal Department.

In reply to your letter No. 600-T.—M., dated the 9th October 1916, I am directed to say that the Government of India have

no objection to the changes sanctioned in paragraph 1 of this Department letter No. 146, dated the 19th September 1916, being adopted in reports on the working of municipalities commencing with the year 1916-17.

ACCOUNT RULES FOR MUNICIPALITIES.

The 13th December 1897, *No.* 5472 *M.*—It is hereby notified for general information that, in supersession of all previous rules issued under section 82 of Bengal Act III of 1884, as amended up to the 1st November 1896, the Lieutenant-Governor is pleased to make the following rules under the aforesaid section of the Act for keeping the accounts of Municipalities and also for the audit of such accounts. These rules will come into force on the 1st April 1898 :—

Preliminary.

In these rules, unless there be something repugnant in the context—

(i) the term 'treasury' means a Government treasury with which a Municipality banks and includes a bank or a branch bank with which a municipality banks with the sanction of the Local Government ;

(ii) 'treasury officer' includes the officer in charge of a bank.

General.

1. The registers and forms prescribed in these rules provide for all classes of transactions usually occurring in Municipalities or ordinary size. But if it is found that the account rules and forms herein prescribed do not conveniently meet the special requirements of a municipality, they may be added to or modified by the Municipal Commissioners with the sanction of the Examiner of Local Accounts in Bengal.

2. The cash and account branches of each Municipal Office shall be kept distinct from each other, and under distinct officers, who, for the puposes of these rules, will be termed, respectively, Tax-Daroga or Cashier and Accountant.

In no case shall the same person compile the Municipal accounts and superintend the collection of the rates and other Municipal income.

3. As the officer in charge of a Treasury and the Vice-Chairman of a Municipality occupy the respective positions of banker and constituent (Rule 20), no person connected with the treasury shall assist in any way in collecting Municipal revenue or in posting the Municipal books.

4. The Chairman, Vice-Chairman or Secretary shall at the time of audit cause to be produced all accounts, registers, documents and subsidiary papers which may be called for by the Local Auditor to assist him in his investigation.

5. All accounts and registers shall, as far as possible, be maintained in English. All books of account and registers shall be substantially bound and paged before being brought into use, and no accounts shall be prepared on loose sheets or in loosely bound volumes.

6. All corrections and alterations in accounts shall be neatly made in red ink, and attested by the initials of the Chairman, Vice-Chairman, or Secretary. Similarly, all alterations and corrections in a voucher shall be duly authenticated by the payee. *Erasures shall on no account be permitted in registers, statements, vouchers, or accounts of any description.*

Security.

7. The Secretary, Accountant, Tax-Daroga Cashier, and tax-collecting sarkars in the employ of a Municipality shall furnish such security as the Commissioners may think proper.

Nothing in this rule shall be understood to prohibit such security as the Commissioners may think advisable being taken from any other officer or servant in the employ of a Municipality.

The prescribed form of security bond for Municipal employés is appended to these rules.

Embezzlements.

8. Whenever "any loss of money by embezzlement, theft or otherwise" is discovered the fact shall be immediately reported by the Chairman of the Municipality to the Examiner of Local Accounts. When the matter has been fully enquired into he shall submit to that officer a further and complete report showing the total sum of money lost, the manner in which it was lost, and the steps taken to recover the money and punish the offenders.

No money lost by defalcation, theft or in other similar manner, shall be written off the accounts, except with the sanction of Government.

Classification of Transactions.

9. No change shall be made in the prescribed list of major and minor account headings without the consent of Government, and the same headings shall, except as provided in Rules 61 and 75, be used in all accounts prepared or issued by a Municipality.

Budget Estimate.

[*The regulations regarding the preparation and sanction of the Budget Estimate are contained in sections* 72 *to* 76 *of the Act.*]

10. The estimate shall be prepared in English in appended Form No. I by the Accountant of the Municipality. The receipts shall be estimated in detail, but the totals only of the estimated expenditure shall be entered in the body of the Budget Estimate against the several headings.

No. 200T.—M., dated Darjeeling, the 16th May 1896.

RESOLUTION—By the Government of Bengal, Municipal Department.

READ—

Government Order No. 3607M., dated 14th October 1896, to the Account-ant-General, Bengal.

Accountant-General's No. 361L.A., dated 5th November 1895.

Government Circular No. 31M., dated 25th November 1895, to all Commissioners of Divisions.

READ also—

The replies from Commissioners of Divisions to the above circular.

In order to secure that Municipalities should have in hand a reasonable working balance at the close of the year, the Accountant-General recommended—

(1) that the probable collections, and not the demands should be taken as the basis of the estimate of receipts in drawing up the budget. and

(2) that the estimated collections of the general rate for one quarter should be regarded as a convenient standard for a reasonable working balance at the close of the year.

The opinion of all Commissioners of Divisions was invited on these suggestions, and they were asked to state the present practice in respect of both the points mentioned. From the replies received, it appears so far as point (1) is concerned, that most of the Municipalities already base their estimates on the probable collections and not on the demand. This is correct, but the demand should also be shown. In regard to point (2) it appears that in each case the Municipal Commissioners are left to fix their closing balance, subject to revision by the Divisional Commissioner. In a matter of this kind no inflexible rule can be laid down and the Lieutenant-Governor therefore desires that the Commissioner of the Division should fix the working and closing balance for each Municipality with reference to local circumstances and conditions, and in doing so should see that ordinarily not less than $\frac{1}{4}$th of the aggregate expenditure on account of establishment and fixed monthly charges for the whole year, or the total average charges for two months, is kept in hand as the closing balance of a Municipality.

ORDER—Ordered that a copy of the Resolution be forwarded to the Accountant-General, Bengal, and to all Commissioners of Divisions, for information.

By order of the Lieutenant-Governor of Bengal,

H. H. RISLEY,

Secretary to the Government of Bengal.

DEFINITION OF ORDINARY INCOME OF A MUNICIPALITY.

Extract paragraph 3, *of Government Order No.* 179*T*—*M*, *dated the* 26*th May* 1893 (*File M*$\frac{3\text{-}E}{3}$—, *Proceedings for June* 1893, *Nos.* 93-94*B*), *regarding the question of the amount of provision to be made by the Commissioners of the Kushtia Municipality for primary education.*

"The ordinary income of a Municipality is ascertained by deducting from the total income in column 56 of Form II of the annual account forms of Municipalities, the total of figures in columns 9, 10, 11, 15, 32, 33, 45, 48 and 55, and what the * * * Municipality have to provide for primary education * * * *i.e.*, 3-2 per cent. on the amount calculated in the above manner from their estimate of income for the * * year."

Columns 56.—"Total income of year excluding opening balance."
" 9.—"Water rate."
" 10.—"Lighting rate."
" 11.—"Conservancy."
" 15.—"From hackney carriages."
" 32.—"Interest of investment—educational purposes."
" 33.—"Interest of investment—medical purposes."
" 45.—Total of grants and contributions for general and special purposes.
" 48.—Total of Miscellaneous.
" 55.—Total of Extraordinary and Debt.

The expenditure chargeable to loans shall be distinguished from that chargeable to revenue, and the balance shall be subdivided thus :—

	Rs. A. P.
Opening balance of loan funds	....
Appropriation of loan funds	....
Closing balance of loan funds ..	....
Opening balance of revenue funds	....
Appropriation from revenue	....
Closing balance of revenue funds ..	....

Particulars regarding the appropriation of loan funds shall be taken from the appropriation Register Form XXIIA, prescribed in Rule 81A.

11. The budget shall be accompanied by a schedule in Form IA for each major head, in which shall be entered full details of the estimated expenditure under that head in the Budget Estimate.

Form No. I (A).

DETAILED ITEMS OF EXPENDITURE.	Number of persons.	Rate of monthly pay.	Monthly aggregate.	Annual amount.	REMARKS.
1	2	3	4	5	6
		Rs.	Rs.	Rs.	

12. In preparing the budget, what is expected to be paid during the year shall be provided for and not the liability likely to be incurred or to fall due within the year. All existing liabilities, which cannot be liquidated before the commencement of the year for which the budget is being prepared, must also be ascertained and provided for.

13. In the form of Budget Estimate and the quarterly and annual accounts to be prepared for publication, all sums received by the Municipal Commissioners are treated as forming one General Municipal Fund, but in appropriating the funds at their disposal, the Commissioners must conform to the special provisions of the Bengal Municipal Act, which direct that after the payment in each case of the proportionate share to be fixed by the Commissioners in meeting of the cost of collection and supervision and of the keeping and audit of accounts, the net receipts on account of the water and lighting rates, as also of fees for the cleansing of private privies and cesspools, shall be spent only on the purposes of Parts VII, VIII and IX of the Act, respectively; and to give effect to these provisions of the law, a separate account showing

the receipt, charges and balance on account of each of these rates, &c., shall be prepared in Form II, as given below :—

Form II.

Subsidiary Accounts of special rates (.....Rate).

Month and year.	Receipts from rate.	Other receipts, *i.e.*, recoveries of charges etc.	Proportionate share of fines and penalties.	Total receipts.	Direct charges.	Proportionate share of cost of collection and supervision.	Interest on capital outlay.	Total charges.	Balance.		Remarks.
									Debt.	Credit.	
1	2	3	4	5	6	7	8	9	10	11	12

The credit balance of each of these accounts must be carried forward and not appropriated for general purposes, but if there is a continuous debit balance, it may be cleared by adding the deficit to the receipts as a contribution from the general fund. The direct receipts and charges will be transcribed from the monthly accounts, but the proportionate shares of cost of collection and supervision and of the keeping and audit of accounts will be estimated and entered in this account without disturbing the classification in the consolidated accounts of the Municipal Fund. For example, if a proportionate share of the cost of collection is to be charged against the water-rate, it will be entered in column 7 of the statement, but the full cost of collection must continue to be shown in Forms XIII and XVIII under the head "A 2—Collection of taxes," and not proportionately under that head and "C 1—Water-supply." The same rule applies to the proportionate distribution of the receipts to the credit of the subsidiary funds.

Cashier's Cash-book.

14. The Cashier shall keep a cash-book in Form III in which he shall enter all sums received by him on account of the Municipality.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

Form III.

Date.	Number of miscellaneous bill, if any.	From whom received.	On what account.	Classification of receipts in as many columns as are necessary.								Total of each item.	Total remitted to treasury as per chalan.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
				Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	

15. The entries shall be in full detail of names and particulars, except in regard to collections, for which separate registers are prescribed, but as regards tax-collections made by sarkars, only the daily "Total arrears" and "Total current" need be shown. The detailed headings for classification of the receipts should be according to the sources of income and the requirements of the Municipality. If the number of receipts is too varied to admit of a separate column being provided for each head, one column may be allotted to miscellaneous receipts, and these entries, with a description of the same, will be transferred to the Accountant's cash-book, and be classified in the abstract register of receipts.

16. When a remittance is to be made to the treasury, a line shall be drawn across the register, and the various money columns shall be totalled. The addition of the entries in the column "Total of each item" will give the total of the remittance, and the subsidiary cash columns will show the totals of the various heads of revenue. If any money is received after the remittance for the day has been made to the treasury, it shall be entered below the total thus struck, but the date in column I shall be the actual date of receipt and not of remittance.

17. As an alternative procedure the Cashier's cash-book may be kept in Form III (A), and the details of the classification to be shown in the payment side worked out in a separate abstract.

Form III (A).

Receipts.						Payments.				
Date.	Number of miscellaneous bill, if any.	From whom received.	On what account.	Amount.	Total.	Date.	Number of chalan.	Details of chalan.	Amount of each head.	Total.
1	2	3	4	5	6	7	8	9	10	11

18. Any revenue paid direct into the treasury, either by servants of the Municipality who are authorised to collect, or by other persons, will not be entered by the Cashier in his cash-book, as he need keep a record only of the money which passes through his hands. Each servant who collects miscellaneous sources of income and remits money to the treasury shall keep a cash-account in such detail as is necessary; but if the collections he makes are recorded consecutively in one of the prescribed registers, and he can prepare his chalan direct from the register, no further account is required. For example, if a clerk is appointed to collect the horse and carriage tax, and remits his collections direct to the treasury instead of through the Cashier, he can prepare his chalan from Form XXIII without keeping a separate cash-account.

19. The Vice-Chairman or secretary shall, once at least in every week, examine the Cashier's cash-book, together with the pass-book, so as to satisfy himself that all money received has really been remitted to the treasury without delay, and that the Cashier does not retain in hand sums of money in excess of the security which he may have given, and that he always remits to the treasury the whole and not part of the day's receipts; and he shall initial the cash-book in token of having made this examination. He shall further, once at least in every fortnight examine the Cashier's or the Accountant's cash-book with all the subsidiary forms (other than rate-bill forms) and registers in which receipts are given or collections recorded, with the view of testing whether all sums received are actually brought to account.

Transactions with Treasury.

20. All sums received on account of the Municipal Fund shall be paid into a treasury.

21. All moneys received on account of the Municipality shall be remitted intact to the treasury as often as can be conveniently managed, and shall on no account be appropriated towards expenditure.

22. All moneys paid into the treasury to the credit of the Municipal Fund, whether by servants of the Municipality or others shall be accompanied by a chalan in Form IV. (*See* page 425.)

If the remittances to the treasury are all made through the Cashier, the chalan shall be in duplicate, and the forms shall be bound in books. The second part shall be removed

from the book and retained by the Treasury office, and the original or counterfoil shall be receipted by the treasury officials and brought back to the Municipal office by the servant sent with the remittance.

When remittances are made by more than one officer or by a person not in the employ of the Commissioners, the chalans shall be in triplicate. The first part shall be retained by the Treasury office, the second part shall be sent to the office of the Municipality whenever the pass-book is returned (Rule 24), and the third part shall be delivered to the person paying in the money.

23. The details of each remittance classified according to the different heads of revenue will appear in the Cashier's cash-book, Form III or Form III(A), payment side. The chalans for remittances by the Cashier shall therefore record only the name of the Municipality on account of which the money is sent to the treasury, and details of the notes and coins of which the remittance is composed.

24. With the remittances shall be sent the pass-book of the Municipality. Upon receipt of the money by the treasury, both sides of the pass-book shall be written up to date by the Treasury Accountant, the entries shall be initialled by the Treasury officer, and the book returned at once to the Municipal office. [*See* Rule 58.]

25. The pass-book will be supplied gratis by the treasury. It is not a Municipal account-book, but is simply a copy of the account kept in the treasury of the money paid in and taken out by the Municipality, and must therefore always be written up *only by the Treasury Establishment*, by whom the original account is kept.

26. No entries or marks shall, under any circumstances, be made in the pass-book by any one connected with or working in the Municipal office. At the close of each month the balance in the pass-book shall be struck, the amount written in words, and signed by the Treasury officer.

Payment Orders and Payment of Claims.

27. Claims against a Municipality shall ordinarily be discharged by cheques drawn upon the Municipal banker.

28. The Commissioners may authorise the advance to the Vice-Chairman, Secretary, Accountant or Cashier of the Municipality of a specified sum of money as an imprest to meet

petty expenditure. Similar advances may also be made to schools, dispensaries or other municipal institutions: Provided that, without the sanction of the Commissioner of the Division, the amount of any one advance shall not exceed Rs. 100.

Payments exceeding Rs. 20 shall not ordinarily be made from the imprest.

29. The imprest shall be recouped as often as is necessary in the manner prescribed in Rules 41 to 43 below.

30. Every bill or other claim for payment shall be presented in the first instance to the Accountant, who shall check and examine it, and, if it be found correct and in order, initial it in token of correctness and submit it for orders, to the Chairman or Vice-Chairman. If payment of the bill so presented is to be made, a payment-order shall be endorsed on the document, that is to say, on the bill presented by the person who prefers the claim. The payment-order shall, except as otherwise provided in Rule 73, run as follows:—"Pay (Rs.) Rs. only," the amount being written in words as well as in figures, and the order shall be signed by the Chairman or Vice-Chairman, if the amount to be paid does not exceed Rs. 500. If both the Chairman and Vice-Chairman be absent, or be unable to sign, no order for payment shall be made on the bill. Orders for the payment of a sum of money in excess of Rs. 500 shall be signed both by the Chairman and Vice-Chairman, or by the Chairman or Vice-Chairman and another Commissioner.

31. If the bill is to be paid out of the imprest, the Vice-Chairman shall, before signing the payment-order, see the bill stamped with the words "Paid in cash" in conspicuous type, and shall then make it over to the Accountant or Cashier for payment. If the bill is to be paid by cheque, it shall be made over to the Accountant or Cashier, and shall be stamped "Paid by cheque No. " in conspicuous type. In the latter case the amount shall be entered, as soon as the cheque is signed, in the appropriate column of the cash-book of the Municipality (Form XI).

32. Every payment made, either in cash or by cheque, shall be covered by a receipt, stamped, if necessary, signed by the person to whom the money is due, and to whom it has actually been paid. A receipt signed by another person or by a Municipal employé is invalid.

Cheques in favour of the Vice-Chairman for payment to contractors and firms supplying stores are expressly prohibited

(A. G. B.'s Circular No. $\frac{LA}{519}$, dated 23rd August, 1900, to Municipalities). If the remittance is to be made by postal order the cheque should be in favour of the Postmaster,——

33. All claims which are preferred and accepted should be paid at the earliest possible date. If a bill is presented and payment is not made within a month of its presentation, or if the claim is contested, it shall be entered in a register in Form V as given below :—

Form V.

Serial number.	Date.	Particulars.	Amount of bill.	Reason for withholding payment.	Payments.		Balance outstanding on 31st March.	Remarks.
					Date.	Amount.		
1	2	3	4	5	6	7	8	9
			Rs. A. P.			Rs. A. P.	Rs. A. P.	

This register and the register of works (Rule 120) are required for ascertaining the unpaid demands for which provision has to be made in the next year's budget (*see* Rule 12) and at the close of the year the unpaid amounts shall be shown in the column " Balance " and be carried forward to the register of the next year. To ensure a complete record of the liabilities in cases where bills may not have been presented all orders for supplies or works other than those for which formal agreements have been taken, and particulars of which are entered in the register of works (*see* Rules 111 and 120), shall be entered in an order-book in Form VI.

Form VI.

Order Book.

No.....

Municipality of.....

To .....

(Particulars of orders for supplies or execution of works.)

Dated the.....

.....

Vice-Chairman.

Order completed on.....

Bill received on.....

	Rs.	A.	P.
Amount of bill ...			
Payment made on voucher No..... Dated.....			
Balance carried to register of unpaid bills.			

No.....

Municipality of.....

To .....

(Particulars of orders for supplies or execution of works.)

Dated the.....

.....

Vice-Chairman.

34. The salary bill of the Municipal establishment shall be drawn in Form VII.

Form VII.

.....MUNICIPALITY.

.....*Department Salary Bill for the month of*.....

The Municipal Commissioners of.....DR.

Names.	Post.	Pay.			Fines.			Income-tax.			Other deductions if any.			Net amount payable.			Signature of payee.
1	2	3			4			5			6			7			8
		Rs.	A	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P	Rs.	A.	P.	
	Total																

"Certified that all salaries drawn on former bills, with the exception of those detailed below (whereof the total has been refunded by deduction from this bill), have been disbursed to the proper persons, and that their receipts have been taken and filed in the office, with receipt-stamps, duly defaced, for every payment in excess of Rs. 20."

"Certified that all service-books have been fully written up to date.

.....

Date..... *Vice-Chairman.*

(*N.B.*—Employés unable to write should make their mark and should be paid in the presence of the Vice-Chairman or by some responsible officer.)

35. If a Provident Fund has been opened, the headings of the establishment bill may conveniently be in the following or some similar form; but the certificates prescribed in the preceding rule shall not be changed:

Name of appointment.	Rate of pay.	Fines.	Salary due on which Provident Fund deduction is to be made.	Provident Fund deductions.	Amount on which income-tax is calculated.	Income-tax.	Net amount payable.	Receipt of Payee.	Provident Fund.			Remarks.
									Deductions.	Contributions.	Total.	
1	2	3	4	5	6	7	8	9	10	11	12	13

NOTE.—The total of the bill will be the joint total of columns 4 and 11. The amount of column 8 (net amount payable) will be disbursed in the Municipal Office. The total of the Provident Fund shown in column 12 will be remitted to the Savings Bank by a cheque drawn in favour of the Postmaster, and the income-tax shown in column 7 will be paid by cheque to the Collector of the district.

36. Every Municipal employé shall give a receipt in the appropriate column of the form for the sum paid to him, and shall in the case of sums exceeding Rs. 20 affix a receipt-stamp before signing. The cost of such receipt-stamp must be borne by the person who receives the money, and not by the Municipality.

37. On bill, whether for establishment or other charges, shall ordinarily only contain details of charges to be taken against one of the budget-heads. If in any case a bill be presented which contains charges against more than one head, the Accountant shall enface in red ink on the bill itself, above the payment order, the details of the apportionment of the charges. These details shall be also shown in the cash book (Form XI) in the column "Head of account in abstract register."

38. All bills and vouchers that have been paid shall be numbered consecutively for the year in order of payment, shall be stamped "paid" or "cancelled," and shall be pasted in a guard-book.

Sub-vouchers for payments made out of the office imprest shall be filed separately, and shall be attached to the voucher for recoupment, a memorandum referring to this voucher being placed in the guard-book.

With a view to facilitate the check and establishment bills of the local auditor, such bills must be accompanied by an absentee statement in the Form annexed to Accountant-General, Bengal's Circular No. $\frac{5A}{319}$, dated 20th February 1905.

Imprest Account.

39. Whenever the Municipal Commissioners shall decide that an imprest is to be granted to the Vice-Chairman, Secretary, or other officer for the payment of petty charges, the following procedure shall be adopted :—

On first receiving or taking charge of the permanent advance, the holder shall sign and file an acknowledgment in these terms :—

"I acknowledge to have in my possession a permanent advance of Rupees.....(Rupees.....), which sum is due from me to the Municipality, and I am personally accountable for the amount."

A similar acknowledgment shall also be given by the holder on the first working day of each year.

The permanent advance, when first drawn, shall be charged in the cash-book to the head "Advances," and shall be debited to the holder's account in the advance-ledger.

There will be no further entries in the ledger-account until the advance is finally repaid. If the amount originally fixed for the permanent advance is subsequently increased or decreased by the Municipal Commissioners, the original advance shall be repaid and a fresh advance drawn.

40. The Chairman or other holder shall make payments from his permanent advance from time to time as may be required, and for each payment he shall obtain and hold a bill receipted by the payee, or, in the case of petty office expense, a written detailed statement of the sums spent.

These bills or statements shall be numbered consecutively, enfaced or stamped "Paid in cash" and entered in the expenditure columns of the permanent advance account (Form VIII), the classification of the charges being carefully entered in the columns provided for the purpose.

Form VIII.

Permanent Advance Account.

EXPENDITURE.												RECOUPMENT OF THE PERMANENT ADVANCE.		
DATE.	Number of sub-vouchers.	Description of charge.	Amount of sub-vouchers.	CLASSIFICATION OF EACH SUB-VOUCHER SHOWING HEAD OR HEADS TO BE DEBITED AND AMOUNTS.								Voucher No.	Amount.	Initials of advance holder.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
			Rs.										Rs.	

41. The permanent advance may be recouped whenever necessary, and it must always be recouped on the last working day of the month.

The procedure of recoupment is as follows :—

The Chairman or other officer holding the advance shall compare the sub-vouchers with the entries in the permanent advance-account : he shall deface them by stamping them "cancelled," so that they cannot be used again. He shall total and initial the column "Amount of sub-voucher" in the permanent advance-account, and also the amounts in the classification columns, the cross-total of which should agree with the total of the column "Amount of sub-voucher" and shall rule a red ink line across the page.

42. The voucher for recoupment shall then be drawn out in Form IX, and it shall be enfaced with the usual payment order in the form prescribed in Rule 30. The Chairman shall draw out a cheque in his own favour for the amount, and initial the entries in the recoupment columns.

Form IX.

Voucher of Recoupment of Chairman's Permanent Advance Account.

No. of voucher.....

Dated.....

Number of sub-vouchers covered by this recoupment.....

Being expenditure incurred from.....to.....

Amount of this recoupment voucher.....

Received contents and certified that I have compared the entries in the permanent advance-account with the sub-vouchers, and have cancelled the latter, so that they cannot be used again.

.....

Chairman.

Classification of the Charges covered by this voucher.

Heads of Accounts.	Amount.
1	2
Total ...	

43. The recoupment shall always be in full of expenditure from the last recoupment to date, so that the balance in hand after recoupment will always be the full amount of the advance.

44. The serial number of the sub-vouchers shall always recommence with No. 1 after each recoupment.

Cheques.

45. Cheques drawn on a Treasury shall be in Form X. (*See* page 427.) Cheque-books, containing 100 cheques each, will be provided by the officer in charge of the Treasury. Each

book should bear a number which should be repeated upon each cheque contained in it, together with the consecutive number of the cheque-form, and the drawing officer should notify to the Treasury upon which he draws the number of the cheque-book which he from time to time brings into use. Outside the book there should be instructions to keep it under lock and key in the personal custody of the drawing officer who, when relieved, should take a receipt for the correct number of cheques made over to the relieving officer, a specimen of whose signature should at the same time be forwarded to the Treasury concerned.

46. On receipt of a cheque-book from the Treasury, the officer to whom the duty of signing cheques is allotted shall count the cheques, and shall record on the back of the cheque-book that "This cheque-book contains.....forms." The cheque-book shall remain in the custody of the officer who usually *signs* the cheques.

47. The cheque-book in use may be made over to the Accountant or Cashier whenever required, but it shall be returned before the office is closed for the day. The officer in whose custody it is to remain shall satisfy himself periodically that all unused cheques are in the book, and that none have been surreptitiously extracted.

48. No cheque shall ordinarily be signed unless required for immediate delivery to the person to whom the money is to be paid. The practice of retaining signed cheques in the office should not be permitted, except under very exceptional circumstances, which should be recorded.

49. Every cheque shall be drawn in English in favour of the person to whom the money is actually to be paid, and no cheque shall be drawn in favour of one person for payment to a third party. The sole exceptions permitted to this rule are in the case of a cheque issued—(*a*) for a sum of money distributable as pay or wages among a number of Municipal employés, and (*b*) for a sum of money due to a person residing outside the district in which the Treasury is situated with which the Municipality banks. In such cases the cheque shall be drawn in favour of the Chairman, Vice-Chairman, or Secretary, who will in case (*a*) endorse the cheque to a named individual by whom the actual distribution is to be carried out, and in case (*b*) cash the cheque himself and forward the sum by half-notes and stamps in registered covers, or by money-orders to the payee.

50. The amount of every cheque drawn shall be written in words as well as in figures, both on the cheque itself and on the counterfoil, and the counterfoil shall be initialled by the person who signs the cheque.

51. All cheques shall bear a receipt-stamp of the value of one anna, and this receipt-stamp shall be affixed before the cheque is signed. The cost of the stamp is payable by the Municipality which issues the cheque, and not by the person in whose favour the cheque is drawn.

52. Cheques shall be signed either by the Chairman or Vice-Chairman. They may also be signed by the Secretary if the Municipal Commissioners so direct; but in that case a copy of the resolution empowering the Secretary to sign cheques shall be sent to the Accountant-General, Bengal, and also to the Treasury where the account is kept.

52*A*. The Commissioner of the Division may, in the case of any Municipality where, owing to his orders on a budget having on a previous occasion been disregarded, he considers it necessary, issue an order directing that such Municipality shall not present to the treasury any cheque for payment (of establishment or any other specified charges) without previously obtaining the counter-signature thereon of the Magistrate or the Sub-divisional Officer (according as the cheque is presented to a district or to a sub-divisional treasury); and in such a case the treasury officer shall not make payment unless the cheque is so counter-signed. A copy of any such order passed by the Commissioner shall be sent by him to the Accountant-General, Bengal, and through the Magistrate to the treasury officer.

Vide Notification No. 834M., dated 8th February, 1899.

53. If a Municipality situated in a sub-division and banking at a sub-treasury requires money to the paid at the District Treasury, a cheque may be drawn for the amount upon the sub-treasury, with a request that an order may be issued for the payment of the amount from the District Treasury, or *vice versâ*.

Cancellation of Cheques.

54. When a signed cheque is cancelled, it shall be enfaced or stamped "cancelled" by the Chairman, and shall be

destroyed by the Government Auditor as soon as the accounts for the month in which the cheque was drawn have been audited.

The fact of cancellation shall be noted in red ink under the initials of the drawer of the cheque upon the counterfoil, and also across the passing order which has been enfaced upon the voucher.

Correction of the Cash-book and Abstract Register when Cheques are cancelled.

55. If the cheque is cancelled before the cash-transactions of the month in which it was issued have been totalled, the entry in the cash-book and also in the abstract register shall be struck out in red ink under the initials of the Chairman or Vice-Chairman.

If, however, the abstract register has been totalled, the amount of the cheque shall be credited in the cash-book as a miscellaneous receipt, and if the correction is made in the year in which the cheque was issued, "deduct entries" shall also be made in the adjustment register under that head and the head of expenditure to which it was originally charged.

56. Cheques are current for three months only. After the expiration of that period, payment will be refused at the Treasury, and the person in whose favour the cheque was drawn will therefore have to bring it back to be re-dated. No fresh cheque should be issued: the lapsed cheque shall simply be re-dated and the alteration initialled by the Chairman or official whose duty it would be to sign the cheque. A note of the fact of re-dating shall be entered in the cash-book against the original transaction and upon the counterfoil of the cheque itself. The alteration will in no way affect the accounts, and no further entries shall be made.

Cash-book.

57. The cash-book of the Municipality shall be kept in English in Form XI by the Municipal Accountant. It shall be a substantially bound volume containing a sufficient number of pages to contain at least one year's transactions. It shall be carefully paged before being brought into use.

Form XI.

Dr. Cr.

DATE OF RECEIPT.	Number of chalan.	Particulars of receipt.*	Amount of each item.	Total of each chalan.	Head of account in abstract register.	DATE OF PAYMENT.	Particulars of payment.*	Number of voucher.	Amount of each voucher.	Number of cheque.	Amount of cheque.	Head of account in abstract register.
1	2	3	4	5	6	7	8	9	10	11	12	13

58. As soon as the pass-book is received back from the Treasury (*see* Rule 24), the Accountant shall compare and verify the entries in the pass-book with the duplicate chalans and with the Cashier's cash-book to ensure that all remittances have been duly brought to account in the Treasury, and the Accountant will then write up the receipt side of his cash-book (Form XI) from the chalans and the Cashier's cash-book.

In writing up his cash-book the Accountant shall transcribe the totals only under the various account headings in the Cashier's cash-book into his cash-book, but at the same time he shall prove the compilation of the account and test the accuracy of the amount and the classification of the items forming the totals by referring to all the forms and registers in which receipts are given or collections recorded. All miscellaneous receipt and license book counterfoils shall thus be checked daily by the Accountant, but the collections of Municipal taxes should be compared only with the sarkar's collection-registers, after they have been duly receipted by the tax-daroga and without scrutinising the counterfoils of the bills.

59. The payment-side of the cash-book shall be posted from the details of the vouchers and of the cheques drawn. The amount of each cheque shall be entered as soon as the cheque is signed (*see* Rule 48).

* This column is intended to show any necessary particulars other than "head of account."

60. The cash-book shall be balanced at the close of every month, and signed by the Chairman, Vice-Chairman, or Secretary in token of the correctness of every entry made therein. The balance brought out shall be stated both in words and figures, and shall be agreed with the balance shown in the pass-book of the Municipality, thus :—

	Rs. A. P.
Balance as per cash-book	
Deduct—	
Balances of separate accounts of the Dispensary Funds in the Treasury as per detailed accounts received from the Managing Committee.	Rs. A. P.
Dispensary Fund	
Ditto	
Ditto	
Net balance of cash-book	
Add—	
Amount of uncashed cheques	
TOTAL ..	
Balance as per pass-book of the Municipal Fund.	

NOTE.—When a cheque has been cancelled (*see* Rule 55), it will of course not be entered in the list of cheques drawn but not cashed.

The memorandum of agreement appended by this rule was modified by Notification No. 2346T.—M., dated 6th July 1905.

ABSTRACT REGISTERS OF RECEIPTS AND EXPENDITURE.

61. All the entries on the receipt-side of the cash-book (Form XI) shall be posted by the Accountant, *one by one*, direct from the cash-book into the abstract register of receipts (Form XII), and all the entries on the payment side of the cash-book shall be similarly posted into the abstract register of expenditure (Form XIII).

When transactions under any head are very numerous, it will be best to open two or more columns with the same heading, and headings under which there can be no transactions may be omitted. They will save space in the register.

Form XII.

	Heads of Receipt as in Budget Form.						
Cash transactions ...							(Cross total carried over to next page).
Total cash transactions.							
Adjustments... { Add ... Deduct							
Net Total ...							

Form XIII.

	Heads of Expenditure as in Budget Form.						
Cash transactions ...							(Cross total carried over to next page).
Total cash transactions.							
Adjustments. { Add Deduct							
Net Total ...							

62. The abstract registers shall be kept in English, and shall be posted as often as may be convenient, but in no case later than ten days after the close of the month to which the account relates.

63. The cash transactions in the abstract registers shall be totalled every month, and the grand totals of the different heads of receipts and expenditure must necessarily be equal to, and shall be compared by the Vice-Chairman or Secretary, with the totals of receipts and payments in the cash-book (Form No. XI). He shall initial the abstract registers in token of having made this comparison.

The adjustments represent the totals appearing in the register of adjustments described below.

ADJUSTMENTS.

64. For the record of transactions other than cash, a register of adjustments shall be opened in Form No. XIV.

Form XIV.

Number of voucher.	Date.	PARTICULARS.	RECEIPT HEADS.	Total.	PAYMENT HEADS.	Total.	REMARKS.
		"Add" entries ...					
		Total ...					
		"Deduct" entries ...					
		Total ...					
		Net total receipt heads			Net total payment heads.		

NOTE.—As an adjustment cannot affect the balance of the account, the net totals of the receipt heads and the payment heads must always agree.

65. The chief adjustments are—

(1) Rectification of errors in classification.

(2) The adjustment of a bill against an advance.

(3) The charge to a head of expenditure by credit to deposits of a sum due on a contractor's bill, which sum is retained as a security deposit.

(4) Adjustments due to refunds of income or recoveries of expenditure.

These transactions shall be entered, item by item, in the register of adjustments, whence the totals pass into the bstract registers of receipts and expenditure; but before the ostings are made in the abstract registers the net total of the ceipt heads shall be agreed with the net total of the payment ads.

66. The methods of entry in the register of adjustments as follows :—

In case (1) the adjustment shall be made by entering nount in the space for "Add entries" in the columu

for the head to which the amount is to be added, and, again, in red ink in the space for "Deduct entries" in the column for the head from which the amount is to be deducted. Both entries will be made on the receipt side if the amount is to be transferred from one head of receipt to another, and both will be made on the expenditure side if the amount is to be transferred from one head of expenditure to another.

In case (2) the adjustment shall be made by entering the amount in the space for "Add entries" in the column of the expenditure side for the head to which charges on account of the particular expenditure incurred are to be taken, and on the receipt side in the space for "Add entries" under the head "Advances recovered." A corresponding entry must of course be made on the receipt or credit side of the advance ledger, Form No. XV, of the person by whom the expenditure was incurred, and to whom the amount adjusted was originally advanced.

In case (3) the adjustment shall be made by entering the amount on the expenditure side in the space for "Add entries" in the column for the head to which the balance of the charges of the bill from which the deduction has been made has been taken, and on the receipt side in the spaces for "Add entries" under "Deposits received."

In case (4) an adjustment shall be made only when the income was originally received or the expenditure incurred in the same year in which the refund or recovery is made. When income is refunded the refund shall be charged to the major head of expenditure corresponding to the major head of receipt to which it was originally credited, or if there be no such head to "Miscellaneous." The amount shall then be deducted in the adjustment register from both the head of receipt to which it was originally credited and the head of expenditure to which the refund is charged. When expenditure is recovered the amount shall be credited to the major head of receipt corresponding to the major head of expenditure to which it was originally charged, or if there be no such head to "Miscellaneous." The amount shall then be deducted in the adjustment register from both the head of expenditure to which it was originally charged and the head of receipt to which the recovery is credited.

67. Adjustments made by deduction in the abstract registers shall always be written in red ink.

ADVANCES.

68. All moneys advanced to contractors or to the Chairman, Vice-Chairman, Municipal Commissioners, or other individuals under whose personal superintendence a work is being executed, all sums paid without proper vouchers, the amount of the imprest, and any other advance that may be made shall, in the first instance, be charged to the head "Advances" and entered in the advance ledger (Form No. XV). A separate account shall be opened in this ledger for each person to whom an advance has been given, and this account shall be credited with the amount of any repayments that may be made.

Form XV.

Advance Ledger.

DR. Name. CR.

ADVANCES MADE.					ADVANCES RECOVERED OR ADJUSTED.					
Date.	Purpose.	Number of voucher.	Amount.	Total.	Date.	Whether in cash or by work bills.	Number of item in pass-book if recovered in cash, or number of voucher if adjusted by work bills.	Amount.	Total.	Debit balance after each transaction.
1	2	3	4	5	6	7	8	9	10	11

69. Advances for works to be carried out departmentally should not be for the full sanctioned cost of the work, but should be restricted to the amount actually necessary to meet immediate payments; and as this amount is exhausted, it can be recouped by submitting detailed bills for the expenditure incurred.

70. In the case of advances made to contractors or others for the execution of works, the account shall be credited with the actual value of the work done upon receipt of detailed bills and proper vouchers for the expenditure incurred out of the advance. These adjustments shall be carried through the adjustment register in the manner prescribed in Rules 64 to 66. Before the order for adjustment is made, the bills and vouchers put forward in support of the expenditure shall be passed by the Chairman or Vice-Chairman, or both, in the same manner as other bills are passed. The passing order shall run thus :—"Passed for Rupees.....Adjust by credit to advance account of....., and debit to....."

71. The different accounts in the advance ledger shall be balanced quarterly and signed by the Vice-Chairman or Secretary. The officer who signs the accounts shall at the same time satisfy himself that steps are being taken to recover or adjust advances which have been outstanding for more than three months. At the close of every quarter a list in Form XV (A) shall be prepared of outstanding advances.

Form XV (A).

Page of advance ledger.	Name.	Amount.	Remarks upon old outstandings, orders of Chairman and note of any action taken.
1	2	3	4

DEPOSITS.

72. All sums of money received by way of security deposit from contractors or others and all sums received which are not the property of the Municipality, and have been placed with the Municipal authorities for a temporary purpose only, shall be credited to the head "Deposits received" in the abstract register of receipts (Form No. XII), and shall be entered on the credit side of the deposit ledger (Form No XVI). As

in the advance ledger, a separate account shall be opened for each depositor, and the accounts shall be balanced quarterly and signed by the Vice-Chairman or Secretary.

Form XVI.

Deposit Ledger.

DR. Name. CR.

DEPOSITS REFUNDED TO THE DEPOSITOR.					DEPOSITS RECEIVED FROM THE DEPOSITOR.					
Date.	Particulars.	Number of voucher.	Amount.	Total.	Date.	Particulars.	Number of item in pass-book if received in cash, or number of voucher if by deduction from bills.	Amount.	Total.	Amount remaining at depositor's credit after each transaction.
1	2	3	4	5	6	7	8	9	10	11
			Rs.	Rs.				Rs.	Rs.	Rs.

73. It sometimes happens that deductions (usually 10 per cent. of the total amount of the bills) are made from the bills of contractors as security for the due performance of work in the future. In such cases the bills shall be passed by the Chairman or Vice-Chairman, or both, for the full amount due on the bill, but only the net amount paid shall be entered in the cash-book (Form No. XI). The amount deducted as security shall be brought upon the Municipal accounts and into the ledger of deposits (Form No. XVI) through the medium of the adjustment register in the manner described in Rules 65 and 66. The payment order shall run thus :—

Passed for Rupees.....Pay Rupees.....by cheque and adjust Rupees.....by debit to....., and credit to deposit account of.....

74. At the close of every quarter a list of outstanding deposits shall be prepared in Form XVI (A).

Form XVI (A).

Page of deposit ledger.	Name of depositor.	Amount.	Remarks upon old outstandings, orders of Chairman, and note of any action taken.
1	2	3	4
		Re.	

Quarterly and Annual Account.

75. At the close of every month the totals under the various heads of account recorded in the abstract registers (Forms Nos. XII and XIII) shall be entered in English by the Accountant in the separate registers (Forms Nos. XVII and XVIII) against the corresponding heads under the appropriate month.

If it is desired to show the expenditure in greater detail than according to the prescribed budget heads, additional detailed heads may be inserted in the register of expenditure, and the particulars of the charges to be posted under those heads can be obtained from the cash-book or vouchers.

These two registers form the quarterly statement required under section 71 of the Act to be prepared immediately after the close of each quarter.

Form XVII.

Heads of Receipt.	Budget estimate as sanctioned.	April.	May.	June.	Total 1st quarter	July.	August.	September.	Total 2nd quarter.	Total half-year.	October.	November.	December.	Total 3rd quarter.	Total of three quarters.	January.	February.	March	Total 4th quarter.	Total for year.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Total Receipts ...																				

Form XVIII.

Heads of Expenditure.	Budget estimate as sanctioned.	April	May.	June.	Total 1st quarter.	July.	August.	September.	Total 2nd quarter.	Total half-year.	October.	November.	December.	Total 3rd quarter.	Total of three quarters.	January.	February.	March.	Total 4th quarter.	Total for year.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Total Expenditure ...																				

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76. As soon as possible after the close of the year, and not later than the 15th April following, the totals of the receipts and expenditure of the year, as worked out in the last columns of the registers (Forms Nos. XVII and XVIII) shall be posted in English by the Accountant into the annual account (Form No. XIX).

Municipal Form XIX.

Annual account of the.....Municipality for the year ending.....

Receipts.								Disbursements.							
1								2							
Balance in hand at the close of last year ...			Rs.	A.	P.			[Heads as in prescribed list.]	Estimate.			Actuals			Actuals plus or minus.
Revenue. [Heads as in prescribed list.]	Estimate.			Actuals.			Actuals plus or minus.		Rs.	A.	P.	Rs.	A.	P.	
	Rs.	A.	P.	Rs.	A.	P.									
								Closing balance							
Grand Total.								Grand Total							

N.B.—The opening and closing balances of this account must agree with the opening and closing balances of the cash-book (Form XI) for the months of April and March.

Memorandum of liabilities and claims.

Liabilities—
- Balance of loans.
- Less amount made over to sinking funds.
- Net balance of loans.
- Deposits.

Claims—
- Advances recoverable.
- Net amount of debt.

Memorandum of investments.

Description of securities.	Nominal amounts.	Purposes for which held.
1	2	3

77. A copy of this account shall be sent not later than the 30th April following to the Magistrate of the district in which the Municipality is situated.

78. To enable the Magistrate to make the prescribed comparison between the estimates and the actual receipts and expenditure of the Municipality, the amounts by which the actual figures fall short of or exceed the estimated figures shall be shown in two separate columns provided for the purpose within the body of Form No. XIX.

AUDIT.

78A. The accounts of the Municipality shall be examined and audited by the Examiner of Local Accounts in Bengal, as far as possible, not less often than once in twelve months.

78B. In auditing the accounts, the Examiner shall see that they have been kept and are presented in proper form; that the particular items of receipt and expenditure are stated in sufficient detail; and that the payments are supported by adequate vouhers and authority. He shall examine whether all sums received, or which ought to have been received, are brought into account, and also whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant; and shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss; and shall disallow and strike out such payments as are not authorised by law or competent authority. He shall also ascertain the total unpaid liabilities of the Municipality, and also whether these can be met out of the Municipal fund when falling due.

78C. The reports of such examination shall be forwarded by the Accountant-General, Bengal, to the Chairman of the Municipality, and copies to the Commissioner of the Division and the Magistrate of the District. The Chairman shall be bound to remedy any defects or irregularities that may be pointed out by the Accountant-General or the Examiner. "and within three months of the date of the receipt of the report he shall submit a statement giving particulars of the action taken thereon, to the Magistrate of the district, who shall forward the same, with his remarks, to the Accountant-General through the Commissioner of the Division."

(*As amended by Notification No.* 253*M.*, *dated* 17*th January* 1902).

REGISTER OF SECURITY DEPOSITS OTHER THAN CASH.

79. Security deposited in *cash* shall be entered at once in the cash-book of the Municipality and the deposit ledger, and paid into the Treasury like revenue. All other forms of security, such as Government paper, bonds for landed property, and the like, shall be recorded in a register in Form No. XX. When the security is surrendered, the depositor shall give a receipt in the column provided for the purpose :—

Form No. XX.

Register of Security Deposits other than cash.

RECEIPTS.						DISPOSAL.							
Date.	Name of depositor.	Designation.	Nature of deposit.	Nominal value.	Initials of Vice-Chairman.	Date.	Name of depositor.	To whom returned.	Nature of deposit.	Nominal value.	Signature of depositor.	Initials of Vice-Chairman.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13	14
				Rs.						Rs.			

GOVERNMENT SECURITY REGISTER.

80. All Government securities which shall become by purchase or otherwise, the sole property of a Municipality shall be accounted for in Form No. XXI. They shall not be written off this form unless disposed of absolutely by sale or otherwise; *e.g.*, Government securities merely made over to the Accountant-General for safe custody under the rules contained in Chapter II of the Civil Account Code shall not be written off this account.

Form No. XXI.

Register of Government Securities.

RECEIPTS.						ISSUES.					
Date.	On what account received.	Details of notes.	Nominal value.	Initials of Vice-Chairman.	REMARKS.	Date.	Details of notes	How disposed of.	Nominal value.	Initials of Vice-Chairman.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12
			Rs.						Rs.		

LOAN REGISTER.

81. The transactions in regard to any loan contracted by a Municipality shall be recorded in Form No. XXII.

Form No. XXII.

LOAN REGISTER.

Account of loan of Rs....., received from....., as per.....

CONDITIONS OF LOAN.

To bear interest at.....per cent. to be paid half-yearly on....., and to be repaid (by half-yearly instalments of

Rs.....in addition to accruing interest) or (within.....year) or (in.....equal instalments) (or by $\frac{\text{half-yearly}}{\text{yearly}}$ payments of Rs.....into a Sinking Fund).

Receipt.		PAYMENT—							Payments into the Sinking Fund.		
		Of principal.			Of interest.						
Date.	Amount.	Amount.	Voucher number and date.	Balance.	Period.	Amount on which due.	Amount paid.	Voucher number and date.	Amount paid.	Voucher number and date	REMARKS.
1	2	3	4	5	6	.7	8	9	10	11	12
	Rs.	Rs.		Rs.		Rs.			Rs.		

When a loan is raised in the open market under the condition that a Sinking Fund is to be formed for its repayment, the payments to the Sinking Fund, as they fall due, shall be made to the Commissioner of the Division and the Collector of the District, who shall hold the funds in trust for the redemption of the principal of the loan. On receipt of the money, the Trustees shall lodge it in the Treasury for credit to a Personal Ledger Account to be opened in their names, and as soon as sufficient balance is available, they shall invest the same in Government securities for retention in the custody of the Comptroller-General under the rules in Chapter II of the Civil Account Code. When any loans or debentures fall due, the Trustees shall realise the whole or a sufficient portion of the securities held in their names, and apply the sale-proceeds thereof, so far as they will extend, to satisfy such loans or debentures. The interest accruing on the investments shall be added to the balance of the trust account, until the Sinking Fund is complete.

The transactions of the trust account shall be recorded in a cash-book in Form No. I of the "Account Rules for the guidance of Administrators of Trust Funds" issued with Finance Circular No. 2, dated 23rd February 1886, which shall be kept by the Trustees. As soon as possible, after the 31st March in each year, the Trustees shall forward to the Chairman of the Municipality, an abstract of the account in Form No. III of the Trust Fund Rules, and obtain from him a written acknowledgment of the correctness of the account. The Trustees shall bring to the notice of Government any default in payment to the Sinking Fund, which is not immediately remedied.

81A. To watch the appropriation of funds raised by loan to the purposes for which the loan has been taken, an appropriation register shall be kept in Form XXIIA.

Form XXIIA.

Appropriation Register of Loan Funds.

Sanctioned amount of loan .. ..

Purposes to which the loan is to be applied..

1	2	3	4	5	6
Receipts as shown in the Loan Register, Form XXII.		Expenditure as shown in the register of works: see Rule 120.		Balance.	REMARKS.
Date.	Amount.	Date.	Amount.	Rs. A P.	

The expenditure shall be posted monthly from the register of works and, without the sanction of Government previously obtained, the balance shall not be appropriated even temporarily to any object other than that for which the loan was raised.

TAX UPON OCCUPIERS OF HOLDINGS OR RATE UPON THE ANNUAL VALUE OF HOLDINGS, LATRINE RATE, LIGHTING RATE, AND WATER RATE.

82. The procedure in connection with the above rates will be found in Appendix A of these rules, which provides

for collection either from door to door, or at the Municipal office.

One or other of these systems shall be adopted with such modifications as may be found necessary, and as are approved by the Examiner of Local Accounts.

Tax on Carriages, and on Horses and other Animals.

83. The register prescribed in section 139 of the Act for the exhibition of the amount of taxes realised on account of carriages and horses and other animals shall be maintained in Form No. XXIII. (*See* page 379.)

84. *As soon as* a license fee or tax has been paid, *and not before*, the license shall be prepared in Form No. XXIV (*see* page 430); and when the necessary particulars have been posted in the register Form No. XXIII (*see* page 428), both register and license shall be placed before the Chairman, and Vice-Chairman, Secretary or other licensing officer, who shall sign the license and initial the register in the proper column.

Notice to Owners of Carriages, and of Horses and other Animals (*suggested*).

85. Under section 133 of the Act, owners of carriages and horses, and other animals liable to the tax are required to forward to the Commissioners statements in writing, containing descriptions of the carriages, and horses, and other animals for which they are bound to take out licenses. To facilitate this procedure, a supply of printed statements in Form No. XXV (*see* page 431) may be obtained and distributed to the owners of vehicles which are taxable. These forms might with advantage be circulated by post to the owners of the different carriages, horses, &c., for which taxes were paid during the preceding half-year.

Fees on the Registration of Carts.

86. Tin tickets shall be issued to owners of carts which have been registered. These tin tickets shall be of a different colour for each period of issue. They shall be of a size sufficiently large to be easily distinguishable, and they shall bear consecutive numbers. Licenses or receipts for the registration fee (in Form XXXVI) may be given in addition to the tin tickets if this is found to be desirable.

As soon as the registration fee and the price of the tin ticket have been paid by the owner of the cart, the necessary

particulars shall be entered in a register in Form No. XXVI. and the ticket shall be affixed to the cart by a Municipal servant.

Form No. XXVI.

Date of Registration.	Number of registration.	Owner of Carts.		Number of carts registered.	Serial number of tin tickets.	Rate per cart.	Cost of ticket.	Transfer fees.	Cost of seizure of carts under section 147 of the Act.	Total.	Carried to Cashier's Cash-book.		Remarks and note of proportionate fees under section 144 of the Act.
		Name.	Residence.								Amount.	Date.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
						Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.		

87. A stock-book of the tin tickets received from the makers and issued under sections 142—147 of the Act shall be kept in Form XXVII. The Vice-Chairman or Secretary shall, at such intervals as shall seem advisable, compare the balance of the tin tickets as brought out in the stock-book with the balance of unissued tickets actually in the office and shall initial the register in token of comparison.

A similar form should be used for carriage and palanquin tickets.

Form XXVII.

Stock Account of Cart Registry Tickets.

Receipts.						Issue.			
Date.	Number in hand.	Number received.	No. and date of voucher.	Initials of Vice-Chairman or Secretary.	Total.	Month of issue.	Number issued during the month as per register.	Balance remaining.	Remarks.
1	2	3	4	5	6	7	8	9	10

Hackney Carriage License Register.

Hackney Carriage Driver's Register.

Palanquin License Register.

Palanquin Bearer's License Register.

88. Fees on account of the above shall be recorded in Registers Nos. XXVIII, XXIX, XXX and XXXI, respectively. The rules regarding the custody, issue, and record of cart registration tickets shall apply, *mutatis mutandis*, to the plates issued under the Hackney-Carriage Act to owners of hackney carriages, to drivers, and to palanquin bearers.

Form XXVIII.

Hackney Carriage License Register.

Number of license.	Date of license.	Owner's.		Description of carriage.	Number of persons licensed to carry.	Number of horses.	Amount of Fees Paid.		Cost of fare table.	Initials of Vice-Chairman or Secretary.	Amount posted in Cashier's cash-book and date.
		Name.	Residence.				Arrears.	Current.			
1	2	3	4	5	6	7	8	9	10	11	12

Form XXIX.

Hackney Carriage Driver's License Register.

Number of license.	Date.	Driver's.			Height.		Birthplace.	Father's name.	Amount of Fees Paid.		Initials of Vice-Chairman or Secretary.	Amount posted in Cashier's cash-book and date.
		Name.	Residence.	Age.	Feet.	Inches.			Arrears.	Current.		
1	2	3	4	5	6	7	8	9	10	11	12	13

Form XXX.

Palanquin License Register.

Number of license.	Date of license.	Owner's name.	Owner's residence.	Amount of Fees Paid.		Cost of fare table.	Initials of Vice-Chairman.	Amount posted in Cashier's cash-book and date.
				Arrears.	Current.			
1	2	3	4	5	6	7	8	9

Form XXXI.

Palanquin Bearer's License Register.

Number of license.	Date of license.	Bearer's name.	Bearer's residence.	Amount of Fees Paid.		Initials of Vice-Chairman or Secretary.	Amount posted in Cashier's cash-book and date.
				Arrears.	Current.		
1	2	3	4	5	6	7	8

89. The licenses granted to owners of hackney carriages, to hackney carriage drivers, to owners of palanquins and palanquin bearers, shall be in Forms XXXII, XXXIII, XXXIV and XXXV respectively.

Form No. XXXII

Municipal Form XXXII.—Hackney Carriage License.

No. ....

19...0 ..

2ND CLASS CARRIAGE.

3RD ditto ditto.

Name of Owner... .....

Residence.....

Rs. A.

Fee ... ...

Fare Table ... ...

Total ...

Dated.....19 ...

.....MUNICIPALITY.

No.....

19...0...

2ND CLASS CARRIAGE.

3RD ditto ditto.

HACKNEY CARRIAGE LICENSE UNDER SECTION 8 OF ACT II (B.C.) OF 1891.

Name of Owner.....

Stand, Stable or Locality.....

Residence of Owner.....

Number of Horses.....

Number of Persons to carry.....

This license to be in force till the 30th September 19 ...unless sooner revoked.

MUNICIPALITY, } *Vice-Chairman*

Dated ....19 ...

Form XXXIII.

Municipal Form XXXIII.—Hackney Carriage Driver's License.

No.....

19...0 ..

Driver .....

Rupees.....

Dated.....19 ...

.....MUNICIPALITY.

No.....

19...0...

This license is hereby granted, under section 21 of Act II (B.C.) of 1891, to Hackney Carriage Driver .....
Age..... of.....

This license to be in force till the 30th of September 19 ...unless sooner revoked.

MUNICIPALITY, } *Vice-Chairman.*
Dated.....19 .. }

Form XXXIV.

Municipal Form XXXIV.—Palanquin License.

No..... .

19...0...

PALANQUIN.

Name of Owner.....

.....

	As.
Fee	
Fare Table	
Total As. ...	

Dated.....19 ...

.. ..MUNICIPALITY.

No.... ....

19...0...

PALANQUIN LICENSE.

UNDER SECTION 46 OF ACT II (B.C.) OF 1891.

Name of Owner.....
Stand or Locality.....
Residence of Owner.....

This license to be in force till the 30th September 19 ...unless sooner revoked.

MUNICIPALITY, } *Vice-Chairman.*
Dated.....19 ... }

Form XXXV.

Municipal Form No. XXXV.—Palanquin Bearer's License.

No. .....

.....MUNICIPALITY

No.....

19...0...

This license is hereby granted, under section 51 of Act II (B.C.) of 1891, to Palanquin.

Bearer. .....

Age.....of.....

This license to be in force till the 30th September 19 ..unless sooner revoked.

19...0...

Bearer..... .....

Annas.....

Dated.....19 ..

MUNICIPALITY,

Dated.....19 ... } *Vice-Chairman.*

MISCELLANEOUS RECEIPTS.

90. For money received by a Municipality on account of the tax upon occupiers of holdings, or rate upon the annual value of holdings, latrine rate, lighting rate, and water rate, a form of receipt has been prescribed in Appendix A (Form F). For money received on account of tax on carriages, horses, and other animals, the license issued will be a sufficient receipt.

For all other money received by the Municipality under the rules in this part, the Vice-Chairman or Secretary shall give a receipt in Form XXXVI. The total amount received shall be written in words, both on the receipt itself and on the counterfoil; the latter need only be initialled by the officer

who signs the receipt. In the case of cart registration, if no license or receipt is given, the tin ticket will suffice.

The forms shall be bound in books containing 100 forms each, and they shall be numbered before the book is brought into use. [*See* Rule 91 below.]

Form XXXVI.

Municipal Form XXXVI—

Mis. Receipt.

No.....

RECEIVED from.....

on account of.....

.....

.....

Rupees (*in words*).....

.....

.....

(Figures) Rs. A. P.

.....

Vice-Chairman.

Dated.....

Municipal Form XXXVI—

Mis. Receipt.

.....MUNICIPALITY

No..... *Dated*.....

RECEIVED from.....

the sum of rupees .....

.....

on account of.....

.....

Rs. A. P.

.....

Vice-Chairman.

A separate receipt book in the same form shall be used for any head of revenue, the receipts on account of which are numerous. [*See* also Rule 86.]

LICENSES AND RECEIPTS.

91. All license and receipt forms shall be bound in counterfoil books. Each book shall contain 100 forms, and no book shall be brought into use until *all* the forms and counterfoils have been consecutively numbered. The numbers shall, if possible, be printed.

Only one book for each purpose for which a separate book is required shall be given out by the Vice-Chairman or Secretary at a time, and until the book thus issued has been used up, no new book shall be given out.

The receipt and issue of all license and receipt forms shall be recorded in a stock-book (Form G of Appendix A of these rules may be used), and on no account shall loose unnumbered license or receipt forms be kept in the office.

Receipts on Account of Municipal Pounds, Ferries, Rent of Municipal Buildings, Lands, &c.

92. Separate registers in Form XXXVII (*see* page 432) shall be opened to show the details of each source from which periodical municipal revenue is derived, for which there is a fixed monthly, quarterly, half-yearly or annual demand. As, however, the sources of revenue and the circumstances are very varied, the form may be modified, with the approval of the Examiner of Local Accounts, to meet local requirements; but, except as provided in Rule 99, the principle of showing the collections in monthly columns should be retained, unless the number of leases is very small.

93. The register shall show all demands due arranged in serial order—(1) on expired leases of the previous year; (2) on unexpired leases of the previous year; (3) on leases granted for the current year.

The entries under (1) and (2) shall be taken from the register of the previous year. In the former case the demand due will appear in columns 8 and 10, and in the latter in columns 8, 9 and 10. The Accountant shall fill up the current year's register in respect of these demands in the manner indicated above, and lay it with the register for the previous year before the Vice-Chairman, who, after comparing the entries, shall place his initials in column 12.

In respect of (3), when the agreement with the lessee has been signed and the security deposit paid, the Accountant shall fill up columns 1 to 11 and post the amount in the deposit ledger.

He shall then lay the agreements, the register, the deposit ledger and the chalans (or the Cashier's cash-book) before the Vice-Chairman, who shall—

(*a*) compare the entries in columns 1 to 7 with the agreements.

(*b*) see by reference to the chalans (or the Cashier's cash-book) that the deposits (column 11) have actually been paid.

(*c*) place his initial against the entries in the deposit ledger and in column 12 of the register.

Note.—When all the leases are for one year only, the amount paid as security deposit may be credited direct to "Rent" and be included in the progressive total of the collections in columns 16, 20, 24 and 28.

94. When all the accounts, arrear as well as current, have been posted and checked by the Vice-Chairman, column 10 of the register shall be totalled and signed by him.

95. The payments made in satisfaction of the demand shall be posted in the column for the month in which the money is credited in the Accountant's cash-book, *e.g.*, a payment credited in June on account of May will appear in the column for June and not for May. The entries shall be made by the Accountant from the chalans (or the Cashier's cash-book, if details are not shown in the chalans), and when all the receipts have been posted, they shall be totalled and agreed with the credit for the month in the abstract register of receipts.

96. When the monthly posting of the receipts has been completed, the register shall be laid before the Vice-Chairman, who shall compare the total for the month with the abstract register of receipts and, as far as possible, the details of the credits with the chalans or the Cashier's cash-book. He shall also carefully compare the credits with the particulars of the demand and take the necessary action for the recovery or settlement of the outstandings.

97. The security deposit which usually amounts to one-fourth of the annual rental will ordinarily be taken in satisfaction of the demand for the last three months of the year in which the lease expires, and shall be transferred by adjustment from " Deposits " to " Rent " and entered in the register in the column for March. Such credits in the register may be made in red ink to distinguish them from cash payments made during the same month.

98. If any part of the deposit has been taken as a fine for non-fulfilment of contract, the balance may be taken in part satisfaction of the demand during the last three months of the year ; and if on the 31st March the deposit or balance of deposit will more than cover the demand, the balance will be refunded in cash to the lessee. But in no case may any sum be removed from deposit and transferred to another head except under the orders of the Vice-Chairman, who shall at the time initial the debits made in the deposit ledger.

99. When the number of demands is very large and bills are issued for their recovery as in the case of rents of Municipal lands and houses, the system prescribed for rate collections in Appendix A may be adopted with slight modifications of the forms of bill and collection registers.

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100. For income for which there is no fixed demand, *e.g.*, daily market fees, &c., a daily collection register shall be kept showing (1) date, (2) from whom received, (3) amount received, and (4) daily total, with any further particulars required and when the circumstances admit of it, receipts in Form XXXVI with counterfoils should be given for each collection.

Miscellaneous Subscription Register.

101. Whenever a Municipality undertakes the collection of voluntary subscriptions to be devoted to a specific purpose, such as the erection of a town hall or market, the subscription book or books to be sent round with the appeal for subscriptions shall be in Form XXXVIII. The books shall be numbered, and a list of them shall be kept which shall be initialled by the Vice-Chairman.

Form XXXVIII.

Miscellaneous Subscription Register.

Donation or subscription promised.		Outstanding.			Amount paid.	Date and initials of donor or subscriber.	Balance outstanding.	Initials of Vice-Chairman.	Amount carried to cash book, and date.	Remarks.
Name.	Amount.	Arrears.	Current.	Total.						
1	2	3	4	5	6	7	8	9	10	11

If separate receipts are given to subscribers for their contributions, separate books of Form XXXVI prescribed in these rules for the grant of miscellaneous receipts shall be brought into use.

102. At the end of each month or quarter the amounts (whether paid up or not) shown in the subscription books (Form XXXVIII) shall be totalled, and the total posted into an abstract in Form XXXIX. The abstract shall be checked and signed by the Vice-Chairman or Secretary. The officer who signs the abstract shall at the same time satisfy himself that steps are being taken to realise the promised subscriptions.

Form XXXIX.

*Abstract of subscriptions promised and received for the purpose of.....up to.....*190.....

Details.	Amount.	Names of subscribers.	Amount of promised subscription.
1	2	3	4
	Rs.		
Total subscriptions promised up to		Total brought forward.	
Deduct realizations as per abstract registers ...			
Total unrealized balance ...			
Details of unrealized balance. Names of subscribers ...			
Total carried over ...		Total unrealized balance.	

Dispensary Subscription Register.

103. The register for the record of donations and subscriptions for a charitable dispensary shall be kept by the Managing Committee in Form XL. Column 10 or 11, as the case may be, of the Register shall be filled in by the Medical Officer or the Secretary of the Managing Committee where the money is sent to the Municipal Office or remitted to the Treasury. Separate receipts need not be granted to the donors or subscribers, unless they specially ask for them.

Form XL.

Charitable Dispensary Subscription Register.

Name of donor or subscriber.	Amount promised.	Outstanding.			Amount paid.	Date and initials of donor or subscriber.	Balance outstanding.	Initials of Civil Surgeon or officer in charge.	Date of remittance to the Municipal Office.	Date when remitted to Treasury.	Remarks.
		Arrear.	Current.	Total.							
1	2	3	4	5	6	7	8	9	10	11	12

104. All cash receipts of Municipal hospitals and dispensaries in class IIB shall be deposited in the Treasury to the credit of the Municipal Fund, and all charges shall be drawn from that Fund. But for each institution vested in the Commissioners, a subsidiary balanced account shall be kept in Form XLA, in which shall be credited (*a*) all endowments, funds, and contributions received by the Commissioners on its behalf, and (*b*) all sums allotted in the budget estimates for its establishment and maintenance which are chargeable to the general revenues of the Municipal Fund, and in which all expenditure incurred shall be charged. The balance of this account, which shall be struck at the close of each month, shall not be appropriated to any object other than the establishment and maintenance of the institution to which it belongs.

A copy of the monthly statement of accounts in Form XXII of the rules for the management of hospitals and dispensaries, which is prepared by the Managing Committee, shall be sent to the Municipal Office for comparison with the balanced account kept by the Commissioners.

Form XLA.

Account of the Receipts and payments of the $\frac{\text{Hospital}}{\text{Dispensary}}$.

Receipts.						Payments.				
Date.	From whom received.	Nature of receipt.	Amount of Government securities (nominal value).	Bank or Treasury.	Date.	Particulars of payments.	Number of voucher.	Number of cheque.	Amount of Government securities (nominal value).	Bank or Treasury.
1	2	3	4	5	6	7	8	9	10	11
			Rs.	Rs. A. P.					Rs.	Rs. A. P.
		To balance.				Balance				
		Total ...					Total ..			

104A. For Hospitals and Dispensaries in class IIA, a separate banking account is allowed at the Treasury. All receipts of these institutions will be paid into the Treasury direct by the Managing Committee, and all payments on account of them will also be paid by the Committee direct without the intervention of the Municipal Office, either from the imprest in the hands of the Medical Officer or by cheques drawn by the Secretary or President upon the Treasury. The income from endowments and investments will, however, be realized by the Municipality and remitted to the Treasury for credit to the account of the Dispensary Fund, an intimation being at the same time sent to the Managing Committee.

Before the 5th of the following month, the Managing Committee will furnish the Municipal Office with an account showing all the receipts and charges of the Dispensary Fund, and a memorandum reconciling the closing balance of the account with that shown at credit of the Fund in the pass-book. On receipt of this account the transactions will be incorporated in the accounts of the Municipality under the proper heads.

The credits shown in the accounts of the Committee on account of contributions paid by the Municipality should be taken under the head "Advances" to which the corresponding payments in the Municipal accounts should also be debited.

MISCELLANEOUS BILL REGISTER (*suggested*).

105. When the number of miscellaneous bills for the record of which forms have not been prescribed or suggested in these rules, is large, it is recommended that Form XLI should be utilised. The Vice-Chairman or Secretary shall initial the register when he signs the bills previous to their being issued and again when the amounts are realised.

Form XLI.

Register of Miscellaneous Bills.

Date.	Number of bill.	Name of debtor.	Particulars.	Amount.	Initials of Vice-Chairman.	To whom made over for collection.	Date of realisation.	Initials of Vice-Chairman.	REMARKS.
1	2	3	4	5	6	7	8	9	10

106. The following form might be adopted for miscellaneous bills :—

Miscellaneous Bill Form XLII.

Name.....*Dr.*

To the Municipal Commissioners of.....

Date.	PARTICULARS.	Amount.
1	2	3
	Total	

Dated.....19....

Bill No..... *Vice-Chairman or Secretary.*

PUBLIC WORKS.

Estimates.

107. Except in cases of emergency or to prevent damage or loss, no work shall be put in hand until a properly detailed estimate has been prepared and sanctioned. All estimates for new works and repairs, the amount of which is Rs. 500 or more, shall be sanctioned by the Commissioners at a meeting and signed by the presiding officer.

107A. In the case of the following classes of estimates or projects, the sanction of the Commissioners shall be subject to the approval of the authority indicated :—

(*a*) All projects for new works, the estimated cost of which exceeds Rs. 5,000, but does not exceed Rs. 20,000.	Approval of the Commissioner of the Division.
(*b*) All projects for new works, the estimated cost of which exceeds Rs. 20,000.	Approval of the Local Government in the Municipal Department to be obtained through the Commissioner of the Division.
(*c*) All projects for works which may affect or alter the course of any river which is navigable at any time of the year, or on either bank of which there is any public embankment.	
(*d*) All projects for embanked roads passing through country subject to floods or irrigated from canals.	

The sanction of the Commissioners to an estimate for an original work which forms part of a contemplated scheme, although such estimate may in itself be within the limit up to which the Commissioners can sanction, shall be subject to the approval of the same authority as the estimate for the whole scheme would be, and no such estimate for a part of a scheme shall be sanctioned, unless the nature and approximate of the entire scheme is fully set forth in the report of the estimate. [*As amended by Notification*, 785*M dated the* 10*th February* 1905 *and No.* 330*M*, *dated* 1*st February*, 1913.]

108. A revised estmate shall be prepared when an estimate is likely to be exceeded either from the rates being found insufficient or from any other cause, and it shall be submitted for the approval of the authority whose sanction would be necessary if it were an original estimate.

109. To facilitate the preparation of estimates, a schedule of rates of each kind of work commonly executed shall be kept up. This schedule shall be passed by the Commissioners at a meeting and kept corrected up to date so as to be a trustworthy record of the rates at which work is actually being done.

110. The estimates shall be filed in order of sanction and indexed.

Agreements.

111. For every work given out on contract an agreement on stamped paper shall be taken and executed in accordance with section 37 of the Bengal Municipal Act.

Contractor's Bills.

112. Payments for works given out on contract for which running accounts are kept shall be made in Form XLIII (*see* page 434). On the completion or cessation of the work, the contractor shall be required to submit his bill for final adjustment of his claims, and when a final settlement is made with a contractor, he shall add in his own handwriting that the payment is in full settlement of all demands. As a further safeguard, final bills may be printed on yellow paper to distinguish them from bills for payments on account.

113. When contractors or suppliers are paid up at once on completion of the work or supplies, Form XLIV (*see* page 436) may be used for the bill. In this form the accounts of several works and, if necessary, of more than one payee, may be included.

Completion Certificate.

114. When a work is completed a completion certificate (signed by the Vice-Chairman, Secretary, or a Ward Commissioner and certifying that the work has been satisfactorily completed) shall be submitted along with the final bill, and in the absence of such a certificate no contractor should be finally paid up.

Measurement Book.

115. The measurement book Form XLV (*see* page 436) is the basis of all accounts of quantities, whether of work done by daily labour or by the piece or by contract or of materials received, which have to be counted or measured. From the measurement book all quantities should be clearly traceable into the documents on which payments are made, and a reference to the voucher on which the quantities are entered for payment as well as the date of entry should be given by endorsement on the original entries. The measurement book shall accompany the bills to the Municipal office, and no contract certificate or bill should be passed without crossing off the connected entry in the measurement book. The document on which payment is made should invariably bear a reference to the number and page of the book in which the detailed measurements are recorded.

116. The entries in the measurement book should, if possible, be made in ink; but when this is not possible, and the entries have to be made in pencil, the pencil entries should not be inked over but left untouched. The "contents or area" should, however, be invariably inked in.

117. To enable the overseer or other officer in charge of works to submit his measurement book with the bills or accounts to the Municipal office, it will be necessary to provide two or more books for his use. The measurement books after they are completed must be returned to the Municipal office for record.

Muster Roll.

118. When work is done by daily labour through departmental agency, the basis of the account will be the muster roll, and when payments are not made daily the muster roll must be a nominal one, *i.e.*, the names of the labourers must be entered in it. This shall be kept in Form XLVI (*see* page 437). The nominal muster roll is the initial record of the abour employed each day on a work, and must be written up daily by the subordinate deputed for the purpose each morning before the labourers begin work.

119. When possible, an extract from the measurement book should be endorsed on the muster roll, and the quantity of work turned out should be compared with the cost of the labour employed, so as to afford satisfactory evidence that

the outturn of work gives a sufficient return for the money spent. Any deficiency in this respect should be noticed by the paying officer.

Register of Works.

120. The register of works shall contain a record of every original work or repair estimated to cost more than Rs. 200, showing the expenditure incurred in comparison with the estimate, and the arrears due on accounts for which part-payments have been made. When the work is estimated to cost under Rs. 2,500 the record of outlay need not be kept by sub-heads, and Form XLVII will be used. But a record should be kept by sub-heads, and Form XLVII (A) used when the outlay is estimated to cost not less than Rs. 2,500: Provided that sub-heads under Rs. 200 need not be separately detailed in the register.

Stock and Store Accounts.

121. For stock and store accounts, registers shall be kept in Form XLVIII with any additional details or columns which may be found requisite.

A separate set of pages shall be assigned to each description of stock or tools and plant. The figures entered in the column "Balance" shall be certified to half-yearly by the Vice-Chairman or Secretary as representing articles found by actual counting or measurement, and if any excess or deficiency be found, the register shall be corrected accordingly.

122. When there is a large balance of stores for use by the Engineering Department, registers of daily receipts and issues with inner columns for each kind of stores may be kept instead of Form XLVIII. These registers should be balanced monthly in a separate abstract and a half-yearly return, showing the receipts and issues month by month and the balances should be prepared for stock-taking. The daily registers, the monthly abstract and half-yearly return may be in Public Works Department Forms 9, 12 and 13.

123. A separate account should be kept of tools temporarily lent to contractors or in use by Municipal subordinates. When no longer required they will be received back by the store-keeper and transferred to the account of articles in store.

124. In stock-taking it is not necessary that count of everything should be made at the same time. The stock-taking may be arranged so as to go on gradually in the manner most convenient to the officers concerned. The date on which each item of stores was actually counted should be entered in the stock and store-register or the half-yearly balanced return.

Record of Service.

125. A service-book in Form No. XLIX, printed in English and the vernacular, shall be supplied at his own cost to every employé holding a substantive appointment on the permanent establishment of a Municipality.

It shall be kept in custody of the Chairman or Vice-Chairman, whose signature, as well as that of the employé on the first page, shall be attested every five years.

The service-book is a contemporary record of the employé's official life, including leave of every description, every period of suspension from employment and every other interruption of service, with full details of its duration. Every entry relating thereto shall be written across the page, and attested by the Chairman, or Vice-Chairman, or the Secretary.

126. The Chairman or Vice-Chairman is primarily responsible that every necessary entry is made, especially in regard to leave or suspension, but it is also the duty of each employé to remind the Chairman, Vice-Chairman, or Secretary when any entry is necessary, and to see that his own service-book is properly written up and attested. Service-books shall be introduced and kept up, whether rules for the grant of pensions and gratuities have been framed or not.

Pensions and Gratuities.

127. Before any pension or gratuity authorised by rules framed under section 47 and approved by Government under section 59 of the Bengal Municipal Act is sanctioned, a report shall be made to the Accountant-General, specifying the grounds on which the pension or gratuity is to be awarded, accompanied by the applicant's service-book and a full statement of his service as shown therein and in other available records. The Accountant-General will then report what pension or gratuity is admissible under the rules.

GSL

[Municipal Form No. 1—Budget Estimate.]

Budget Estimate of probable Receipts and Expenditure of the Municipality for the year ending 31st *March*, 19 .

HEADS OF RECEIPT.	Estimate for the year (19..0...).	Actual receipts for the year last completed (19 0...).	Actual receipts for nine months of current year (19 0...).	Sanctioned estimate for current year (19..0...).	HEADS OF EXPENDITURE	Estimate for next year.	Actual expenditure for the year last completed.	Actual expenditure for nine months of current year.	Sanctioned estimate for current year.
1	2	3	4	5	1	2	3	4	5
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
Probable balance at commencement of year					(*A*).—General Administration and collection charges—				
(*A*).—Municipal rates and taxes—									
1.—Tax on houses and lands					1.—General Administration—				
Arrear collections for the previous year ...					Office establishment and contingencies				
Collections for the current year					Honorary Magistrate's establishment and contingencies				
Total ...					Cost of audit ...				
2.—Tax on animals and vehicle									

On animals ...
On vehicles ...
Cart registration fees ...
Total ...

3.—Tax on professions and trades—

4.—Tolls—

On ferries ...
On bridges ...
Total ...

5.—Water-rate—

Arrear collections for the previous year ...
Collections for the current year ...
Total ...

6.—Lighting rate—

Arrear collections for the previous year ...
Collections for the current year ...
Total ...

Contribution towards establishment in offices of account and treasury ...
Total ...

2.—Collection of taxes (including establishment, purchases of account book and paper)—
Establishment for collection of taxes
Other charges on account of taxes ...
Total ...

3.—Collection of tolls on roads and ferries ...
4.—Survey of land ...
5.—Refunds ... ...
6.—Pensions and gratuities ... ...

(*B*).—Public safety—

1.—Fire (establishment, purchase of fire engines, buckets, repair, &c.)
2.—Lighting (establishment, purchase of lamps and oil, repairs, &c.)
3.—Police (purchase of clothing, lanterns, &c., repairs to out posts, &c.)

GSL

Budget Estimate of probable Receipts and Expenditure of Municipality for the year ending 31st March 19 .—(contd)

Heads of Receipts.	Estimate for the year (19..0..).	Actual receipts for the year last completed (19 0..).	Actual receipts for nine months of current year (19..0..).	Sanctioned estimate for current year (19..0..).	Heads of Expenditure.	Estimate for next year.	Actual expenditure for the year last completed.	Actual expenditure for nine months of current year.	Sanctioned estimate for current year.
1	2	3	4	5	1	2	3	4	5
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
(*A*).—Municipal rates and taxes—*contd.*					(*B*)—Public safety—*contd.*				
7.—Latrine-fees—					4.—Rewards for destruction of wild animals and snakes ...				
Arrear collections for the previous year ..					(*C*).—Public health and convenience—				
Collections for the current year					1.—Water-supply—				
Total ...					Capital outlay ...				
8.—Tax on persons—					Establishment, &c. ..				
Arrear collections for the previous year ...					Repairs				
Collections for the current year					Construction and repairs of wells and tanks				
Total ...					Total ...				
9.—Warrant fees, &c.									

(B).—Realisation under special Acts—

1.—Pounds ... ...
2.—Hackney carriages ...
3.—Vaccination fees ...
4.—Jute warehouse fees ...
5.—Petroleum fees ...
6.—Fees on musical processions ... ...

(C).—Revenue derived from municipal property and powers apart from taxation—

1.—Rent of lands, houses, serais, dâkbungalow, &c.
2.—Sale-proceeds of lands and produce of lands, &c.
3.—Conservancy receipts (other than taxes and rates).
4.—Fees and revenue from educational institutions.
5.—Fees and revenue from medical institutions.
6.—Fees and revenue from markets and slaughter houses.
7.—Fees and revenue from tramways ...
8.—Burning-ghât and burial grounds ...
9.—Other fees ... ...

2.—Drainage—
Capital outlay ...
Establishment, &c. ...
Repairs ... ...
Total ...

3.—Conservancy—
Public latrines ...
Private privies and cesspools ...
Road watering ...
Road cleaning ...
Total ...

4.—Hospitals and dispensaries*—
Charges to be met from the General fund ... ...
Charges to be met from endowments and special receipts ... ...
Total ...

5.—Vaccination ...
6.—Markets and slaughter-houses ...
7.—Pounds ... ...
8.—Dâk bungalows and serais ... ...

9.—Arboriculture, public gardens, and experimental cultivation ... ...

* In forms XIII, XVIII, and XIX the charges should be shown under the one head "Hospitals and Dispensaries."

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

Budget Estimate of probable Receipts and Expenditure of Municipality for the year ending 31st March 19 .—(contd.)

Heads of Receipts.	Estimate for the year (19 0 ..).	Actual receipts for the year last completed (19 ..0..).	Actual receipts for nine months of current year (19 0 ..).	Sanctioned estimate for current year (19 ..0..).	Heads of Expenditure.	Estimate for next year.	Actual expenditure for the year last completed.	Actual expenditure for nine months of current year.	Sanctioned estimate for current year.
1	2	3	4	5	1	2	3	4	5
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
(C) Revenue derived from Municipal property and powers apart from taxation—*contd.*					(C).—Public health and convenience—*contd.*				
10.—Fines under Municipal and other Acts ...					10.—Public Works (a) ..				
11.—Interest on investments—					Establishment (b) ...				
(a) For general purposes					Buildings (c) (new works)				
(b) For educational purposes					Ditto (repairs) ...				
(c) For medical purposes					Roads (new works) ...				
Total ..					Do. (repairs) ...				
					Stores (tools and plant) (c) ...				
					Total ...				
(D).—Grants and contribution for general and special purposes—					(D).—Public Instruction—				
1.—From Government—					1.—Schools and Colleges				
					2.—Contributions				
					3.—Libraries, museums, &c.				

For general purposes ...	
,, educational purposes	
,, medical purposes ..	
Total ...	
2.—From Local Funds—	
For general purposes ...	
,, educational purposes	
,, medical purposes ..	
Total ...	
3.—From other sources—	
For general purposes ...	
,, educational purposes	
,, medical purposes...	
Total ...	
(*E*).—Miscellaneous—	
1.—Recoveries on account of services rendered to private individuals ...	
2.—Other items	
(*F*).—Extraordinary and Debt—	
1.—Sale-proceeds of Government securities and withdrawals from Savings Bank ...	
(*E*).—Contributions for general purposes (*d*)	
(*F*).—Miscellaneous—	
1.—Interest on loans—	
Previous year ...	
Current year ...	
Total ..	
2.—Actual cost of work done for private individuals ...	
3.—Other items—	
Printing charges, &c.	
Law charges ...	
Provident Fund ...	
Miscellaneous ...	
Total ...	
(*G*)—Extraordinary and debt	
1.—Investments ...	
In securities (other than for Sinking Fund)	
In Savings Bank ...	

(*a*) Under these heads [(A)1.—General Administration and (C)10.—Public Works] only such general charges are to be shown as cannot be properly shown under any of the other heads. Whenever establishment is employed or works are constructed for a particular purpose, the charge should be shown under the head to which that item belongs, and not under these heads.

(*b*) If the Public Works establishment be employed partly upon works connected with any of the other heads, the share of the charges debitable to those heads should be shown under those heads and not under this head.

(*c*) Cost of buildings erected or stores used for special works, *e.g.*, for water-works, should be charged to those works; cost of such buildings or stores only will be shown here as properly cannot be shown under any other head.

(*d*) Contribution should be classified according to the object for which they are made, *e.g.*, for schools under D.—Public Instruction, &c., a contribution not made for any particular purpose or for a purpose for which no separate head is provided should be charged under this head.

Budget Estimate of probable Receipts and Expenditure of Municipality for the year ending 31st March 19 .—(concld.)

Heads of Receipt.	Estimate for the year (19..0..).	Actual receipts for the year last completed (19..0..).	Actual receipts for nine months of current year (19..0..).	Sanctioned estimate for current year (19..0..).	Heads of Expenditure.	Estimate for next year.	Actual expenditure for the year last completed.	Actual expenditure for nine months of current year.	Sanctioned estimate for current year.
1	2	3	4	5	1	2	3	4	5
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
(*F*).—Extraordinary and debt—*contd.*					(*G*). Extraordinary and debt—*contd.*				
2.—Loans					2.—Payments to Sinking Fund				
From Government—					3.—Repayment for Loans				
Raised in the open market					4.—Advances ...				
Total ..					5.—Deposits				
3.—Realisations of Sinking Fund for repayment of loans					Total ...				
4.—Advances					Total Expenditure ...				
5.—Deposits					Probable surplus at the end of the year				
Total receipts ...					Grand Total				
Grand Total ...									

[Municipal Form No. IV.]

ORIGINAL CHALAN No.....

Chalan of money to the .....*Bank or Treasury, dated* ....191.....

By whom brought.	On what account.	Amount.
	Total Rs.	

Notes as on back

Silver and Copper

Total Rs

Treasurer.

Examined and entered

MUNICIPAL OFFICE, *Accountant.*

Dated.....191..

Cashier.

[Municipal Form No. IV.]

DUPLICATE CHALAN No.....

Chalan of money to the .....*Bank or Treasury, dated* . .. .191 . ..

By whom brought.	On what account.	Amount.
	Total Rs.	

Notes as on back

Silver and Copper

Total Rs.

Treasurer.

Examined and entered

MUNICIPAL OFFICE, *Accountant.*

Dated..... 191

Cashier.

[Municipal Form No. IV.]

TRIPLICATE CHALAN No.....

Chalan of money to the .....*Bank or Treasury, dated*. . .....191.....

By whom brought.	On what account.	Amount.
	Total Rs.	

Notes as on back

Silver and Copper

Total Rs.

Treasurer.

Examined and entered

MUNICIPAL OFFICE, *Accountant.*

Dated ....191 .

Cashier.

Municipal Form No. IV (C).

Numbers of Notes.	Amount.	Numbers of Notes.	Amount.	Numbers of Notes.	Amount.

[**Municipal Form No. X.**—*Treasury Cheque.*]

No.....

Date.....

.....

.....

Amount Rs.....

Chairman, Vice-Chairman, or Secretary.

No.....

.....MUNICIPALITY.

Dated....., *the*.....191...

TO THE OFFICER IN CHARGE OF .....TREASURY.

Pay to..... ...*or Bearer, the sum of Rupees*..... *and debit the amount to the* .....*Municipal Fund.*

(*Receipt stamp.*)

Chairman, Vice-Chairman, or Secretary.

CSL 428

[**Municipal Form No. XXIII**.—*Carriage and Animal Tax Register.*]

Register of the Tax on Carriages and on Horses and other Animals kept or used in the ordinary course of business within the Municipality of....., levied under Act III of 1884, Sections 131—141, during the half-year ending.....191 .

Name of license.	Number of license.	TO WHOM GRANTED.		PARTICULARS OF EACH LICENSE.									
				CARRIAGES.									
				Four-wheeled, drawn by two horses				Four-wheeled, drawn by one horse or by a pair of ponies under 13 hands.				Two-wheeled.	
		Name.	Residence.	No.	Amount.			No.	Amount.			No.	Amount.
1	2	3	4	5	6			7	8			9	10
					Rs.	A.	P.		Rs.	A.	P.		Rs. A. P.

ACCOUNT RULES. [APPENDIX.

Municipal Form No. XXIII—(Contd.)

PARTICULARS OF EACH LICENSE.								Arrears.	Total.	Initials of licensing officer.	BROUGHT ON TO CASHIER'S CASH-BOOK.		REMARKS.
HORSES AND ANIMALS.													
Horses.		Ponies under 13 hands, mules, and donkeys.		Elephants.		Camels.					Amount.	Date.	
No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.						
11	12	13	14	15	16	17	18	19	20	21	22	23	24
	Rs. A. P.		Rs. A. P.		Rs. A. P.		Rs. A. P.						

GSL

[Municipal Form No. XXIV.—*Carriage and Animal Licenses.*]

No. .....

LICENSE FOR CARRIAGES, HORSES, AND OTHER ANIMALS.

UNDER SECTION 133 OF ACT III (B.C.) OF 1884.

For the half-year ending .. ..19 .. ..

The Municipal Commissioners for..... ....
hereby grant unto..... .....*residing at No*..... ... .
in .....*this license to keep within* ... .
.....*the undermentioned carriages and animals:—*

No.	Description of carriages, etc.	Rate	Amount of tax received.		
		Rs.	Rs.	A.	P.
	4-wheeled carriage, drawn by two horses, @				
	4-wheeled carriage, drawn by one horse, or a pair of ponies under 13 hands, @				
	2-wheeled carriage, @				
	Horse, @				
	Pony under 13 hands, @				
	Mule, @				
	Donkey, @				
	Elephant, @				
	Camel, @				
	Penalties				
	Arrears				
	Total Rs ...				

This license is to cease on the..... . . .19 .....

MUNICIPAL OFFICE, Received payment.
The ....19... *Vice-Chairman.*

N.B.—This license is granted without prejudice to the rights of the Commissioner to proceed for any penalties already incurred.

[Municipal Form No. XXIV.—*Carriage and Animal License.*]

No. .....

LICENSE FOR CARRIAGES, HORSES, AND OTHER ANIMALS.

UNDER SECTION 133 OF ACT III (B.C.) OF 1884.

For the half-year ending ....19 .....

The Municipal Commissioners for .. ..

Municipal Form No. XXV.

[APPLICATION FOR CARRIAGE & ANIMAL LICENSE.]

DESCRIPTION IN WRITING referred to in section 133 of Act III of 1884 (B. C.)

Tax on Carriages and Animals.

Number of each description kept for any period during half-year ending.	Description of articles.	Rate per half-year.			Total for each description per half-year.			Remarks.
1	2	3						5
		Rs.	A.	P.	Rs.	A.	P.	
	4-wheeled carriage drawn by two horses							
	4-wheeled carriage drawn by one horse, or a pair of ponies under 13 hands							
	2-wheeled carriage ...							
	Horse							
	Pony under 13 hands, mule or donkey							
	Elephant							
	Camel							
	Total Rs. ..							

Being under section 133 of Act III of 1884 (B. C.) required to fill up in writing, sign, date, and return the above Schedule to the office of the Municipal Commissioners, Town of....., within the first month of the present half-year, I declare the above to be a true statement of every carriage, horse and every other animal in my possession of the kind specified in the fifth Schedule of the Act, liable to the tax under the above quoted section.

The.....19..... }

To THE CHAIRMAN OF THE MUNICIPALITY.

The tax under section 133 of Act III of 1884 (B.C.) shall not be imposed upon—

(*a*) Horses or ponies belonging to officers doing regimental duty at the rate of one animal for each officer.

(*b*) Animals exempt from any municipal tax under section 25 of the Indian Volunteers Act, 1869.

(*c*) Carriages or animals belonging to Government or to the Municipal Commissioners, or for keeping which, for the execution of their duty, an allowance is made by the Government, or by the Commissioners to any of their officers.

(*d*) Animals used by, or exclusively for the purpose of, any regiment.

(*e*) Horses or ponies used by police-officers at the rate of not more than one for each officer.

(*f*) Carriages, the wheels of which do not exceed 24 inches in diameter.

(*g*) Carriages or animals kept for sale by any *bonâ fide* dealer in such carriages or animals and not used for any other purposes.

Municipal Form No. XXXVII.

Register of Rents for which there is a fixed demand.

PARTICULARS OF THE LEASE.							DEMAND.									SECURITY DEPOSIT.				Initials of the Vice-Chairman.
Serial number.	Name of pound, &c., and situation.	Term of lease.	Period to run.	Name of lessee.	No. and date of agreement.	Instalments in which payable.	Arrear.			Rent for current year.			Total rent due.			No. of chalan. Date.	Amount paid.			
1	2	3	4	5	6	7	8			9			10			11				12
							Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.		Rs.	A.	P.	

COLLECTIONS SHOWING AMOUNT AND NUMBER OF CHALAN.

April.		May.		June.		Total to end of June.	July.		August.		Sept.	
No. of chalan.	Amount.	No. of chalan.	Amount.	No. of chalan.	Amount.		No. of chalan.	Amount.	No. of chalan.	Amount.	No. of chalan.	Amount.
13		14		15		16	17		18		19	
	Rs. A. P.		Rs. A. P.		Rs. A. P.	Rs. A. P.		Rs. A. P.		Rs. A. P.		Rs. A. P.

COLLECTIONS SHOWING AMOUNT AND NUMBER OF CHALAN.

Total to end of September.	October.		Nov.		Dec.		Total to end of December.	January.		February.	
	No. of chalan.	Amount.	No. of chalan.	Amount.	No. of chalan.	Amount.		No. of chalan.	Amount.	No. of chalan.	Amount.
20	21		22		23		24	25		26	
Rs. A. P.		Rs. A. P.		Rs. A. P.		Rs. A. P.	Rs. A. P.		Rs. A. P.		Rs. A. P.

March.		Total to end of March.	Remissions.	Total of collection and remissions.	Balance.	Remarks.
No. of chalan.	Amount.					
27		28	29	30	31	32
Rs. A. P.		Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A.	

Municipal Form No. XLIII.

Contract Certificate.

Number of this certificate.

Name of work.

Name of Contractor.

Authority for work.

Unit.	Quantity executed or supplied since last certificate.	Quantity executed or supplied up to date as per measurements.	Items.	Rate.	Amount. Up to date.	Amount. Since last certificate.	Remarks. (In the case of supplies the name of the receiving officers should be entered here.)
1	2	3	4	5	6	7	8
				Rs. A. P.	Rs. A. P	Rs. A. P.	
			Total value of work done or supplies made to date				
			Deduct value of work for supplies shown on last certificate ...				
			Net value of work done or supplies made since last certificate ...				

.....

Contractor.

Certified that the necessary detailed measurements have been taken by me on the .....19..., and are recorded at page ..... of my measurement book No. .....

....

Overseer or officer in charge of the work.

Dated the.....

Certified that the foregoing claim is correct and that the work has been satisfactorily completed.

.....

Vice-Chirman, Secretary, or Ward Commissioner.

MEMORANDUM OF PAYMENTS MADE.	Rs. A. P.	Rs. A. P.
Total value of work done ...		
Amount of previous payments from last certificate No. .....of ...		
Rs. A. P.		
Payments now made { By cash ... ; „ cheque No.... ; „ value of stock supplied ...		
Balance due ...		

Received Rs. ( ) ..... only, as per details above, on account of this work.

Stamp.

.....

Contractor.

Dated the.....19...

Witnesses { .... ; ..... }

Municipal Form No. XLIV.

Petty Contract Bill.

Bill for work done or Stock supplied when payment is made in full on the completion of the job.

N.B.—This form must not be used for payments on account, or for settlement of running accounts.

Name of petty contractor or supplier.	Name of work or supplies.	Reference to recorded measurements, or name of officer receiving the supplies.	Quantity.	Rate.	Amount.	Acknowledgment.
1	2	3	4	5	6	7
			Total ...		Rs. A. P.	

Dated the..... (*Signature.*)

Designation of officer preparing the bill.

Municipal Form No. XLV.

Measurement Book.

Municipality.

Measurement Book No.

Particulars.	No.	L. Length.	B. Breadth.	H. Height.	Contents or area.
1	2	3	4	5	6

Name of officer ...

Designation ... ...

Date of first entry ...

Date of last entry ...

N.B.—This portion should be printed in as a title page.

Municipal Form No. XLVI.

Name of work.....Nominal Muster Roll.

Description of labourers.	Number.	Name.	Father's name.	Date. 1	2	3	4	5	6	7	8	9	10	Total.	Rate.	Amount.	Date of payment.	Initials and remarks of paying officer or signature of labourer when he is able to write his name.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
																Rs. A. P.		
Grand total of the Muster Roll ...																		

Certified that the above payments have been made by me in person.

Signature.....

Designation of paying officer.

Municipal Form No. XLVII

REGISTER OF WORKS.

For accounts not to be kept by sub-heads.

Work commenced on.....

Name of work and authority	
Estimate	Rs.
Appropriation ...	Rs.

Voucher number.	Date.	Total value of work done.	Deduct unpaid amounts.	Total charges.	Initials of Vice-Chairman or Accountant.
1	2	3	4	5	6
Expenditure of previous year brought forward (if any)					

Work completed, completion report received on.....

Vice-Chairman.

GSL

Municipal Form No. XLVII (A.)

REGISTER OF WORKS. FOR ACCOUNTS TO BE KEPT BY SUB-HEADS.

Name of Work.....*authority*.....*appropritation for the year Rs*.....

Work commenced on.....

Voucher No.	Date.	Quantity.	Amount.	Quantity.	Amount.	Quantity.	Amount.	Quantity.	Amount.	Quantity.	Amount.	Quantity.	Amount.	TOTAL VALUE OF WORK DONE.	BALANCE DUE TO CONTRACTORS.	TOTAL CHARGES.	Initials of Vice-Chairman or Accountant.
														Amount.	Amount.	Amount.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
														Rs. A. P.	Rs. A. P.	Rs. A. P.	
Estimate No. ....of																	
Rate.																	
Expenditure of previous year brought forward (if any.)																	

Work completed, completion received on.....

Vice-Chairman.

Municipal Form No. XLVIII.

Stock and Store Register of the.....Municipality.

Name of article.....

Balance.	Received.			Total.	Issued.			Balance.	Signature of verifying officer.
	Date.	Number and date of voucher for purchase.	Number of articles.		Date.	Purpose for which issued.	Number of articles.		
1	2	3	4	5	6	7	8	9	10

Municipal Form No. XLIX.

SERVICE BOOK.

[*Opening page.*]

1. Name.
2. Race.
3. Residence.
4. Father's name and residence.
5. Date of birth by the Christian era as nearly as can be ascertained.
6. Exact height by measurement.
7. Personal marks for identification.*
8. Signature of officer whose services are therein recorded.*
9. Signature of Chairman.*

* *N.B.*—These two signatures and the personal marks should be renewed or re-attested at least every five years.

[*Second Page.*]

Appointment.	Whether substantive, permanent, acting, or temporary.	If acting, here state substantive appointment.	Pay.	Acting allowance.	Date of appointment.	Signature of officer whose services are herein recorded.
1	2	3	4	5	6	7

[*Third Page.*]

Signature and designation of Chairman or attesting officer.	Date of termination of appointment.	Reason of termination [such as promotion, transfer, dismissal, &c.]	Leave taken, nature and duration.	Signature and designation of Chairman or attesting officer.	Reference to any recorded punishment or censure or reward or praise of the officer.
1	2	3	4	5	6

FORM OF SECURITY BOND.

(*Rule* 7.)

KNOW ALL MEN by these presents that..... and held and firmly bound unto the CHAIRMAN OF THE MUNICIPAL COMMISSIONERS of.....hereinafter referred to as "The CHAIRMAN" in the sum of Rs..... .....to be paid to the.....his successors or assigns or his or their certain attorney, or attorneys for which payment well and truly to be made, I bind myself my heirs executors administrators and representatives firmly

by these presents sealed with my seal dated this.....day of .....19;.....and I do hereby for myself heirs executors administrators and representatives covenant with the Chairman his successors and assigns that if any suit shall be brought touching the subject-matter of this obligation or the condition hereunder written in any Court subject to the High Court of Judicature at Fort William in Bengal other than the said High Court in its Ordinary Original Civil Jurisdiction the same may at the instance of the Chairman be removed into tried and determined by the said High Court in its Extraordinary Original Civil Jurisdiction.

WHEREAS the above bounden.....has been appointed to and now holds and exercises the office of..... .....at.....and his duties at present are as follows.....

.....

.....

AND WHEREAS the said.....is further bound to keep true and faithful accounts of his dealings with all property and moneys which may come to his hands or possession or under his control such accounts to be in the form and manner that may from time to time be prescribed by duly constituted authority and also to prepare and submit such returns and such accounts and other documents as he may from time to time be called upon to do AND WHEREAS the said .....has been called upon by the Chairman in consideration of his said appointment to deliver to and deposit with and endorse over to the Chairman Government securities to the extent of* Rs.....and as he is not in a position to do this at once it has been arranged that he should monthly and every month pay to the Chairman (by deductions from his pay if the Chairman shall so think fit) the sum of Rs. .....until he shall have paid the full sum of Rs..... and Government securities for Rs.....shall have been purchased delivered to deposited with and endorsed over to the Chairman his successors or assigns for the purpose of in part securing and indemnifying the Chairman his successors and assigns against all loss injury or damage which he or they might or may in any way suffer by reason of the misconduct neglect default oversight or otherwise of the said

.....

.....or any person or persons acting under

* [This will be modified if the Government securities are deposited.]

him or for whom he may be held responsible AND WHEREAS the said.....has entered into the above bond in the penal sum of Rs.....conditioned for the due performance by him of the duties of the said office and of any other office to which he may be appointed at any time and of the duties appertaining thereto respectively or which may be required of him and for the indemnity of the Chairman against loss injury or damage as aforesaid. Now THE CONDITION of the above written bond is such that if the said.....has whilst he has held the said office of.....as aforesaid always duly performed and fulfilled the duties of the said office and if he shall whilst he shall hold the said office or any other office to which he may be appointed or in which he may act always duly perform and fulfil all and every the duties thereof and further shall and will monthly and every month pay to the Chairman his successors and assigns by deductions from his pay or otherwise the sum of Rs.....until he shall have paid the full sum of Rs.....and Government securities for Rs..... shall have been purchased delivered or deposited with or endorsed over to the Chairman his successors and assigns in manner aforesaid and shall also indemnify and save harmless the Chairman his successors and assigns and all and every the Corporation of person or persons concerned of and from all and every loss injury and damage which has been or shall or may at any time or times hereafter during the service or employment of the said.....in such office as aforesaid or in any other office be sustained or suffered by the Chairman his successors or assigns or any Corporation or person or persons concerned by or by reason of the act neglect failure misconduct default disobedience omission or insolvency of the said.....or of any person or persons acting under him or for whom he may be held responsible then this obligation shall be void and of no effect otherwise the same shall be and remain in full force and virtue *provided always* and it is hereby declared and agreed that the said sum of Rs.....to be so gradually deposited as aforesaid or the Government Promissory notes for Rs..... to be so purchased and retained or delivered as aforesaid respectively or such other Government security or securities to the smae amount as the Chairman may consent from time to time to accept and receive in lieu or in exchange for the same and the interest thereof respectively shall be and remain with the Chairman as such security to the Chairman as aforesaid with full power to the Chairman his successors or assigns as

occasion shall require to appropriate the said money or to sell and dispose of the said Government securities or a sufficient portion thereof with the interest thereof and to apply the proceeds thereof in and towards the indemnity as aforesaid of the Chairman or otherwise as aforesaid but nevertheless the interest of the said Government securities may in the meantime be paid over as the same shall be realized if the Chairman shall think fit to the said.....And it is hereby lastly agreed that on the final termination of the service of the said.....the said sum of Rs.....or the said Government Promissory notes for Rs.....as the case may be or any notes that may be substituted therefor and this Bond shall remain with the Chairman for.....calendar months as security against any loss that may have been incurred owing to the act neglect or default of the said.....or any other person or persons as aforesaid and which may not have been discovered until after the termination of his service and his liability hereunder shall continue until the expiry of the said term of.....calendar months.

NOTIFICATION.

No. 1313*M.*—*The* 1*st March* 1899.—It is hereby notified for general information that, in exercise of the power conferred on him by section 82 of the Bengal Municipal Act, III of 1884, as amended up to November 1896, the Lieutenant-Governor is pleased, in continuation of Rule 7 of the Municipal Account Rules, promulgated with Government Notification No. 5472M., dated the 13th December 1897, which appeared at pages 297 to 358, Part IB of the *Calcutta Gazette* of the 15th idem, to prescribe the following additional form of security bond for municipal employés who are allowed to give security in landed property.

E. N. BAKER,

Offg. Secy. to the Govt. of Bengal.

FORM OF SECURITY BOND.]

(*Rule* 7.)

KNOW ALL MEN by these presents that

of

son of

is held

and firmly bound unto the CHAIRMAN OF THE MUNICIPAL COMMISSIONERS of
in the district of
hereinafter referred to as the CHAIRMAN in the su of Rs.
to be paid to the CHAIRMAN his successors or assigns or his or their certain attorney or attorneys for which payment well and truly to be made I bind myself my heirs executors administrators and representatives firmly by these presents sealed with my seal dated this
day of 19 and I do hereby for my heirs executors administrators and representatives covenant with the CHAIRMAN his successors and assigns that if any suit shall be brought touching the subject-matter of this obligation or the condition hereunder written in any Court subject to the High Court of Judicature at Fort William in Bengal other than the said High Court in its Ordinary Original Civil Jurisdiction the same may at the instance of the CHAIRMAN his successors or assigns be removed into tried and determined by the said High Court in its Extraordinary Original Civil Jurisdiction.

WHEREAS the above bounden
has been appointed to and now holds and exercises the office of
at
and his duties at present are as follows
AND WHEREAS the said
is further bound to keep true and faithful accounts of his dealings with all property and moneys which may come to his hands or possession or under his control such account to be in the form and manner that may from time to time be prescribed by duly constituted authority and also to prepare and submit such returns and such accounts and other documents as he may from time to time be called upon to do AND WHEREAS it was one of the conditions of the employment of the said
as such as aforesaid that he the said
should for the purpose of in part securing and indemnifying the CHAIRMAN his successors and assigns against all loss injury and damage which he or they might or may in any way suffer by reason of the misconduct neglect default oversight or otherwise of the said or any person or persons acting under him or for whom he may be held responsible execute a formal mortgage of the hereditaments and premises in the schedule hereto shortly described to secure

the payment by him to the CHAIRMAN of the sum of Rs.

AND WHEREAS

he the said has accordingly by formal mortgage of even date herewith granted conveyed and assigned unto the CHAIRMAN the hereditaments and premises in the schedule hereto shortly described to secure the payment to the CHAIRMAN subject to the conditions in such Indenture contained of the said sum of Rs.

AND WHEREAS the said has entered into the above bond in the penal sum of Rs. conditioned for the due performance by him of the duties of the said office and of any other office to which he may be appointed at any time and of the duties appertaining thereto respectively of which may be required of him and for the indemnity of the CHAIRMAN against loss injury and damage as aforesaid now the condition of the above written bond is such that if the said has whilst he has held the said office of as aforesaid always duly performed and fulfilled the duties of the said office and if he shall whilst he shall hold the said office or any other office to which he may from time to time be appointed or in which he may act always duly perform and fulfil all and every the duties thereof and shall also indemnify and save harmless the CHAIRMAN his successors and assigns and all and every the Corporation or person or persons concerned of and from all and every loss injury and damage which has been or shall or may at any time hereafter during the service or employment of the said in such office as aforesaid or in any other office be sustained or suffered by the CHAIRMAN his successors or assigns or any Corporation or person or persons concerned by or by reason of the act neglect failure misconduct default disobedience omission or insolvency of the said or of any person or persons acting under him or for whom he may be held responsible then this obligation shall be void and of no effect otherwise the same shall be and remain in full force and virtue.

Signed, &c.

The Schedule above referred to.

THIS INDENTURE made the day of 19

between

of

son of

of

of the one part and the Chairman of the Municipal Commissioner

of in the district of hereinafter called the mortgagee of the other part.

WHEREAS the said on the day of 19 entered into a bond with the mortgagee in the sum of Rs. to secure the due performance by the said of his duties as at and of the duties of any other office to which he may be appointed at any time.

AND WHEREAS it was one of the conditions of the employment of the said as such as aforesaid that he the said should execute a formal mortgage of the hereditaments and premises in the schedule hereto described to secure the payment to the mortgagee of the sum of Rs.

NOW THIS INDENTURE witnesseth that in pursuance of and for effectuating the said condition and in consideration of the premises he the said doth hereby grant convey and assign unto the mortgagee all that and those the lands hereditaments and premises in the said schedule hereto described together with their respective appurtenances and all the estate right title and interest whatsoever of the said into out of or upon the same premises or any part thereof and all deeds pattas evidences and writings or other muniments of title whatsoever relating to the said hereditaments and premises or any part thereof and now in the custody power or control of the said

TO HAVE AND TO HOLD the said lands and hereditaments and all and singular other the premises hereinbefore expressed to be hereby assured with their appurtenances (all which hereditaments and premises are hereinafter referred to "as the said mortgaged premises") unto the mortgagee for ever freed and discharged from all claims and demands but subject nevertheless to the proviso for redemption next hereinafter contained: PROVIDED always and it is hereby agreed and declared that if the said his heirs executors administrators representatives or assigns or some or one of them shall at all times carry out and perform all and every the conditions set forth in the said bond and on his part to be performed and observed then and at any time not earlier

than six months after a final adjustment of account between the said
or his representatives on the one part and the mortgagee or his representatives or his or their successors in office on the other part the mortgagee shall upon the request and at the costs and charges in all things of the said
or his representatives reconvey the said mortgaged premises unto the said
his heirs executors administrators representatives or assigns or as heor they shall direct: PROVIDED ALSO and it is hereby further agreed and declared that it shall be lawful for the mortgagee at any time after the said
shall have failed to carry out and perform any of the conditons set forth in the said bond without any further consent on his part to make sale and dispose of the said mortgaged premises or any part thereof either by public auction or private contract and either together or in parcels and either subject or not subject to any special or other conditions or stipulations relative to title or evidence of title or otherwise as may appear expedient and with full power to buy in the same or any part thereof at any auction and to rescind or vary the terms of any contract for sale and to re-sell without being answerable for any loss occasioned thereby and otherwise to act in relation to such sale or sales as may be deemed expedient and for the purposes aforesaid or any of them to execute and do all such assurances and things as to the mortgagee shall seem proper: PROVIDED nevertheless and it is hereby agreed and declared that upon any sale purporting to be made in pursuance of the aforesaid power in that behalf the purchaser or purchasers shall not be bound to see or enquire whether any such failure as aforesaid has happened or as to the necessity or expediency or regularity of such sale and notwithstanding any irregularity or impropriety whatsoever in any such sale the same shall as far as regards the safety and protection of the purchaser or purchasers and whether he or they shall have bought with notice thereof or not be within the aforesaid power of sale in that behalf and be valid and effectual accordingly and the remedy of the said
his heirs executors administrators representatives or assigns in respect of any impropriety or irregularity whatsoever in any such sale shall be in damages only and it is also agreed and declared that upon any such sale as aforesaid the receipt of the mortgagee for the purchase-money of the premises sold shall effectually discharge the purchaser or purchasers therefrom and from being concerned to see to the application or being answerable for any loss or misapplication or

non-application thereof and it is further agreed and declared that the mortgagee shall by and out of the moneys which shall arise from any such sale as aforesaid in the first place reimburse himself or pay and discharge all the costs and expenses incurred in or about such sale or otherwise in respect of the said premises and in the next place apply such moneys in or towards the payment or satisfaction of the said sum of Rs.
and then hold the surplus if any in trust for the sale

PROVIDED ALSO

and it is hereby agreed and declared that the mortgagee shall not be answerable or accountable for any involuntary losses which may happen in or about the exercise of the aforesaid power and trusts in any of them: PROVIDED ALSO and it is hereby agreed and declared all the rights and powers by the Indian Contract Act, 1872 and by the Transfer of Property Act, 1882 respectively conferred upon a mortgagee or pledgee which are in any way applicable to a security of the nature of these presents and which do not in any way conflict with or restrict any of the powers herein expressly set forth shall be deemed as incorporated herein and as hereby empowering the mortgagee his successors in office or assigns to exercise the said rights and powers or any of them and the said doth hereby for himself his heirs executors administrators and representatives covenant with the mortgagee his successors in office and assigns as mentioned in section 65 of the said Act IV of 1882 and that the covenants mentioned in that section shall be considered as embodied in and as forming part of these presents. IN WITNESS whereof the same parties to these presents have hereunto affixed their hands and seals the day and year before written.

Signed sealed and delivered by the abovenamed
in } Seal.
the presence of

The Schedule above referred to.

APPENDIX A.

Procedure to be adopted by Municipalities for the collection of the tax on persons occupying holdings, the rate on the annual value of holdings, latrine rate, lighting rate, and the water rate.

GENERAL.

1. In municipalities in which there is a responsible paid Secretary, any duties which are assigned to the Vice-Chairman

in the rules contained in this Appendix may, under the written orders of the Chairman, be performed by the Secretary.

2. The general principle of the following rules is that there shall be a Demand Register, in which all changes in the demand are to be entered and from which the bills are to be prepared. The bills, when written out, are to be entered in a Bill Register in which the satisfaction of the bills by collection or remission is to be posted, and the total of the bills issued as shown in this Register must agree with the total of the demend for the same quarter in the Demand Register. For each officer entrusted with the collection of bills an account or ledger is to be kept, in which he will be debited with the demand for the quarter as shown in the Demand and Bill Registers, and credited with the collections and remissions. These accounts are to be closed and balanced monthly, and the totals of the several accounts are to be brought together in the form of a progress statement to show the state of the entire collections.

The rules for carrying out the principles indicated above allow of alternative methods to meet the requirements of the largest and smallest municipalities. If there is a sufficient establishment it is desirable to keep the Assessment Department distinct from the Collection Department. The former, which might be placed in charge of the Head Clerk, should keep the Demand and Mutation Registers and prepare the bills and progress statements, and the latter should deal with the collections and post the settlement of the bills in the Bill Register. But if the same officer is in charge of the Collection and Assessment Departments, the Demand and Bill Registers may be combined (*see* Rule 13), and the Remission Register may, if convenient, be combined with the sarkar's ledger (*see* Rules 27 and 49). The Vice-Chairman shall apportion the duties between the Head Clerk or Accountant and the Tax-Daroga so as to distribute the work evenly, and to keep, if possible, a cross check on the accounts of the Collection Department. The sarkars who are employed in the actual work of collection shall not, however, be allowed to prepare the bills or have access to the Bill Register (*see* Rule 40), and the Accountant or Head Clerk shall in every case audit the cancelled bills, as provided in Rule 23, and check the progress statements (Rule 51).

Division of the Municipal Area into Circles.

3. The Municipality shall be divided into collecting circles by a calculation based on the area of ground to be

traversed and the number of bills to be delivered. Each circle shall be numbered, and to each circle shall be appointed a sarkar. The collecting circles should be as compact as possible, and so arranged as to distribute the work of tax-collecting evenly among the sarkars. No collecting circle shall contain more houses than can be visited by one sarkar during the working days of a month.

4. The circles having been determined, and the assessment list, or the valuation and rating list prescribed by section 112 of the Act, having been published, the registers of the municipal rates and taxes shall be opened.

5. Whenever a Municipality levies a house-rate upon owners and also a rate or rates upon occupiers for water, lighting and latrines, a double set of registers shall be opened, *i.e.*, one set for owners and the other for occupiers. When two or more rates are chargeable to the occupier, they may be drawn on one bill; and, if found convenient, the necessary additional columns may be introduced in the forms and registers, so as to avoid keeping a separate set for each rate. If the names shown in the rating list for latrine or other special rates do not differ in more than 5 per cent. of the cases from those shown in the assessment list for house-rates, the Municipalty may with the previous approval of the Examiner of Local Accounts, maintain only one set of registers, the name of the occupier when different from that of the owner being entered in the register immediately below it. Where the names are identical, or where the special rate is recoverable from the owner, the Municipality may issue a combined bill for all rates. In other cases separate bills must be issued.

6. When the tax on persons and the rate on holdings are both in force in the same municipality, duplication of the forms may be avoided by making the divisions of the collecting circles coincident with the wards in which each rate is imposed. By this means there will be a complete division of the two rates throughout the accounts, but it may be found preferable to keep a separate progress statement, Form L, for each rate.

7. The following is a list of the forms and registers which shall be kept :—

A or B.—Demand Registers, by circles.

C.—Petition Register. (This may, if convenient, be kept by circles.)

D.—Mutation Register, by circles.
E.—Remission Register, by circles. This may be dispensed with in certain cases. (*See* Rule 27.)
F.—Bill forms.
G.—Stock-books.
H.—Bill Register, by circles. (This may be combined with the Demand Register, Form B—*see* Rule 13.)
I.—Sarkars' Collection Registers, by circles.
J.—Transit Register, by circles.
K.—Sarkars' Ledger, by circles.
L.—Progress Statement for entire demand.
M.—Register of Warrants issued. (This may, if convenient, be kept by circles.)

THE DEMAND REGISTERS.

8. The Demand Register shall be in Form A.

Form A.

CIRCLE No. .

Demand Register of the for 19 19 .

Number on assessment or rating and valuation list.	Description of holding.	Name of assessee.	As per first demand.		SUBSEQUENT REVISIONS.			Reference to entry in mutation register.	Initials of the Vice-Chairman.	REMARKS.
			Annual value.	Quarterly instalment.	Date of revising order.	Future rate. Annual value.	Future rate. Quarterly instalment.			
1	2	3	4	5	6	7	8	9	10	11

A separate volume shall be assigned to each collecting circle. Columns 1 to 5 shall be filled up from the assessment or rating list. Sufficient space shall be left between each name for posting revisions. Spaces may also be left at the end of each street or mahalla or other convenient interval for the insertion of new holdings brought under assessment.

9. Before the preparation of the bills is commenced, the Demand Register shall be totalled. This should be done if possible, at least a month before the beginning of the first quarter of the year from which the revised assessment will take effect. The totalling may, if it be found convenient, be made by sub-divisions, but these subsidiary totals must be carried forward or summed on a separate page of the Demand Register, so as to arrive at the total of the circle. When the total has been struck, the Vice-Chairman, Secretary or a Commissioner appointed for the purpose shall carefully compare the entries in columns 1 to 5 with the assessment or rating list, and with the orders of the Commissioners of appeal, and shall sign the register in token of having made this comparison.

10. As petitions against the rating list come in (see Rules 16 and 17 below), the number and date of each shall be noted in column 11, "Remarks." Any reduction allowed after the Demand Register has been written up, but before it has been totalled and the preparation or the bills has commenced, shall be entered in the assessment list or rating and valuation list, and the entries in columns 4 and 5 of the Demand Register shall be corrected, but all subsequent alterations shall be noted in columns 6 to 8, with reference to the orders of reduction or enhancement contained in the file of orders and the Mutation Register.

11. The Vice-Chairman shall take care that the Demand Registers are free from erasures, and no alterations shall be made in them except under the initials of the Vice-Chairman or other officer empowered to sign for him.

12. The total originally struck in the Demand Register shows the demand for the first quarter of the assessment. To arrive at the demand for the second quarter it is necessary to add the new and enhanced assessments made during the first quarter, which take effect from the second quarter, and similarly to deduct permanent remissions or reductions in the demand. The calculation shown thus :—

	Rs.
Demand for first quarter of as per column 5, Demand Register	....
Add new and enhanced assessments ..	....
TOTAL ..	....
Deduct remissions and reductions	....
Demand for the second quarter of	....

and so on, from quarter to quarter, until the assessment is revised. These entries may be made in continuation of the original total struck in the Demand Register, or they may be noted in an abstract on the opening page. The total of all the circles may also, if desired, be brought into one view in a separate abstract.

NOTE.—If the percentage on the valuation at which the rate is levied is changed under section 102 of the Act during the currency of the assessment, it will be necessary to correct the Demand Register in accordance with section 98A. This may be done by correcting the figures in columns 4 and 5 or 7 and 8, Form A; or, if the alteration is foreseen by providing an additional column or columns between 5 and 6; or by re-writing the Demand Register.

13. The Demand Register is the principal record of the Assessment Department, and the officer in charge of that department shall be responsible for seeing that it is correctly prepared, and that all alterations therein are attested by the proper authority. When, however, the same officer controls the Collection and Assessment Departments, the Demand Register may be kept in Form B, which also serves the purposes of the Bill Register.

Form B.

CIRCLE No. .

Demand and Bill Register of the *for* 19 19 .

DEMAND REGISTER.					BILL REGISTER.					
					First quarter.					A set of columns similar to numbers 6 to 10 for 2nd, 3rd and 4th quarters respectively.
							Paid or remitted.			
Number on valuation or assessment list.	Situation of holding.	Name of assessee.	Annual assessment.	Quarterly tax.	Printed serial number of bill.	Amount.	Amount.	Date.	Remarks.	
1	2	3	4	5	6	7	8	9	10	11 to 25

NOTE.—Any necessary particulars regarding remissions can be entered in columns 10, 15, 20 and 25. "Remarks," or columns 8 and 9, may be sub-divided, so as to show remissions separately from payments. (See Rule 38 below.) The "Remarks" columns may also be used to record the receipt of notice of vacancy.

14. The demand portion of this Register (columns 1 to 5) shall be prepared in accordance with the directions given in Rules 8 to 12 above, except that all corrections will be made by altering the figures shown in columns 4 and 5. If, however, this is found to be inconvenient, additional columns (6 to 8, Form A) may be inserted to show the revisions.

15. The Register will require to be re-written annually during the last quarter of each year. Careful comparison must then be made of the entries relating to the assessment, columns 1 to 5, in the old and new registers, and the total of the first quarter brought out by addition shall be proved with the figures arrived at by adding to, and deducting from, the demand of the last quarter of the previous year, the increases and decreases in the Mutation Register. The Vice-Chairman shall sign the Register in token that the agreement has been made. The portion relating to the settlement of the demand will be written up in the same manner as the Bill Register, Form H, as provided in Rules 38 and 39 below.

Petitions.

16. Petitions against the assessment should, if possible, be presented in forms of a uniform pattern. The use of the form annexed to these rules is suggested for this purpose.

17. Petitions shall be registered in Form C by means of which the progress made in dealing with petitions shall be watched.

Form C.

Petition Register.

Register of Petition for exemption from or reduction of.....

Serial No.	Name of petitioner.	Holdings to which the petition relates.			Date of receipt of petition.	Date when passed on by Vice Chairman to revising authorities.	Date of orders passed on petition.	Remarks and note of whether entry has been made in the Remission Register.
		Circle.	Sub-division.	No. of list published under section 112 or on register of new and improved holdings				
1	2	3	4	5	6	7	8	9

GSL

Changes in the Demand.

18. All permanent alterations in the demand, whether as increases by new assessments, or the enhancement of the existing assessments, or as decreases by the cancellation or reduction of existing assessments, shall be recorded in the Register of Mutations in Form D.

Form D.

Mutation Register.

Register of changes in the permanent demand made during the quarter ending.

Serial number.	Date of order.	Sub-division.	Number of holding, if any, in Demand Register.	Name and description of holding.	Effect on Demand.		Remarks.	Initials of Vice-Chairman.
					+ Increase.	− Decrease.		
1	2	3	4	5	6	7	8	9

19. This Register shall be written up from the orders passed by the revising authority, and shall be totalled at the close of each quarter. The total of the increases shall then be added to the previous quarter's demand in the Demand Register, and from the sum shall be deducted the total of the decreases so as to work out the demand of the ensuing quarter (see Rule 12).

20. As soon as the revising order has been passed and registered, it shall be made over to the assessor or other officer in charge of the Demand Register, who shall correct the demand and shall give a certificate on the order to the following effect :—

" Certified that the corrections in the demand directed by these

orders have been entered in the Demand Register." The order shall then be placed in a file with the other orders of the same quarter.

21. As an alternative system the details of the order may be entered in Form D either in the column "Remarks" or in an additional column to be opened between columns 5 and 6. The corrections in the Demand Register shall then be made with reference to the entries in the Mutation Register, each of which shall be initialled by the officer making the correction; and the certificate in the form prescribed in Rule 20 above shall be given at the foot of the Mutation Register after it has been totalled.

22. The alteration in the demand to be entered in Form D will not be retrospective. If occasion for a retrospective addition to the demand arises, as for instance by applying section 94 of the Municipal Act, it will be necessary to issue a supplementary bill, and to correct the opening demand of the current quarter; but in view of the inconvenience to which such changes give rise, it is desirable to defer all increases in the assessment until the beginning of the next quarter.

Remission of Bills.

23. When the Bill Register for any quarter has been closed, every bill entered therein must be satisfied either by collection or remission or partly by each method. The manner of dealing with the remissions shall be as follows:—

First.—If the demand has been entirely remitted, the order of remission, together with the receipts and counterfoils, shall be placed before the Vice-Chairman or the officer in charge of the Assessment Department, who shall see that both the receipts and counterfoils are stamped "Cancelled" in large type, and shall initial the former in token of having compared them with the orders. The receipts (with the bills attached, if they have not been served) shall then be removed from the counterfoils and be given to the Accountant, together with the remission orders. The Accountant shall compare the receipts with the orders, and after giving a certificate of agreement on the order, shall retain the bills in safe custody for scrutiny and destruction by the Local Auditor.

Secondly.—If the demand has been remitted in part only, the necessary corrections shall be made in the counterfoil and the receipt, and also in the bill, if it has not been issued, and

shall be initialled by the Vice-Chairman, who shall also initial the remission order. If the two rates are drawn in one bill, and one of them is remitted in full, the remission shall be attested by the Vice-Chairman as if it were a partial remission of one rate.

24. After the orders have been compared by the Acountant or the Vice-Chairman with the cancelled or corrected bills, as provided above, the orders shall be made over to the Bill Register poster, who shall return them with a certificate that the necessary postings have been made in the Bill Register. The remissions shown in lists shall next be entered in the Remission Register or the sarkar's ledger (see Rules 26—27), and the list shall then be placed in a guard file.

25. For remissions granted for one quarter or one holding it is unnecessary to have a standard form of remission order, but the period for which the remission is granted shall always be clearly stated. If many remissions are granted by one order, either as a legal reduction on account of vacancy, &c., or to clear the accounts of irrecoverable demands, the amounts to be remitted should be entered in the lists in columns according to the quarter to which they belong, the headings being as shown below :—

	Previous year.				Current year.				
Old arrears.	1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	Remarks.
1	2	3	4	5	6	7	8	9	10

The total of these lists should be given both in words and figures when they are passed by the revising authority.

26. An index to the file of remission order shall be kept in the Remission Register, Form E.

Form E.

CIRCLE NO.....

Register of remission orders for.....granted during the month of.....

Serial number.	Date of order.	Old arrears.	PREVIOUS YEAR.				CURRENT YEAR.				Initial of Vice Chairman.
			1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	
1	2	3	4	5	6	7	8	9	10	11	12

This form gives all the essential information, but the Commissioners may, if they so desire, insert additional columns to show the names of the rate-payers, the number and locality of the holding, and the amount of the original assessment, so that a complete record of the remissions may remain in the Remission Register in case the remission orders are lost. At the close of each month the register shall be totalled and the total of each of the quarterly columns 3 to 11 shall be entered in the sarkar's ledger (Form K) [see Rule 49].

27. As an alternative system, a detailed record of the remission orders may be kept in the sarkar's ledger (see Rule 49), and the Remission Registers may be dispensed with.

Bills and Bill Forms.

28. Bills for municipal rates shall ordinarily be in three parts in Form F, the receipt portion being printed in red ink. The sample form given below is for the rate on holdings :—

Form F.

No. ..MUNICIPALITY OF .....

COUNTERFOIL FORM No.....

Rate on Holdings Bill.

Collecting Circle .....

Sub-division .....

Number of holding on Valuation Register ...

Name of owner.....

Bill for the .... quarter of 19.....

Rs. A. P.

Amount ...

Date of bill .....

Date of service of bill ...

Date of service of notice of demand .....

Date of service of warrant.....

Date of payment.....

Sarkar.

[*N.B.*—If the rate is recovered from the occupier under the provisions of section 105, the name of the occupier must also be stated.]

No....MUNICIPALITY OF.....

Receipt for rate on holdings paid to be given to the rate-prayer under section 119, *Act III* (*B. C.*) *of* 1884.

(Name.)

.....

Owner of holding shown in the Municipal Registers as No. .....in collecting Circle ..... and in the .....Sub-division .....

..... Dr.

To quarterly instalment of rate on holdings payable in advance on the first day of the quarter on account of the above mentioned holding for the quarter ending... .....19.....

Rs. A. P.

Amount ...

Received payment.

Municipal Seal.

Sarkar.

Vice-Chairman.

DATED AT ... | *The*..... 19.... |

N.B.—This receipt will not be valid unless signed by the Tax Collector or Cashier.

No....MUNICIPALITY OF.....

Bill due for rate on holdings, under section 120 *of Act III* (*B. C.*) *of* 1884.

(Name.)

.....

Owner of holding shown in the Municipal Registers as No.....in collecting Circle..... and in the ..... Sub-division.....

..... Dr.

To quarterly instalment of rate of holdings payable in advance on the first day of the quarter on account of the above mentioned holding for the quarter ending.. ..... 19.....

Rs. A. P.

Amount ...

Date of service of this bill .....

Vice-Chairman.

N.B.—This bill should not be accepted as a receipt. On payment of the tax, the separate receipt printed in red ink should be demanded and it should be seen that it bears the same printed numbers as the bill delivered previously, and that a separate receipt is given for each quarter's tax.

29. If the circumstances of the municipality admit of all bills being served without leaving them with the rate-payers, the third portion of Form F may be dispensed with, and the second portion with the alteration of the heading to "bill and receipt, &c." may be used both as the bill and the receipt. In this case the third part shall not be printed.

30. An estimate shall be made of the number of forms likely to be required for a year's consumption, and the complete year's supply shall be consecutively numbered and stitched in books, each containing 100 forms. Arrangement may be made with the Superintendent of Government Printing at Calcutta to supply the bill forms printed in Engish or in the vernacular, or in both languages.

31. The surplus forms, which will be very few in number, if proper care be taken in making the estimate and indents, shall be destroyed by the Vice-Chairman at the end of each year.

32. The Vice-Chairman or Secretary shall keep the stock of bill forms in his personal custody, and under lock and key. On receipt of the forms from the press they shall be counted under the supervision of the Vice-Chairman or Secretary, and on the fly-leaf or corner of each book shall be noted the number of forms it contains attested by the initial of the person who counted them. The bills shall then be entered in the stock register of bill forms.

Form G.

Stock Register of bill forms for the.....rate.

Date.	Particulars, i.e., whether received or issued.	From whom received or to whom issued.	Special Number.		Number of forms.	Remarks.
			From.	To.		
1	2	3	4	5	6	7
	Received					
	Balance					
	Issued					
	Received					
	Balance					
	Issued					
	Received					
	Balance					

33. All issues, whether to the bill-writers or for the purpose of destruction of the surplus forms (Rule 31), shall be recorded in this register. Bills returned by the bill-writers to the Tax-Daroga or Assessor will not be shewn in this register, but it any entire books of forms are unused, they should be returned into stock as a receipt. If the balance becomes broken into two or more series, it will be necessary to bracket the figures in columns 4 and 5, showing each series separately.

34. To ensure that the bill-writers deliver back all forms which they have been entrusted to fill up, the Assessor or Tax-Daroga shall prepare a statement in the following form which shall be signed by the Vice-Chairan :—

Number of bills issued as per Stock Register ..
Add unused bills issued in previous quarter (if any)

Total A

Number of holdings or persons assessed in circle
Number of spoilt forms (if any) .. ..
Number of bills, if any, see Rule 33, returned to stock .. ..

Total B
Balance A *minus* B consisting of bills No. .....to

Assessor or Tax-Daroga. *Vice-Chairman.*

35. The bills forming the balance should either be cancelled or (except in the last quarter of the year) they may be left in the bill books and be used for the next quarter's demand. The latter course should be adopted only when the number of unused bills is large, and particular care must be taken to record the balance correctly in the memorandum prescribed in the preceding rule.

36. The bills shall be filled up from the Demand Register, Form A (or columns 1 to 5, Form B). Before the bills are brought to be signed they should be compared with the De and Register by some responsible officer, who shall record a certificate in the fly-leaf of each book as follows :—" I hereby certify that I have examined this bill book and have ascertained the correctness of the numbering and correspondence of the sums and names in the bills and receipts and counterfoils, with the Demand Register, and I certify that the number of forms in this book for the.....rate for the.....quarter of.....amount to.....(in words)." This certificate may be printed on the fly-leaves of the bill books.

37. The bill shall be signed or stamped with a *fac-simile* signature by the Chairman, Vice-Chairman, Secretary, or the Commissioner for the ward to which the bills belong, and the signing officer shall satisfy himself that the comparison of the bills with the Demand Register has been carefully made.

If a *fac-simile* stamp be used, it shall always be kept in the personal custody of the officer whose signature it represents, and shall never be used except in his presence and actually in his sight.

Bill Register.

38. The Bill Register, Form H, shall be prepared from the signed bills. The form provides separate columns for noting payments and remissions, but if it is important to economise space, as when two rates are entered in the same register, one column will suffice both for collections and remissions, the latter being posted in red ink or with a distinguishing mark.

Form H.

Circle No.....

Register of Bills for.....'...for the year.....

Sub-division.	No. of holding on the Demand Register.	Name of owner.	1st Quarter.						A set of columns, similar to Nos. 4 to 9 for 2nd, 3rd and 4th quarters, respectively.	Remarks.
			Printed serial number of bill.	Amount of bill.	How satisfied.					
					Paid.		Remitted.			
					Amount.	Date.	Amount.	Date.		
1	2	3	4	5	6	7	8	9	10 to 27	28

39. The columns "Amount of bill" shall be totalled and agreed with the demand for the same quarter shown in the Demand Register (*see* Rules 12 and 15), and until the agreement has been made and certified to by the signature of the Vice-Chairman or Secretary in both registers, the bills shall not be issued for collection. As soon as the bills have been issued, the demand for each circle should be entered in the sarkar's ledger, whence it will pass into the progress statement.

40. The satisfaction of the bills by payment or remission shall be posted daily in the Bill Registers, and the Vice-Chairman shall be personally responsible for seeing that the work does not fall into arrears. The collecting sakars shall not be allowed to have access to these registers.

Service of Bills.

41. When the Bill Registers have been completed in accordance with Rule 39, the bills shall be made over to the

Tax-daroga for collection. Subject to the general control of the Tax-daroga, each sarkar shall be responsible for the collection and disposal of the bills connected with the particular circle assigned to him. The Tax-daroga shall distribute the bills to the sarkars, and shall be responsible for seeing that the sarkars do not retain in their possession any bills for a longer period than is necessary for actual delivery and that all receipts which have been removed from the counterfoils have been credited in the collection-registers.

42. The Tax-daroga shall commence the service of the bills on the first day of the quarter by making over to each of the sarkars one or more books of his circle for delivery to the rate-payers. If the tax be paid upon presentation of the bills, the sarkars shall sign the red receipt which he shall deliver to the tax-payer and shall note the date of payment in the counterfoil of the bill, and enter details of each paid bill in the daily register of collection, Form I.

Form I.

CIRCLE NO.....

Sarkar's Daily Register of Collections on account of.....

Date.	Sub-division.	Number of holding.	Owner.	Number of bill.	Old arrears.	Amount received on account of the previous year.					Amount received on account of this year.				Total current.	Grand Total.	Warrant Fees.	Remarks and note of any bill paid to the Cashier at office.
						First quarter.	Second quarter.	Third quarter.	Fourth quarter.	Total arrears.	First quarter.	Second quarter.	Third quarter.	Fourth quarter.				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

NOTE.—Columns 11 and 16 may be omitted if the specification of "total arrears" and "total current" is given below total of each day's collection.

43. If the tax be not paid on presentation of the bill, the sarkar shall (if triplicate bills be used) separate the bill from the receipt and serve the bill in manner prescribed in section 356 of the Act. He shall at the same time, whenever possible, mention the date when he will again demand payment. The date of service shall be noted in the counterfoil The receipt shall not be detached from the counterfoil, except on payment or remission in full of the demand, and it shall be the duty of the Tax-daroga to bring to the notice of the Vice-Chairman any instance in which he may detect an infringement of the rule.

44. The sarkar shall return to the Municipal Office either every day or, if so permitted by the Vice-Chairman, every alternate day, and shall deliver to the Tax-daroga all the money he has collected, together with the Daily Register, Form I, and the bill books in his possession.

The Tax-daroga or his assistant shall check the account by comparing the credits with the counterfoils, and after initialling the latter, he shall cursorily run through the books and see that there are no counterfoils from which the receipts are missing, which have not been initialled by him or his assistant or by the officer attesting remissions. He shall then total the Register and see that it corresponds with the money given to him by the sarkar, and if all is in order, he shall initial the account in token of having received the money. If the service of the bills in the book or books in the possession of the sarkar has been completed, he shall return them to the Tax-daroga, and take away a fresh batch for service.

45. Each batch of bills handed over to the sarkars for service shall be entered in a Transit Register in Form J.

Form J.

CIRCLE NO.....

Transit Register.

Date.	Name of sarkar.	Number of bill file.	Quarter.	Number of bills in file.	Sarkar's receipt.	Number of bills collected.	Number returned.	Tax-daroga's signature.	Date.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11

When arrears are due, the sarkar must take with him the books for those quarters as well as for the current quarter, but all bill books taken away by the sarkars shall be entered in Form J, the sarkars giving an acknowledgment of their receipt and the Tax-daroga of their return to him.

46. If the sarkar takes the Daily Register with him on his rounds, he shall be provided with two copies, which he shall use alternately, and he shall leave one copy in the office to enable the Tax-daroga to post his books. If, however, owing to the size of the Register or to there being more than one kind of tax, the Register is inconveniently large to carry, he may take with him a note-book in the following form :—

Name.	No. of bill.	Whether for last or current year.	For what quarter.	House.			Latrine.			Water.		
1	2	3	4	5			6			7		
				Rs.	A.	P.	Rs.	A.	P	Rs.	A.	P.

The entries in this book shall be transcribed into the Daily Collection Register, and when filled up, it shall be returned to the office for record.

NOTE.—If the taxes are collected during the quarter in which they are due, and there are no arrears, this form may be used in place of Form I.

47. The entries in the Sarkar's Daily Register shall be posted into the Bill Register (*see* rule 40), and the Tax-daroga shall post the total received from each sarkar into his Cash-book, as provided in Part I of the Account Rules.

48. The Tax-daroga or Head Clerk shall then post the Sarkar's Ledgers, Form K, one of which shall be kept for each circle of collection.

Form K.

CIRCLE NO.....

Sarkar's Ledger.

DATE.	PREVIOUS YEAR.					CURRENT YEAR.				
	Old arrears.	First quarter.	Second quarter.	Third quarter.	Fourth quarter.	First quarter.	Second quarter.	Third quarter.	Fourth quarter.	TOTAL.
1	2	3	4	5	6	7	8	9	10	11
Demand or balance from last month—										
Collections—										
1st										
2nd										
3rd										
4th										
etc.										
Total collection during the month										
Remissions—										
1st										
2nd										
3rd										
4th										
etc.										
Total remission during the month										
Total of collections and remissions										
Balance ...										

NOTE.—By inserting a column "number of bills" between columns 1 and 2, and similar columns in the Collection and Remissions Registers, the actual number of bills outstanding, as well as their value, can be ascertained.

49. The entries under the heading Collections shall be filled up from the daily totals in the daily collection register under the various quarterly columns. The remissions may either be taken from the file of remission orders (*see* Rule 24) or, if a Remission Register is kept (*see* Rule 26), from that register. The sample form given above provides for entry of the total of each day's remissions according to the former method, but if the latter method is adopted, the form may be simplified by recording only the total or the Remission Register for the

month concerned, in one entry in the various quarterly columns, as it is unnecessary to show details of the remission orders in the sarkar's ledger as well as in the Remission Register.

50. The sarkar's ledgers shall be closed and balanced at the end of each month, and the totals of the collection and remission shall then be posted into the Progress Statement, Form L.

NOTE.—If there is only one circle of collection, Form K may be made to serve the purpose of the Progress Statement.

Form L.

Progress Statement.

DATE.	Arrears.	PREVIOUS YEAR.				CURRENT YEAR.				
		First quarter.	Second quarter.	Third quarter.	Fourth quarter.	First quarter.	Second quarter.	Third quarter.	Fourth quarter.	TOTAL.
1	2	3	4	5	6	7	8	9	10	11
Demand										
Collection—										
Circle No. 1 ...										
Ditto 2 ...										
Ditto 3 ...										
Etc.										
Total collections of the month ...										
Collections up to the end of last month ...										
Grand total of collections										
Remissions—										
Circle No. 1 ...										
Ditto 2 ...										
Ditto 3 ...										
Etc.										
Total remissions of the month ...										
Remissions up to end of last month ...										
Grand total of remissions										
Grand total of collections and remissions										
Balance ...										

51. The entry under the heading "Demand" will be the aggregate of the circle demands of the same quarters in the demand and bill registers and the sarkars' ledgers. The figures to be posted as "collections up to the end of the previous month," and "remissions up to the end of the previous month" will be those shown as "Grand total of collections" and "Grand total of remissions" in the progress statement of the previous month. The collections of the month shall be verified by the Accountant with the Abstract Register of Receipts, Form XII, and the Cashier's cash-book, Form III, and the remissions with the remission register of file or remission orders. If any discrepancies are noticed, the accounts of the month must be re-checked until the errors are detected and rectified. As soon as the correctness of the progress statement has been proved by the Accountant, he shall sign it and lay it before the Vice-Chairman, and when it has been passed and signed by the Vice-Chairman, it shall be placed with the sarkars' ledgers before the next ordinary meeting of the Municipal Commissioners.

52. The progress statement represents the state of the collection accounts as a whole and sarkars' ledgers of each circle separately, and they should be carefully scrutinized with a view to the adoption of measures for the collection or remission of arrears.

53. The progress statements and sarkars' ledgers show only the aggregate of the demands under each quarter. To obtain details of the unrealized bills reference must be made to the bill registers, and to ensure that these important registers are kept posted up-to-date as well as to prove the correctness of the accounts, and act as a deterrent to the commission of fraud, a comparison shall be made once "every six months," or oftener if the Commissioners desire it, of the entire balance of bills in hand and the blank spaces in the bill register. If any differences are found, they must be reconciled immediately either by tracing the cause of the error or recovering from the tax-daroga or sarkars any deficiencies for which they are unable to account. If the scrutiny leads to the detection of any embezzlement, the facts shall be immediately reported to the Examiner of Local Accounts (in accordance with Rule 8, Part I, of these rules as amended by notification No. 1550-T.-M., dated 12th September 1900).

54. Every year, in the month of April, the Commissioners shall submit a copy of the Progress Statement, Form L, for

the month of March preceding, through the Magistrate to the Commissioner of the Division, and if there are outstandings extending further back than the first quarter of the previous year, full explanation shall be given as to why these taxes have neither been collected nor remitted, and the Commissioner of the Division shall forward these explanations to Government with his remarks with his annual report on the working of municipalities in the Division.

55. The form of remission register, daily collection register, sarkars' ledgers and progress statements classify the outstandings for each quarter separately of the current and previous years only. Except under very special circumstances, taxation should never be allowed to fall into arrears extending over more than one complete year. If, however, arrears of earlier date than the previous year still remain on the books, they shall be consolidated into one account and be shown in the column "Old Arrears" in the froms referred to above. At the same time a list shall be made from the Bill Register of all such bills, the letter A being placed against the blank spaces, and future realizations and remissions shall then be noted in these lists, and not in the original bill registers, which will have been finally cleared.

56. The form of list may be similar to that prescribed for the Bill Register (Form H). The same care must be taken to have the payments and remissions posted in these lists, as in the bill registers (*see* Rule 40). The consolidation of two or more quarters' outstandings into one account may also be made at any time when more than 75 per cent. of the demand has been satisfied, but the separate lists of uncollected demands must always be prepared before this is done.

SERVICE OF NOTICES OF DEMAND AND DISTRESS WARRANTS.

57. If the amount mentioned in the bill be not paid on presentation thereof under Rule 42, the notice of demand with a copy of the bill annexed may be served at once, and at the latest it shall be served on the first day of the second month of the quarter when the sarkar shall again take round the undelivered receipts, together with the notices of demand which shall in the interval have been attached to the receipt by the Tax-daroga. If the demand is then not paid, the notice of demand shall be left with the assessees, and the undelivered receipt shall be returned to the Tax-daroga for the preparation of distress warrants, with a note of the date on which the notices

of demand were served. When fifteen days shall have elapsed after the delivery of a notice of demand, the sarkar shall proceed with a warrant of distress, and if the demand as well as the fee prescribed by law for the warrant expenses be not then satisfied, he shall make an attachment of the defaulter's property, preparing an inventory of all goods and chattels so attached, and proclaiming a notice of sale by beat of drum.

Warrant Department.

58. The procedure prescribed in the preceding rule presupposes the services of the warrants by the sarkars. If there is a separate Warrant Department, the bills transferred to that department should be deducted from the balance of the sarkars' ledgers and be treated as a separate circle or circles of collection. Each warrant sarkar or bailiff shall keep a collection register in Form I, and the progress of his work shall be recorded in a ledger in Form K, the monthly totals of which shall be embodied in the progress statement, Form L. The remissions and collections shall either continue to be shown in the original bill registers, or separate registers may be opened for the Warrant Department, the letter W being entered in the original bill register against all bills transferred. The latter course need be adopted only when there is a complete division between the Collection and Warrant Department.

59. As warrants are issued they shall be recorded in a register in Form M—

Register of Warrants Issued.

Form M.

Serial number of warrant.	Mahalla.	Number of holding.	Name of tax-payer.	Quarter for which tax is due.	Amount of tax due for each quarter.					Amount of penalty due	Date of Vice-Chairman's order for issue of warrant.	Date of issue of warrant to tahsildar.	Date of realization of amount.	Actual penalty realized	Number in register of distraint (if sale of property is effected.)	Initials of Tax-daroga.	Orders and Initial of Vice-Chairman (if penalty is remitted).	Remarks.
					House.	Latrine.	Water.	Lighting.	Total.									
1	2	3	4	5	6					7	8	9	10	11	12	13	14	15