THE BENGAL
MUNICIPAL MANUAL.

THE BENGAL MUNICIPAL MANUAL,

CONTAINING

THE MUNICIPAL ACT, B. C. ACT III OF 1884, AND OTHER LAWS RELATING TO MUNICIPALITIES IN BENGAL,

WITH

RULES, CIRCULAR ORDERS BY THE LOCAL GOVERNMENT, AND NOTES.

BY

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PREFACE.

THE first edition of "The Bengal Municipal Act" was exhausted long ago, and the work, therefore, appears to have been found useful. In the present edition the notes to the Municipal Act have been carefully revised, and some twenty pages of additional notes have been added. The Circulars, issued by the Bengal Government under the Act, have been appended as Notes to the Sections to which they refer. The amendments relating to the adulteration of food made by B. C. Act III of 1886 have been inserted.

The Rules for the election of Municipal Commissioners have been revised since the issue of the first edition. Account Rules have also been issued, and are appended for ready reference. The rules relating to the preparation of the Annual Report are also given.

A set of Model Rules for the conduct of business at meetings have been inserted as likely to prove useful. These rules are based on the General and Model Rules issued by the Lieutenant-Governor under the Local Self-Government Act; but otherwise, of course, possess no official authority. As it

seems probable that of the larger Municipalities must sooner or later frame Leave and Pension Rules, those which are in force in the Calcutta Corporation are given as a convenient model.

All the Acts to which the Commissioners are likely to have to refer in the ordinary execution of their duties have been added to the present edition. The Tramways Act has been omitted, as the number of Municipalities in which it is likely to be in force in the next decade or so, is extremely limited. The Cattle-Trespass Act has, of course, been added on account of the management and control of pounds, situated in Municipalities, having been everywhere made over to the Commissioners.

F. R. S. C.

RUNGPORE, *May* 1887.

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THE BENGAL MUNICIPAL ACT, 1884.

NOTE.

The Act was passed in the Council on the 29th March 1884, received the assent of the Governor-General on the 15th April, was published in the *Calcutta Gazette* on the 7th May, and came into force by order of the Lieutenant-Governor on the 1st August.

ADDENDA.

Section 67.

"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.

"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 himself 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"—*Ibid*, 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 master himself." —*Ibid*, 51, 52. A familiar case for the application of this principle in India, is the occupation of a cutcherry by a Gomashtah 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, referred to in the judgment above quoted, is an example of this principle.

PERMANENCE.

Permanence in regard to rateable occupation refers to both time and place. In the judgment 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.

(Section 69.)

It is obvious that the Municipal Fund cannot legally be expended upon any purposes not specified in this and the preceding section. Expenditure upon ceremonies, entertainments, testimonials, etc., cannot therefore, be met from it, and should be defrayed by private subscriptions. It was held *in re Corporation of Sunderland*, T. S., 1878, that the Corporation could in no case have a right to spend any part of the borough fund in the entertainment of General Grant. In *Attorney-General* v. *Mayor of Batley*, 26 L. T., N. S., 392, it was held that the Corporation clearly cannot buy the Mayor a gold chain, such an article being utterly unnecessary.

In *Attorney-General* v. *Mayor of Norwich*, 2 Myl. and Cr., 406, 425, 428, the Lord Chancellor remarked that the clause in the Act of 1835 authorizing the payment of expenses not otherwise provided for, which shall be necessarily incurred in carrying into effect the provisions of the Act—"Cannot merely mean expenses to carry into effect that which must be done to set the Act of Parliament in operation, but must mean also those expenses which would arise out of the duties imposed on the parties by the Act." On this principle, it has been held that the costs of litigation undertaken *bonâ fide*, and on reasonable grounds for the defence of the corporate rights, may be paid out of the public fund, though such litigation is eventually unsuccessful.—*Reg.* v. *Mayor of Tamworth*, 19 L. T., N. S., 433.

THE

BENGAL MUNICIPAL ACT,

BEING

B. C. ACT III OF 1884.

[NOTE.—The numbers in brackets denote the corresponding sections of Act V of 1876. The sections marked with an asterisk have been reproduced *verbatim*.]

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

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.

PRELIMINARY.

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

Short title and commencement.

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

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

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

Enactments repealed.

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.

And all references to any such enactment shall (so far as may be practicable) be deemed to be made to this Act.

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

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.

Hon'ble Mr. Reynolds.—"With regard to what fell from the Hon'ble Mr. Dampier, he might say that the point had been considered in Committee, and he understood it was the opinion of the Legal Members of the Council that section 2 was sufficient to cover the levy of tolls now raised on roads and bridges."—*P. C., February 23rd*, 1884.

It is important to note that all rules and bye-laws made under the former Act will still remain in force, unless inconsistent with the present Act.

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.

It will be observed that this section does away with Unions and Stations, by omitting all mention of them. It also omits the distinction drawn between first class and second class Municipalities by the corresponding section of the former Act. The subject is referred to as follows in the "Statement of Objects and Reasons:"

"The present Act V of 1876 relates to institutions of four different kinds: Municipalities of the first class, Municipalities of the second class, Unions, and Stations. It seems unnecessary to retain these distinctions.

There is practically very little difference between the two classes of Municipalities ; and there are only two Stations under the Act, both of which can, without difficulty, be raised to the rank of Municipalities. Unions are more numerous, and it will perhaps be found that some of these are not sufficiently advanced to be entrusted with Municipal responsibilities.

"Such Unions will be placed under the Local Boards, which it is intended to establish by a separate Act of the Legislature, while the more fully developed Unions will be treated as Municipalities."

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

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

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.

This section reproduces section 5 of the previous Act (Beng. Act V of 1876), with the exception that the term "Local Government" is substituted for "Lieutenant-Governor." This change has been made throughout the Act.

Under section 21 of Act III of 1880, the Local Government may, with the sanction of the Governor-General in Council, by notification in the official Gazette, impose in any cantonment any tax which can be imposed in any Municipality under the said Government. By section 22 of the same Act, the Local Government may, by notification in the official Gazette, apply to such cantonment the provisions in force for the assessment and recovery of any tax in any Municipality under such Government.

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.

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

"Cart."

These definitions are taken *verbatim* from the former Act. With reference to (1) the point has been raised as to whether a bamboo cart can be regarded as a wheeled vehicle with springs, on account of the bamboos acting as springs. It is obvious that it cannot be so regarded. The word "springs" in the definition must be taken in its ordinary and definite sense.

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

"Holding."

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

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

This definition is new and very important. The Select Committee remark in their Preliminary Report: "We desire to call special attention to the modification we have introduced in the definition of a holding. The present definition (if indeed it deserve to be called a definition at all) has practically the effect of giving the Commissioners power to divide what is really a single holding into as many separate holdings as they think fit, and thus to evade the provision of the law which limits the amount of personal tax which can be imposed in respect of holdings. Cases have been brought to our notice in which this power has been improperly exercised."

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

"House."

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

"Immoveable property" and "land."

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

"Moveable 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."

The term is unknown to English law. The corresponding term in English law is the word 'borough," which is defined in section 7 of the Municipal Corporations 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 section 29.

(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.

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

"Part."

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

"Road."

Public have a right of way.—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 belong, it is still a highway, for 'highway is the genus of all public ways, as well cart, horse or footways'" 2 *Smith's Leading Cases*, p. 137.

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 at 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 extinctive presumption or prescription. . . . . See the judgment of Byles, J., in *Dawes* v. *Hawkins*, 8. C.B.N.S., 858." 2, *Smith's Leading Cases*, p. 144. Compare, *Empress on the prosecution of Jodunath Ghose* v. *Brojonath Dey*, I.L.R., 2 Cal., 425, quoted in the note to s. 201.

"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.".

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

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

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

"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.

PART I.

OF THE CREATION OF MUNICIPALITIES.

Existing Commissioners and existing rates and taxes temporarily continued.

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.

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

Local Government may extend 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 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.

Variation of limits and power to withdraw from operation of Act.

9. (10) The Local Government may, on the recommendation of the Commissioners at a meeting, by a like notification, at any time vary the limits of any Municipality or subdivide any Municipality into two or more Municipalities, or withdraw any town, village or land from the operation of this Act, or alter the number of the Commissioners of such Municipality.

The provision for subdividing a Municipality is new, and is rendered necessary by sections 88 and 102. Under those and the corresponding sections of Act V, when the Act is first extended to any place, no tax can be raised until the following quarter. Now, in the absence of a distinct authority to subdivide a Municipality, the only legal method of forming it into two is to withdraw one part from the operation of the Act, and then to extend the Act to it as a new Municipality.

Consequently, in such a case, no tax can be levied during the first quarter after the Act is so extended. This difficulty actually occurred when the Bally Municipality was formed by the separation of that town from Howrah, and one quarter's taxation was lost. The provision for subdividing a Municipality, contained in the present section, is designed to meet such cases. Authority being given under the Act for such a subdivision, the provisions of the Act, and taxes already in force under it, would continue in force after the subdivision was carried out.

The section, however, does not provide for the joining of two Municipalities into one, and precisely the same difficulty would occur in such a case. The only legal method of carrying out such a union would be by withdrawing under this section each Municipality from the operation of the Act, and then, by extending its provisions to them jointly under section 8. One quarter's taxes would, however, be lost, as the joint Municipality would be exactly on the same footing as a place to which the Act had been extended for the first time.

Government has been advised that the phrase "like notification," as here used, is to be understood as denoting merely the same form and method of notification as that referred to in the preceding section, but

not to include the provisions of the second and third paragraphs of the same. The provision contained in the phrase "on the recommendation of the Commissioners at a meeting" sufficiently provides for discussion and publicity. (L. R.)

Hon. Mr. Reynolds.—"I ought also to call particular attention to the alteration made in section 9 of this Bill, as compared with section 10 of the present law. The present law permits the Government at any time to withdraw any place from the operation of the Act. The Bill declares that this shall only be done on the application of the Commissioners themselves." (*P. C., January 12th*, 1884.)

Conditions on which Municipality may be created.

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 of inhabitants not being less than three thousand, and an average number of not less than one thousand inhabitants to the square mile of the area of such town or village.

Local Government may unite places to a Municipality.

11. (13) The Local Government may, from time to time, by notification in the *Calcutta Gazette*, declare that any place in which three-fourths of the adult male population are chiefly employed in pursuits other than agricultural shall be united with any town or village as aforesaid for the purposes of forming a Municipality:

Provided that no such place shall be so united unless some part of such place be situated within the distance of one mile from some part of such town or village.

Every such declaration shall specify the boundaries of every place so to be united.

Every town or village with which any such place is united, and all places so declared to be united with any such town or village, shall be deemed, for purposes of taxation, and for all other purposes, to form part of one and the same Municipality.

This section is practically unaltered. A Cantonment, having a distinct legal status, cannot be united with a Municipality under this section. (L. R.)

Land between Municipality and place united to form part of Municipality.

12. (14) Notwithstanding anything hereinbefore contained, whenever the Local Government shall declare any place or places as aforesaid to be united with any town or village for the purpose of

forming one Municipality, the Local Government may similarly declare that any land by which any such place is separated from the town or village with which it is united, and any land by which any such place is separated from any other such place which is united with the said town or village, shall be deemed to form part of the Municipality for all purposes other than those of taxation.

And such declaration shall specify the exterior boundaries of the entire Municipality as constituted under this and the last preceding section.

The only change which has been made in this section is in the substitution of the words "Local Government" for "Lieutenant-Governor."

This section evidently refers to large expanses of arable land lying between towns or villages. It follows that the taxation of arable lands in Municipalities was contemplated by the Act. Compare note to section 98.

PART II.

OF THE MUNICIPAL AUTHORITIES.

Of the Constitution of the Municipality.

Number of Commissioners.

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.

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. Under section 15 of the former Act, the Lieutenant-Governor could, within the limits laid down, vary the number at any time. The notification referred to in the first clause was published in the *Calcutta Gazette* of the 6th August 1884, and will be found *post*.

The last clause follows clause (4) of section 22 of the Municipal Corporations Act of 1882, by which it is provided that "no act or proceeding of the council or of a committee shall be questioned on account of any vacancy in their body." In Rawlinson's M. C. Act it is remarked that while this clause will prevent any ill-effects from death, resignation, or absence, it will probably be held never to obviate the necessity of the number present at any meeting of the council being not less than one-third of the whole council—that being the quorum fixed by the Act. 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 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.

This is altogether new.

Section 14.

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 Chunder Sirkar* v. *Kurnodhar Moochee and others*, 349, C.R., 7 W.R., 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 permanency to such occupancy. 'Residence,' said Park, B., 'means a domicile or home.' *Lamb* v. *Smith*, 15 L. J., 207, Exchequer.

"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 *Whithorne, 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 *Kashi Nath Kover* v. *Deb Kristo Ramanooj Dass and others*, 240 C.R., 16 W. R.; *Fatima Begum* v. *Sakina Begum and another*, I. L. R., 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. *Hachin Khansamah*, 417 C. R., W. R. 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.

Since the above note was written, a definition of the term "resident" has been inserted in the Election Rules.

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 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

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

(2) being a member of a joint undivided family, one of the members of which has, during the year immediately preceding such election, paid, in respect of any of the rates imposed by this Act, an aggregate amount of not less than three rupees, is a graduate or licentiate of any University, or holds a certificate as a pleader or a mookhtear, or holds any office or employment carrying a salary of not less than fifty rupees per mensem,

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.

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

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 (section 14), and the elected Commissioners must be qualified to vote.

No such restriction exists in the case of nominated Commissioners. They need not therefore be necessarily residents, or otherwise qualified to vote.

Joint undivided family.—It may be noticed that the term "family," and not "Hindu family" is used. It would seem therefore that the application of clause (2) is not restricted to Hindu families; and that it has no reference to the technical meaning of "joint undivided family" in Hindu law. If the members of the family live together and have their expenses in common, the clause would seem to be applicable, whether they are Hindus or not.

In the corresponding section of the former Act, the Lieutenant-Governor was empowered to lay down rules as to the qualification of candidates. This provision has been omitted in the present section. 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 ratepayer 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.)

The term "rates" is not defined anywhere in the Act, and questions will very probably arise as to its meaning in this section. It is defined in Webster's Dictionary to be "a tax or sum assessed by authority on property, for public use, according to its income or value; as parish rates, town rates, highway rates." The following extracts from the Proceedings of the Council (March 8th, 1884) have reference to the point:—

Hon. Mr. Beverley.—"It had been assumed by the Hon'ble Mover of the amendment (and a good deal of his argument was based on the assumption) that fees for house-service, levied under Part IX of the Bill, would be taken into account as rates under section 15. It seemed to Mr. Beverley that this was open to question; and if it was the intention of the Hon'ble Member in charge of the Bill that such fees should be taken into consideration in estimating the property qualification, Mr. Beverley would suggest the expediency of amending the wording of the section to that effect."

Hon. Mr. Reynolds—"In answer to the Hon'ble Member on his right (Mr. Beverley), he said he *certainly understood that rates included the payment of fees.*"

There can be no doubt that fees under Part IX should be included in the rates referred to in this section, as although termed fees in the Act, they are really *rates* on the annual value of holdings.

The term *rates* in this section must, therefore, be held to include:

(1) The *tax* upon persons occupying holdings levied under section 85, clause (*a*).

(2) The rate on the annual value of all holdings levied under section 85, clause (*b*).

(3) The water-rate on the annual value of holdings levied under Part VII.

(4) The lighting-rate on the annual value of all holdings levied under Part VIII.

(5) The *fees* for house-service levied under Part IX.

The opinion of the Hon'ble Mr. Reynolds above quoted is to the effect that *rates* included the payment of fees. It seems probable, however, that the Hon'ble Member had only the particular class of fees under discussion (*i.e.*, fees under Part IX) in view at the time of speaking. For the term *rates* is obviously inapplicable to fees for the registration of carts under section 143, to fees for permission to enclose or otherwise deal with roads under section 234, to fees for licensesund er section 261, and to other sections where the term is used. None of these fees can be held to be *rates*, as they are not rated or calculated on the value of any property.

For the same reason it would appear that the tax levied upon carriages, horses, and other animals, under section 131, cannot be regarded as a rate; and, therefore, cannot be included in the rates referred to in this section. For it is not a tax assessed upon property according to its income or value, but a fixed tax levied without reference to the value of the property assessed. At the same time, however, the term *rates* in the present section is obviously not used in a very strict sense, as otherwise it would not include the tax upon persons levied under section 85, clause (*a*). Such a tax is not, strictly speaking, a rate, as it is levied according to the cir-

cumstances of the person taxed, as well as with reference to his property within the Municipality.

The *tax* upon persons levied under section 85, clause (*a*), must obviously be intended to be included in the term *rates* for the purpose of this section. For, in many Municipalities, it is the only tax in force, and if it is not so included, none of the inhabitants would be qualified to vote, whatever the voting qualification might be fixed at. Although therefore it is not, correctly speaking, a rate, it must be taken as one for the purposes of the present section.

It is obvious that the qualification prescribed by this section is merely a maximum, and that the Local Government can reduce it at discretion. By the rules in force the qualification has been reduced and the term "rates" has been defined so as to include the five classes of taxes above mentioned, as well as the tax upon carriages and horses levied under section 131, and the fees for cart registration under section 143. The occupation of a holding, in respect of which rates are paid by the owner also, in certain cases, confers a qualification to vote.

The question arises as to whether the managing director or manager of a company, residing and transacting the business of the company on premises for which the company is rated, will be qualified to vote under this section. The point was raised under the English Municipal Act of 1835 (*Rex* v. *Fripp. M. T.* 1836, *Glover on Corporations*, 693). The Court of Queen's Bench declined to decide on motion the sufficiency of such rating or occupation. The question is, therefore, a doubtful one.

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.

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; 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.

These two sections are entirely new. It will be observed that *ex-officio* Commissioners are abolished by sections 14 and 17.

The proviso in the third clause of section 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 section 8, and of Municipalities in which the Commissioners have been superseded under section 65. Compare sections 8 and 66.

Resignation of Commissioner.

18. (20) The Local Government may, from time to time, accept the resignation of any Commissioner appointed or elected under this Act.

By section 22, a Commissioner who has resigned under this section, may be re-appointed or re-elected.

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 words "if it thinks fit" and "at a meeting" are new, the remainder of the section being unchanged. 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 is obvious that 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*, I. L. R., 7 Mad., 466.

By section 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.

Commissioner who neglects to attend meetings, or is convicted of non-bailable offence, to cease to be Commissioner.

20. (22) Any Commissioner who, without having obtained permission from the Commissioners at a meeting, shall have omitted to attend six consecutive meetings of the Commissioners, and any Commissioner who shall have been convicted of a non-bailable offence, or shall have been declared insolvent by a competent Court, shall cease to be a Commissioner.

The words "at a meeting" are new.

The second clause formerly stood "shall have been sentenced to imprisonment."

The provision as to insolvents is new.

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.)

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. *Chitty*, 5 A. and E., 609.

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

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.

Under the former Act the Commissioner, unless he had previously retired by rotation, vacated his office at the end of three years from the first day of the year next following the date of his appointment or election as Commissioner. The rule of rotation is abolished by the present Act.

When Commissioner may be re-appointed or re-elected.

22. (28) Any person who has resigned the office of Commissioner under section eighteen, or who has ceased to be a Commissioner in consequence of his failure to attend meetings, or in consequence of his insolvency, as provided in section twenty, may be at any time re-appointed or re-elected a Commissioner; but no person removed by the Local Government from his office under section nineteen, or who has ceased to be a Commissioner in consequence of being convicted of a non-bailable offence, may be elected

or re-elected a Commissioner without the sanction of the Local Government.

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

From some of the opinions submitted on the Draft Bill, this does not seem to have been generally understood. It would have been more satisfactory if the Act had contained a distinct provision on the subject. The N.-W. P. and Oudh Municipalities Act and the English Municipal Act both contain distinct provisions on the point. The corresponding section of the former Act (Act V of 1876) also provided for the re-election or re-appointment of retired Commissioners. The last Bill of 1872 contained a similar provision.

Appointment of Chairman.

23. The Local Government shall appoint the Chairman of every Municipality mentioned in the second Schedule of this Act.

Every Municipality, the name of which is not included in the said Schedule, shall, at a meeting, elect one of its Commissioners to be Chairman; or may, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman.

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

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

This section is new.

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 section 13 has reference only to the number of Commissioners, and not to the corporate officers. Compare section 29, 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.

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. and A., 658.

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 section 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 doubtful as to whether he can claim the right to preside. For the most reasonable view of the matter would appear to be that, as soon as a meeting is formed to elect a new Chairman, the old Chairman resigns his office. By the Commissioners Clauses Act (10 Vict., c. 16, s. 38), it is provided that the Chairman going out of office may preside, if willing to do so. But the inference would appear to be that, without such a special provision, the former Chairman would not be entitled to preside. On the whole, the best course for the meeting to follow appears to be to choose one of their number to preside, the former Chairman not being necessarily excluded.

Another question which arises is as to whether the Chairman at such a meeting has a second or casting vote. As section 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 the 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 section 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 anyone 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 section 8, and of Municipalities in which the Commissioners have been superseded under section 65.

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.

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 favor 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.

This section is new.

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. Under section 17 of the former Act, the Magistrate of the District and the Magistrate of the Division were *ex-officio* Commissioners, and one or other was ordinarily Chairman of the Municipality.

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 section 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.

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.

Under the former Act the Vice-Chairman was not necessarily a Commissioner before his election. He must now be a Commissioner before he can be elected.

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

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 next subsequent appointment or election, not being an appointment or election under the next succeeding section.

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

27. If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office, the vacancy caused by his resignation or removal or death 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.

These two sections are entirely new.

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.

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

Under section 30 of Act V, a salaried Vice-Chairman might be elected; but no provision was made for granting allowances to the Chairman.

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.

"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 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 section 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 nor 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 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.*)

"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."—I. L. R., 3 Cal., 762.

An action for malicious prosecution will lie against a corporation. *Edwards* v. *The Midland Railway Company*, 6 Q. B. D. Rep., 287.

A Municipal Corporation is not a public servant within the meaning of section 39, Act IV of 1877 (repealed), and may therefore (in certain cases) be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section. *Empress* v. *The Municipal Corporation of Calcutta*, I. L. R., 3 Cal., 758.

Act IV of 1877 was repealed by Act X of 1882 (the Code of Criminal Procedure). Section 197 of the latter Act is, however, practically to the same effect as regards this particular matter as section 39 of the former. It follows, therefore, that the above ruling now applies to all Municipalities, and that the sanction of Government is not requisite for the criminal prosecution of any Municipality.

Section 39 of Act IV of 1877 referred, and section 197 of the Criminal Procedure Code refers, to a public servant not removable from office without the sanction of Government; and in the case above quoted it was held that a Municipal Corporation does not come under this description. Whether a Municipal Corporation can be considered to be a public servant at all within the meaning of section 21, Indian Penal Code, was held to be very doubtful. In the case above referred to, White, J. remarked: "I think it is open to much doubt whether the Corporation, as distinct from its individual members, is a public servant at all, as these words are defined by the 21st section of the Indian Penal Code."

This view of the matter appears to overlook the definition of the term "person" given by section 11 of the Penal Code and was apparently differed from in *Kharak Chand Pal* v. *Tarack Chunder Gupta*, I. L. R., 10 Cal., 1030, and in an unreported case quoted in the note to s. 236.

A Municipal Commissioner is a public servant,—section 21, Indian Penal Code.

Of the Property of the Commissioners.

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

30. (32) All roads, bridges, tanks, ghats, wells, channels, and drains in any Municipality (not being private property, and not being maintained by Government or at the public expense), now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all 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, and may cancel such notification wholly or in part:

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

This section differs from section 32 of Act V of 1876 in omitting embankments, wharves, and jetties from the first two clauses. The words "at a meeting," at the end of the third clause, are new.

The provisions of this section cannot be held to interfere with the rights of the public. (See note to section 201.)

The reservation, "not being private property," appears to be unnecessary as regards roads, on account of the definition in clause (13) of section 6. A road over which the public has a right of way cannot be considered as altogether private property. As regards the actual property in the land over which the road passes, it usually remains with the owners of the adjoining lands. There is a general presumption to that effect. The provisions of statutes vesting highways in local authorities are not intended to deprive persons of private rights of property in the land used as such highways. As long as the land is used as a highway, such private rights necessarily remain in abeyance. They are merely dormant, however, not extinguished, and if the land ceases to be used as a highway, at once revive. See *Nihal Chand* v. *Azmat Ali Khan*, I. L. R., 7 All., 362.

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

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

This section also differs from section 33 of the former Act (V of 1876) in omitting the words "embankment," "wharf," and "jetty."

The words "or the control thereof" are new. The control of the property can now be made over to the Commissioners without surrendering the proprietary right.

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 section 6.

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

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

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.

The only change made by this section is in the use of the term "Local Government" for "Lieutenant-Governor."

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

34. (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.

Power to purchase, lease, and sell lands.

The word "exchange" is new.

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*, I. L. R., 1 All., 557.

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.

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

No alteration beyond the usual substitution of "Local Government" for "Lieutenant-Governor."

*36. (38) The Commissioners shall be bound to pay to the Government the cost of any land which may be acquired for them.

Commissioners to pay cost of such land.

on their application under the provisions of the last preceding section.

By section 56, India Act X of 1870 (the Land Acquisition Act), the charges incurred by the Collector in acquiring land at the cost of a Municipal Fund shall be defrayed by such Fund.

Mode of executing contracts.

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

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.

Under section 39 of the former Act it was held that the section did not authorize the Commissioners to enter into a contract with a company for the construction and working of tramways, such construction and working not being one of the purposes of the Act. This objection has now been obviated by the inclusion of tramways among the objects to which the Municipal Fund may be applied by section 69.

Section 39 of Act V provided a limit of Rs. 200 in respect of second class Municipalities. The distinction between first and second class Municipalities having been abolished by the present Act, the higher limit has been adopted.

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.)

The section authorizes 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.

"'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*, I, 351.

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*, 20 C.R., 9 W.R.

Of the Mode of Transacting the Business of the Municipality.

Commissioners to meet ordinarily once a month.

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.

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.

Notice of all meetings, whether ordinary or special, should obviously be served upon all the Commissioners. The omission to serve a notice upon any Commissioner within summoning distance would probably be held to invalidate the proceedings.

Vestries Act, 1818, *section* 1.—A meeting of a 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 proceeding at such meeting in his absence. On the party who supports the validity of such proceeding 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. By section 30 of the Bill of 1872, it was provided that "the Chairman, or, in his absence, the Vice-Chairman shall exercise all the powers vested by this Act in the Commissioners." The following extract clearly shews the meaning of the word "absence" in this proviso—

"The Council would remember that the Municipalities where the Magistrate was resident were comparatively few. In many places all over the

country there was no resident Magistrate. If the Council would look to the provisions of the Bill, they would find that not only on the delegation of the Magistrate, but also in his absence, the Vice-Chairman would exercise the full powers of the Chairman. The consequence would be that in many Municipalities, where there was no resident Chairman, the Vice-Chairman would be for most purposes the Chairman, and the most ample opportunities for self-government would be left to the people in those Municipalities."—P.C., 20*th July*, 1872.

*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.

And at other times on special 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., 638: 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, section 24.
(2) Removal of Vice-Chairman, section 25.
(3) Framing rules for pensions or annuities, or for Provident or Annuity Fund, section 47.
(4) Imposing tax upon persons or holdings, section 85.
(5) Imposing additional taxes, section 86.
(6) Extension of special regulations, section 221.
(7) Framing of bye-laws, section 350.
(8) Arranging for registration of births and deaths, section 11, B. C. Act IV of 1873.

(9) Applying to Local Government for sanction to the construction of a tramway. section 3. B. C. Act III of 1883. .

By section 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 movement 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"—*Chambers' 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 *Chambers' Handbook for Public Meetings*.

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.

Questions to be decided by majority.

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

Casting vote.

The words "unless otherwise provided by this Act" are new, but obviously necessary. In certain cases a majority of two-thirds of the whole number of the Commissioners is necessary.

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.

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, nor unless a quorum shall be present.

Quorum.

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

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

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

Adjourned meeting.

The last clause is new, and is taken from the Calcutta Municipal Act, 1876, section 49.

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) require 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 reassembly of a quorum before its presence is officially declared."—*Palgrave's Chairman's Handbook*, 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.

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; Chairman's decisions 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. Indexes 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.

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,