the record of each sitting was issued without delay under the authority of the presiding officer. If printed forms were prepared to be filled up as occasion required, a prompt and methodical issue of the minutes might be obtained, and verbal inaccuracies might be corrected under direction from the Chairman of the next meeting, if his attention be called thereto, either at the commencement or the close of the sitting."—*The Chairman's Handbook*, p. 19.

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

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

"*Reg.* v. *York, Mayor.* In the case of meetings of public bodies, 'confirm' is commonly used in the sense of to 'verify.' *Per* Lord Campbell, C.J.:—To confirm the minutes of a meeting means not to give them force, but to declare them accurate." (1 E. & B., 588, at p. 594.)" *Chambers' Handbook of Public Meetings*, p. 106.

Powers of Chairman.

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

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

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

Chairman may delegate his duties to Vice-Chairman.

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

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

express or implied consent of the Chairman previously or subsequently obtained.

The words "or modify" in the first clause are new, as are also the words "previously or subsequently obtained" at the end of the second clause.

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

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

Appointment of subordinate officers.

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

Subject to the scale of establishment decided upon by the Commissioners under this section, the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their places:

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

In the former Act the limits were Rs. 200 and Rs. 50 respectively.

This section is controlled by section 61, which must therefore be read with it.

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

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

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

to suggest, would be [illegible]

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

And may repeal or alter such rules.

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

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

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

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

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

Pensions, &c., to Government officials.

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

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

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

This section is taken almost *verbatim* from the N.-W. P. and Oudh Municipalities Act, India Act XV of 1883, section 37.

Security from officers or servants.

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

The former section only referred to collectors of taxes or tolls, and persons whose duty it was to receive or expend money. The present section applies to all municipal subordinates. It is obvious that the nature and amount of security to be taken rests entirely with the Commissioners, and that the rules in force as to the securities of Government Ministerial officers do not apply to municipal subordinates.

Though not provided by the section, it is obviously desirable that the Commissioners should determine at a meeting the nature and amount of

security to be taken from each class of municipal subordinates, and not leave the matter to the sole discretion of the Chairman.

By Rule 8 of the Account Rules, the secretary, accountant, tax-darogah, cashier, and tax-collecting sircars must furnish security. Rules 89 to 91 suggest service books for all municipal employés.

Of Ward Committees.

Power to appoint Ward Committees.

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

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

Commissioners may lay down rules for election.

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

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

Election of Chairman and Vice-Chairman of Ward Committee.

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

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

Commissioners may delegate powers to Ward Committee.

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

(a) [illegible] Municipal Fund; or

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

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

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

Certain sections applicable to transaction of business by Ward Committees.

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

Removal, resignation, and appointment of members.

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

Liability of Commissioners and Ward Committees.

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

Personal liability of Commissioner or Member of Ward Committee.

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

"The distinction between Corporations and Trading Partnerships is this, that, in the first, the law sees only the body corporate and knows not the individuals, who are not liable for the contracts of the Corporation in their private capacity. . . . . but in the latter, the law looks not to the partnership, but to the individual members of it, who are therefore answerable for the debts of the firm even to their last shilling and acre." (*Wharton's Law Lexicon, art. Corporation.*)

The personal liability of Municipal Commissioners is discussed in 287 C. R., 24 W. R., in which case Macpherson, J., remarked as follows:—

"The Judge speaks of the protection offered by the Act, which he says must be taken to extend to cases where the defendant *bonâ fide*, though erroneously, exceeds the powers given him by the Act. We are not aware of there being any special protection afforded by the Act (III.

B. C. of 1864), excepting that, under section 22, relating to contracts made on behalf of the Commissioners, for which no Municipal Commissioner is to be personally liable. Municipal Commissioners under this Act and their servants incur no personal responsibility for what they do, so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable for an action. That is the law in England as to Trustees and Commissioners of Public Works and the like, and it is equally the law here. There is no special law extending to members of Municipalities which protects them so long as they act *bonâ fide*."

The law of England as to Trustees and Commissioners of Public Works referred to has been thus stated: "And generally, as with all other corporations, their powers, duties, and liabilities will be determined directly or implied by the statutes and other instruments appointing them. The jurisdiction, the rights and the responsibilities imposed upon them will belong to them, but no others. For the due and careful carrying out of their authorities they must provide; and in default of this—if anything be done, directed or concurred in negligently by them, or through negligence omitted to be so done or directed—they will be answerable in damages for injury resulting, even if they have no funds to pay such damages; and even though they are purely a public body, and deriving personally no profit or advantage whatever from their position." (*Brice on the Doctrine of Ultra Vires*, p. 234.)

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

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

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

Disqualification of Commissioners having share or interest in contracts.

57. (57) No Commissioner or Member of a Ward Committee shall have, directly or indirectly, by himself or through others, any share or interest in any contract made with the Commissioners; and if any Commissioner shall have such share or interest, he shall thereby become disqualified to continue in office as Commissioner, and shall be liable to a fine not exceeding five hundred rupees.

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

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

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

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

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

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

The second paragraph is taken from the English Municipal Corporations Act of 1882.

By section 12, clause (1) (*c*) of the English Act., a person is disqualified for election as a Municipal Councillor if he "has directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the Council." The following commentary on this clause may be quoted from Rawlinson's Municipal Corporations Act:

"The object of this clause, which is produced *verbatim* from section 28 of the Act of 1835, clearly was to prevent all dealings on the part of the Council with any of its own members in their private capacity; in other words, to prevent a member of the Council, standing in the situation of a trustee for the public, from taking any share or profit out of the trust fund, or in any contract or employment, in the making or regulating of which he, as one of the Council, ought to exercise a superintendence.

"The evil contemplated being evident, and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be brought within the above words. Upon this principle, a person who had entered into an existing contract for profit with the Council was held to be disqualified, even though, by reason of its not being under seal, he could not have sued the corporation on the contract." *Reg. v. Francis*, 18 Q. B., 526; S. C., 21 L. J. Q. B. 304.

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

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

58. (58) No Commissioner or Member of a Ward Committee shall vote on any question which regards exclusively the assessment of himself, or the valuation of his property, or of the property for which he is manager or agent, or his liability to any tax.

Commissioners disqualified from voting on certain questions.

Control.

This and the two following sections are entirely new. The remaining sections under this head are taken from other Acts. The following extract from the Report of the Select Committee explains the object of these sections :—

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

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

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

Certain resolutions subject to approval of Government.

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

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

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

(*d*) under section forty-seven for the making, repeal, or alteration of rules for the grant of pensions or gratuities,

or for the creation and management of Provident or Annuity Funds,

shall be subject to the approval of the Local Government.

Copy of minutes to be sent to Magistrate.

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

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

Sanction to appointment of subordinate officers.

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

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

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

Magistrate's power of inspection.

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

This section is taken from the Central Provinces Local Self-Government Act (India Act I of 1883), section 28. By it the District and Subdivisional Magistrates are appointed Visitors of the Corporation.

Power to suspend action under Act.

63. The Commissioner of the Division or the Magistrate of the District may, by order in writing, suspend within the limits of the division or district (as the case

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

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

This section is taken almost *verbatim* from the N.-W. P. and Oudh Municipalities Act (India Act XV of 1883), section 60.

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

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

Powers of Local Government in case of default.

64. If at any time it appears to the Local Government, on the report of the Magistrate of the District, or of the Commissioner of the Division, that the Commissioners

of any Municipality have made default in performing any duty imposed on them by or under this or any other Act, the Local Government may, by an order in writing, fix a time for the performance of that duty.

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

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

N.-W. P. and Oudh Municipalities Act (India Act XV of 1883), section 62.

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

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

This is taken from clause (1), section 63 of Act XV of 1883. The words "in the opinion of the Local Government" have been inserted in order to check litigation, as, without them, legal proof might possibly have been required that the Commissioners were not competent, or persistently made default, &c.

Consequences of supersession.

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

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

(*b.*) All the powers and duties of the Commissioners shall, during the period of supersession, be exercised and

performed by such person or persons as the Local Government may direct.

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

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

This is evidently taken from section 63 of the N.-W. P. and Oudh Municipalities Act (Act XV of 1883).

PART III.

OF THE MUNICIPAL FUND.

What shall constitute the Municipal Fund.

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

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

It is clear, however, that the general provisions contained in these sections must be held to be overridden by the special provisions contained in other parts of the Act. Thus it is provided by section 307 that the water-rate levied under Part VII can only be expended on purposes connected with the supply of water. There is no such distinct provision with regard to the lighting-rate; but it is clear that as the Commissioners are only empowered to raise it for the purpose of lighting with gas, and the amount of rate is limited to what is sufficient to defray such expense (section 309), they could not legally expend any portion of its proceeds on any other purpose. As regards the house-service fees or latrines-rate, its application is expressly limited by section 322 to the purposes of Part IX. It appears obvious therefore that

each of these rates must be credited to what is for all practical purposes a separate fund, and that none of them are available for the other general purposes specified in sections 68 and 69.

Payment on account of interest on loans and establishment.

68. (60) The Commissioners shall set apart and apply annually out of the Municipal Fund,—

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

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

(*c*) thirdly, such sum as the Local Government may direct towards the cost of audit, and towards the cost of establishments in any office of account or in any treasury:

Provided that the total amount which any Municipality may be required to pay under clause (*c*) shall not in any year exceed two per centum on the amount of the Municipal income for such year.

India Act XI of 1879 enacts in what manner loans may be raised by Municipal Committees and other local authorities.

By section 8 it is enacted that, except as provided by the Act and the rules made thereunder, no local authority shall, for any purpose, borrow money upon or otherwise charge its funds; and any contract made for that purpose after the passing of the Act, shall be void.

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

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

Municipal Department No. 522 of the 19th February 1885 to the A. G., Bengal, has reference to clause (c) of this section, and is as follows:—

"I am directed to acknowledge the receipt of your letter No. 1293LA dated the 19th ultimo, submitting proposals for the payment by Municipalities, under section 68 (*c*) of Act III (B. C.) of 1884, towards the cost of treasury establishment, and the audit of their accounts. You propose that on account of treasury establishment a fee of 1 per cent. should be levied on the income of all Municipalities, with the exception of the Suburbs of Calcutta, Howrah, Dacca, Naraingunge and Patna, which do not bank with Government. For the cost of audit, you propose to charge each Municipality Rs. 150 per annum, or 1 per cent. of income, whichever is less; but for such Municipalities as have an income exceeding Rs. 25,000, you propose to charge an additional fee of Rs. 25 for each additional Rs. 25,000 or fraction thereof. In the case, however, of the Suburbs of Calcutta, Howrah, Dacca, Naraingunge and Patna, it is proposed that the amount of the audit fee shall continue as at present.

2. In reply, I am directed to say that the Lieutenant-Governor approves the above proposals, and authorizes you to realize the fees recommended from the Municipalities, with effect from the 1st August 1884."

Purposes to which Fund may be applied.

69. (61) After the said sums have been set apart under the last preceding section, the Commissioners at a meeting shall, as far as the Municipal Fund permits, from time to time cause roads, bridges, tanks, ghats, wells, channels, drains, and privies, being the property of the Commissioners, to be maintained and repaired, and the Municipality to be cleansed.

And may, subject to such rules and restrictions as the Local Government may from time to time prescribe, apply the Municipal Fund to any of the following purposes within the Municipality, that is to say—

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

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

(3) the erection and maintenance of offices and other buildings required for municipal purposes;

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

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

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

(7) the promotion of vaccination;

(8) the maintenance of a fire-brigade;

(9) and generally to carrying out the purposes of this Act:

Provided that no portion of the Municipal Fund shall be applied to the establishment and maintenance of any school, hospital or dispensary, or to the promotion of vaccination, unless such application be sanctioned by the consent of a majority of the Commissioners present at a meeting specially convened for considering such application, or held after special notice has been given that such application will be considered at such meeting.

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

The changes made by this section are as follows:—

Para. 1. Embankments, wharves, jetties, latrines, and urinals are omitted.

Para. 2, *clause* (1). The same words are omitted, and the word "tramways" added. Police-stations have been omitted from clause (3). The proviso after clause (4) is omitted.

The "maintenance of a fire-brigade" is new.

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

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

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

Contribution to other Municipalities.

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

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

The provision for the contribution of a portion of the salary of an officer employed under another authority, is new.

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

Account books to be kept open and quarterly statement published.

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

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

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

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

Rules 48—51 of the Account Rules refer to the quarterly and annual accounts.

Annual estimates to be prepared.

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

"Three months before the close of the year" in the former section.

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

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

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

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

Estimates to be published.

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

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

"In the office of the Magistrate" has been omitted from para. 1.

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

Estimate to be transmitted to Magistrate.

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

Magistrate may record remarks.

This section is new.

76. (67) The Commissioner of the Division may either sanction the estimate as it stands, or sanction it after making such alterations therein as may seem to him fit; or may cause it to be returned to the Commissioners for such modifications as he may think necessary; and when such modifications have been made, the estimate shall be re-submitted for ratification to the Commissioner of the Division:

Power of Commissioner as to estimates.

Provided that the Commissioner of the Division shall not raise the total of the proposed expenditure above the sum shown by the estimate to be at the disposal of the Commissioners.

Under the former section, the power of altering the estimate rested with the Lieutenant-Governor.

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

Estimate of expenditure may be revised.

"The Magistrate and the Commissioner of the Division" have been substituted for "the Commissioner of the Division and the Lieutenant-Governor" in the latter part of this section.

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

Disbursement of expenditure sanctioned in estimate.

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

Rules 83, 84 of the Account Rules refer to this section.

The provisions of the first clause of this section were until recently rarely observed. The Accountant-General has stated that "the fact that the budget estimates have been approved by the Commissioners and by the Commissioner of the Division is universally accepted as sufficient authority for the disbursement of the items entered in the estimates." General as the practice was, it is, however, undoubtedly illegal. The sanction of the Commissioners at a meeting ought to be taken beforehand for all expenditure. Compare section 84, the 2nd clause of which distinctly enacts that no order for the payment of money shall be issued unless the expenditure *has been* authorized by the Commissioners at a meeting as provided in section 78.

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

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

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

"Five thousand" has been substituted for "three thousand" in this section.

The Account Rules suggest that a Sanction Register should be kept up. See Rules 83, 84, *post*.

Disbursement of excess expenditure.

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

The practice of transferring and expending such amount in anticipation of sanction is illegal, and should be avoided. If application for sanction be made in due time, it cannot be necessary.

The amount of an estimate sanctioned for a given year for expenditure on any object must, of course, be expended within that year, or it lapses. The practice of drawing out such unexpended balances before the close of the year and keeping them in deposit, in order that they may appear in the accounts as disbursed in that year, is quite illegal and improper and an evasion of the budget system. It is not, however, an altogether unknown practice.

An annual report of proceedings, &c., to be submitted.

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

The report and any orders which may be passed thereon by Government shall be open to the inspection of the tax-payers at the office of the Commissioners, with the account books and the quarterly and the annual accounts.

The Commissioners should obviously have an opportunity of considering and amending the report at a meeting before it is submitted.

The former section provided that the Lieutenant-Governor might cause any such report to be published in the *Calcutta Gazette*.

Municipal Circular No. I. T—M. of the 29th April 1886 prescribes what the annual report should contain, and the date of its submission. It will be found *post*.

Form and audit of accounts.

82. (73) The municipal accounts shall be kept in such form, and shall be audited each year in such manner as the Local Government shall direct.

The power of directing in what manner the municipal accounts shall be kept, conferred on the Local Government by this section, is new.

Account Rules have been issued under this section by Municipal Resolution of the 6th May 1886, and were published in the *Calcutta Gazette* of May 12th. They will be found *post*.

Custody of the Municipal Fund.

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

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

The words "unless the Local Government shall otherwise direct" are new. 'In the Government Savings Bank' has been omitted from the second clause.

Rules 14—16 of the Account Rules relate to transactions with Banks and Government treasuries. Rules 26—33 refer to cheques. By Rule 19 all moneys received must be remitted to the Municipal banker, and no claims can be liquidated out of them.

Orders for payment of money.

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

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

authorized by the Commissioners at a meeting, as provided in section seventy-eight.

"Commissioner of the Division" has been substituted for "Lieutenant-Governor" at the beginning of the section. The other changes in the section are in consequence of the abolition of the distinction between first and second class Municipalities.

The second clause is important, though its provisions were until recently commonly disregarded or misunderstood. The authorization here referred to is required *in addition* to a provision in the sanctioned budget estimates, though the two things were commonly confounded. The Chairman or Vice-Chairman is not justified in signing the order for payment unless there has been a distinct resolution passed at a meeting, authorizing the expenditure for the purpose in question. Such a resolution cannot be legally passed at a meeting, unless there is a provision in the sanctioned budget estimates of a sum for the purpose in question, covering the proposed expenditure. Compare section 78 and note.

Rules 17—32 of the Account Rules deal with the payment of claims.

Circular No. 15 T—M. of the 28th July 1885, in the Municipal Department has reference to this section, and is as follows:—

"It has been brought to the notice of Government that differences exist in regard to the interpretation put upon the words "orders for the payment of money from the Municipal Fund," which occur in section 84 of Act III (B. C.) of 1884. In most cases these words are understood to refer to orders on the treasury, *i.e.*, cheques on the treasury issued by the administrators of the Fund. This interpretation, however, is not only incorrect, but gives rise to considerable difficulty in the keeping and checking of the accounts of Municipalities, which might otherwise be obviated, for when a cheque has once been signed, the amount for which it is drawn must be immediately entered in the cash-book of the Municipality as a payment from the Fund, even though the cheque be not immediately made over to the payee. It frequently happens that the Chairman and Vice-Chairman of a Municipality are absent when a creditor presents his claim. The creditor goes away leaving his bill, and does not return again perhaps for a month or more. Meanwhile a cheque is drawn for the amount of the bill, and is charged off in the cash-book as a payment, although no payment has actually been made, and no voucher is forthcoming. Added to this, there is the danger, in such a case, of the signed cheque being abstracted, since it is always made payable to "bearer" and represents so much actual cash. These difficulties would disappear if the correct interpretation were applied to the words above quoted, and that is the orders made upon bills or other forms of demand directing the same to be paid. It is these orders which are the authority for the payment, whether the payment is made from cash in a cash-chest kept in the municipal office, or by a cheque on the treasury. The mere order does not constitute actual payment, and cheques should only be drawn on presentation of the order by the payee. The signing of the cheques may, in the discretion of the Municipal Commissioners, be left either to the Chairman, the Vice-Chairman, or the Secretary."

PART IV.

Of Municipal Taxation.

Alternative tax upon persons or holdings.

85. (77) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall

have been given, and with the sanction of the Local Government, impose within the limits of the Municipality one or other, but not both, of the following taxes :—

(*a*) a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality :

Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum ; or

(*b*) a rate on the annual value of all holdings situated within the Municipality :

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

Annual value.—Annual value means the annual letting value. The section must apparently be read with section 101. See *Nando Lal Bose* v. *The Corporation for the Town of Calcutta*, I. L. R., 11 Cal., 275, and compare section 101 and note.

Under the Municipal Taxation Act, 1881 (Act No. XI of 1881), section 3, the Governor-General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax payable by persons residing, on military duty, within the limits of a Municipality, or by Government itself.

By section 4, as long as such an order is in force, the amount of tax incurred by such person on military duty shall be paid by Government: Provided that Government shall not be liable to pay any tax in respect of a horse which such person is bound by the regulations of the service to which he belongs to keep.

By section 5, as long as such order is in force, the amount of tax due on account of Government in its own behalf shall be such as an officer appointed for that purpose by the Local Government shall decide to be fair and reasonable.

The tax upon persons under clause (*a*) must be considered a rate within the meaning of section 15, as otherwise, if none of the special rates referred to in the present Act were in force, none of the residents could be held to pay any rates at all, and none of them would be able to vote at the elections of Municipal Commissioners.

Two or more persons having separate sources of income, and occupying in severalty the same holding, may, it would seem, be separately assessed under clause (*a*). In such a case it appears somewhat doubtful whether each could be assessed up to the maximum of Rs. 84, or whether the total assessment upon all the occupiers of the holding must be within that amount. Probably the latter view is the correct one.

The proviso attached to the definition of "holding" in clause (3), section 6, must be borne in mind as regards clause (*a*) of this section. Where two or more adjoining holdings form part of the site or premises of certain

classes of buildings, they shall be deemed to be one holding, except for the purposes of the Act mentioned in clause (*a*) of section 85. If, therefore, a dwelling-house, manufactory, or other building of the kinds specified, is built upon several holdings, the owner thereof can be separately assessed in respect of each of such holdings up to the limit of Rs. 84 per annum. If, on the contrary, such building is built on one holding only, the amount assessed cannot exceed Rs. 84 per annum, whatever may be the annual value of the building. In the case of a large manufactory or warehouse, it is, therefore, very much a matter of mere accident whether it can be adequately assessed or not in a Municipality where a tax on persons is in force. The tax in question appears to be quite unsuitable to any very advanced Municipalities. It is admittedly illogical and arbitrary, though it may work well enough as a rough-and-ready mode of assessment in small Municipalities, where the incidence of taxation is very light. The following remarks on this tax may be quoted :—

"The Hon'ble Mr. Dampier said the scheme of the tax was none of his own. The Bill merely continued the rough mode of assessment which was in force throughout the length and breadth of the land, and had been so for the last score of years. At the same time, he admitted that this tax, if you came to look at it through a microscope, and to test it critically, was absolutely indefensible ; it was a rough and crude mode of taxation, which, on the whole, was well adapted to the circumstances of the country ; but he should be glad to improve upon it if it could be done."—*P. C., Feb.* 19, 1876.

The proviso that the total sum to be raised under clause (*a*) shall not exceed the amount which would be produced from an average rate of Rs. 2-4 per holding has been omitted. The following extract explains why :—"The Hon'ble Mr. Reynolds moved to substitute the following proviso for the proviso to (section 85), clause (*a*) : 'Provided that the amount assessed on any one person in respect of the occupation of any one holding shall not be more than eighty-four rupees per annum.' He said that this amendment was rendered necessary in consequence of the amendment which had been made in the definition of 'holding,' the effect of which would be to diminish the total number of holdings in Municipalities. There was some danger in retaining the words in the first part of the proviso : 'The total sum to be raised by the tax in any year shall not exceed the sum which would be produced by an average rate of Rs. 2-4 for each holding.'"—*P. C., March* 15, 1884.

Additional taxes.

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

(*a*) a tax on carriages, horses, and other animals named in the fifth Schedule ;

(*b*) a fee on the registration of carts :

(*c*) tolls on ferries and (subject to the provisions of sections one hundred and fifty-eight and one hundred and fifty-nine) tolls upon bridges and metalled roads ;

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

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

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

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

Clauses (*d*), (*e*), (*f*), and the proviso at the end of the section are new. The fact that any of the taxes specified in this and the preceding section have not been included in the estimates does not preclude the Commissioners from levying them in the manner prescribed. Compare section 72.

Of the Tax on Persons.

Assessment list to be prepared.

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

(*a*) name of the street or road in which the holding is situated;

(*b*) number of the holding on the register;

(*c*) name of the person occupying the holding, whether such person be assessed or exempted from assessment;

(*d*) description of the holding, and of the property within the Municipality, and the profession or business of the person assessed;

(*e*) amount of annual assessment;

(*f*) amount of quarterly instalment;

(*g*) if the occupier of the holding is exempted from assessment, a note to that effect.

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

Such tax shall not be assessed or levied on any person in respect of the occupation of arable lands or of any building which is used exclusively as a place of public worship.

"Public worship" has been substituted for "worship": otherwise unaltered.

The holding may possibly not be situated near any street or road, and in such a case the omission of the particulars required by clause (*a*) could not reasonably be held to invalidate the assessment.

"Arable" is defined in Webster's Dictionary as "fit for ploughing or tillage; hence, often applied to land which has been ploughed or tilled."

"Tillage" is defined by the same authority to be "the operation, practice or act of preparing land for seed and keeping the ground free from weeds which might impede the growth of crops."

In the case of a petition filed by certain pân-growers in the Baidyabati Municipality, Government was advised that pân gardens are arable lands and as such are not liable to taxation under this section.

Orchards and pleasure-gardens are obviously not arable lands.

"Shall be payable in quarterly instalments." This provision imposes on the Commissioners the duty of collecting the tax quarterly, and they are not justified in collecting it half-yearly. They have obviously no power of collecting it half-yearly in advance as the tax-payers are only bound to pay it quarterly in advance. There is nothing in the Act which compels the Commissioners to maintain a staff for collecting the tax from door to door, though there is also nothing to prevent their doing so. They may require payment at their office if they are so minded. (L. R.)

A Gomastah resided in a cutcherry situated within a Municipality, in which a tax upon persons was in force. The Zemindar, his employer, was a non-resident. *Held*, that as the Gomastah paid no rent, and resided in the building solely to carry on the business of the Zemindar, whose representative he was, the Zemindar must be considered to be the person occupying the holding under this section, and to be liable for the tax. (L. R.)

If the holding is occupied in severalty by more than one person, each of such persons may apparently be separately assessed under this section. For the tax is not assessed on holdings, but on persons occupying holdings according to their circumstances and property within the Municipality. It seems probable in such a case that the total assessment must not exceed the maximum of Rs. 84.

Duration of assessment.

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

Provided that when this Act is extended to any place, the first assessment may take effect from the beginning of

the quarter next following that in which the said notice shall be published.

It follows that when the Act is first extended to any place, no tax upon persons can be raised during the current quarter. For the assessment cannot take effect until the beginning of the quarter following that in which the notice shall be published, so that even if the notice is published directly after the Act is extended, no tax can be raised until next quarter.

When under the former Act the Bally Municipality was formed out of a portion of the Howrah Municipality, it was held that no tax could be collected during the current quarter. For the Act containing no provision for the division of a Municipality, had to be extended to the place as if it had never been in force there, and the notice referred to had therefore to be published. Section 9 of the present Act authorizes the sub-division of a Municipality, and therefore provides against similar difficulties in future. The section (9), however, does not provide for the uniting of two Municipalities, and precisely the same difficulty would occur in such a case.

Assessment of public buildings.

89. (81) In any Municipality in which the tax on persons is imposed, no tax shall be assessed on any person in respect of his occupation of any holding which is the property of Government and used for the purposes of a public building, but a rate not exceeding seven and-a-half per centum may be assessed on the annual value of every such holding, to be ascertained in the manner prescribed by section one hundred and one, and such rate shall be payable by Government.

Act XI of 1881, the Municipal Taxation Act, has reference to taxation of Government property in Municipalities and will be found *post*.

It is not very obvious why it has apparently always been taken for granted in this country that Government property in Municipalities ought to be rateable. It is not rateable in England, where the law on the subject has been thus stated :—

"The Crown is not named in the 43 Eliz. c. 2, and, therefore, when property is occupied by the Crown there is not an occupier within the statute, and, therefore, no one who can be rated."

"The exemption from rateability which exists when the property is in the occupation of the Crown includes cases when the occupation is that of the servants of the Crown, occupying for the purposes of the Crown. The purposes of the Crown comprise the carrying on of the Government of the country, the administration of justice, and the discharge of such other duties as are theoretically the prerogatives of the Crown. Accordingly, it has been held that property is not rateable when occupied for the purposes of the Royal Army and Navy; or of the Post Office; for Assize Courts, or Judge's lodgings; or for Prisons."—*Rosher on Rating*, 75.

Procedure if aggregate amount of rates assessed on any person exceeds Rs. 84 per annum.

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

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

These two sections are practically unaltered.

Power of exemption.

* 91. (83) The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax; but the name of the occupier of every holding shall be included in the assessment list, whether he be assessed or exempted from assessment.

Power to apply for reduction of assessment in altered circumstances.

92. (84) If any person mentioned in the assessment list shall, at any time after the publication thereof, have ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed shall have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct.

The following extract bears upon this section:—

"The Hon'ble Mahomed Yusuf moved that the words 'the Commissioners shall,' in line 8 of section 91, be substituted for 'the Commissioners may' in line 8 of section 91. The section gave power to apply for a reduction in altered circumstances, but left it optional with the Commissioners to grant or refuse reduction of assessment in such cases. He contended that reduction of assessment should be imperative where the means and property of the assessee had been reduced, and notice of exemption should be given where a holding has ceased to be occupied."

"The Hon'ble Mr. Reynolds remarked that the amendment would require the Commissioners in these cases either to pass an order of exemption or to revise the assessment, but the clause did not apply only to the case of a man who ceased to occupy premises, but also to reduction of assessment. He, therefore, could not accept the amendment. He understood the object of the amendment to be, that when a man had ceased to occupy, the Commissioners must in that case exempt; but the fact of ceasing to occupy need not necessarily in every case give an absolute right to exemption. He should, therefore, prefer to give the Commissioners the discretion provided in the section. The words 'may exempt' *impose on the Commissioners the duty of exempting* if cause be shown."—*P. C., February 20th*, 1884.

Power to alter assessment.

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

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

The number of the section referred to is necessarily altered, but otherwise no change has been made. The following extract from the Proceedings of the Council when Act V was under discussion is important as clearly showing the object and effect of this section:—

"The Hon'ble Baboo Kristodass Pal moved the omission of the words 'to be inadequate and' in line 8. He said, that this section provided that the Commissioners might, at any time after the publication of the assessment list, assess any person who was without authority omitted therefrom, or whose liability to assessment had accrued thereafter; and might enhance any assessment which appeared to them to be inadequate, and to have been so made owing to mistake or fraud. He wished to be informed whether this enhancement might be made during the currency of the assessment, that was to say, within the three years for which the assessment was to remain undisturbed. [The Hon'ble Mr. Dampier said that it was so.] Then this section would override the other sections as to assessment. The ground of inadequacy was after all a very slender ground, and would be open to misconstruction. He submitted that where there had been mistake or fraud which could be proved, the assessment ought to be revised; but no assessment ought to be enhanced merely because it appeared to be inadequate; for if you allowed the assessments which were made for three years to be disturbed on so slight a ground, it would open a wide loophole for enhancement."

"The Hon'ble Mr. Dampier explained that the essence of the provision was that the assessment was made by mistake or fraud; according to the wording it must have been inadequate *and* have been so made by mistake or fraud."—*March 2*, 1876.

It is clear from the above that the only cases in which assessments can be disturbed before the expiration of the three years, is where there has been mistake or fraud.

Procedure on change of occupation.

*94. (86) The Commissioners may at any time substitute for any name mentioned in the assessment list the name of any new occupier of a holding, and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced.

Assessment on vacant holdings when to cease.

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

Of the Rate on the value of Holdings.

Commissioners to determine the valuation of holdings.

*96. (88) When it has been determined that a rate shall be imposed on the annual value of holdings, the Commissioners, after making such inquiries as may be necessary, shall determine the valuation of all holdings within the Municipality as hereinafter provided.

Duration of assessment.

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

Buildings exempted from tax.

98. (90) The rate on the value of holdings shall not be assessed or levied on any holding which is used exclusively as a place of public worship, or which is duly registered as a public burial or burning ground under section two hundred and fifty-four.

"Buildings exempted from tax" in the margin is an obvious mistake for "holdings exempted from tax." "Public worship" has been substituted for "worship." The object of the alteration is obvious. Under the former section, places used for the purpose of private worship were exempted.

The exemption of duly registered public burial or burning grounds is new.

It will be noticed that arable lands, which are exempted from the tax on persons by section 87, are not exempted from the tax on holdings under

this section. The ordinary and obvious inference appears to be that the intention of the Act is that they should not be exempted. As, however, contradictory opinions on the point have been given on high authority, it may be as well to see what evidence exists as to the intentions of the Council on the subject.

Before Act V of 1876 was passed, arable lands were expressly exempted under both Act III of 1864 and Act VI of 1868. Under the former Act a rate on holdings was in force, and under the latter a tax on persons. Arable lands were therefore at that time expressly exempted from all Municipal taxation. The following extract from the Proceedings of the Council, when the Bill of 1872 was under consideration, will shew, however, that, by that time, there was a strong opinion on the part of Government that they ought to be assessed :—

"Section 45 related to the tax upon buildings (holdings?) and exempted buildings used exclusively as places of public worship or applied solely to charitable purposes."

"The Hon'ble Rajah Jotendro Mohun Tagore moved the insertion of the words 'and arable lands' after 'purposes,' so as to exempt arable lands from the tax."

"The Hon'ble Mr. Beaufort said that he would move as a counter-amendment that the following words be added to the section :—" Provided that the annual value of any arable land shall be deemed to be one-half of the annual rent at which such land may be reasonably expected to be let."

"The Hon'ble Mr. Bernard said, it might be explained that lands taxed by Municipalities were exempted from road cess under Act X of 1871 of this Council, and if arable lands within municipal limits were exempted from taxation under this Bill, they would escape taxation altogether. The amendment which the Hon'ble Member in charge of the Bill had proposed would reduce the rate on arable lands in Municipalities very nearly to what they were assessed for road cess outside Municipalities."

"His Honor the President said, roads outside Municipalities were to be made by those taxed outside by the district road cess, and inside Municipalities, by Municipalities; and it was only fair that arable lands within Municipalities, which were exempted from the district road cess, should pay a tax such as the same lands outside Municipalities paid under the road cess. He quite thought with the Hon'ble Member that it would be hard that arable lands within Municipalities should pay a tax as high as that paid by houses and shops; and therefore it appeared to His Honor that the half-rate, which the Hon'ble Member in charge of the Bill had proposed would meet the difficulty."

"The Hon'ble Rajah Jotendro Mohun Tagore said, that after the explanation that had been given he would withdraw his amendment."

"The Hon'ble Mr. Beaufort's amendment was then agreed to."—*P. C., 18th July*, 1872.

The principle of the amendment in question was accepted by the framers of the Draft Bill which afterwards became Act V of 1876, as section 69 contained a clause *identically the same as Mr. Beaufort's amendment*. This clause was, however, omitted by the Select Committee. The only possible conclusion which can be drawn from this omission, is, that they were of opinion that arable lands should be assessed at the full, and not at the half-rate. The fact having been already recognized by the Draft Bill, that arable lands were assessable under its general provisions referring to the tax on holdings, it would have been obviously necessary to introduce a distinct provision on the subject, had the Select Committee intended to exempt them altogether. Moreover, it appears from their

report, that they had no such intention. They specify the classes of holdings which they have exempted from municipal taxation, but arable lands are not among them.

When the Bill was considered in Council, a provision was added exempting arable lands from taxation with respect to the tax on persons. No such provision was inserted with regard to the rate on the value of holdings, and the obvious inference is, that it was not the opinion of the Council that they ought to be exempted.

In the Act now in force the provisions on the subject are taken from the former Act without alteration. It may be noticed, however, that the Bill, before it came into Council, contained a clause exempting arable and pasture lands from the lighting-rate, though it contained no such provision with regard to the rate on holdings. This exemption as regards the lighting-rate was deliberately omitted by the Council. Compare note to section 311.

As the present section has been made to apply to both the lighting-rate and the water-rate, it appears that arable lands are subject to both, though this fact has possibly been overlooked. There are no exemptions as regards fees under Part IX. and they are therefore subject to latrine tax also, though in cases of hardship the Commissioners have power under section 327 to exempt them. As section 106 has been extended to both the lighting-rate and water-rate, the Commissioners have a similar power with regard to these taxes also.

What return may be required for ascertaining annual value.

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

Penalty for default in furnishing return.

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

This is new. A sentence by a Court inflicting a daily fine until such time as an accused person shall desist from committing a continuous

offence. is bad in law. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41 ; 6 Cr. R., 25 W. R.; 31 Cr. R., 21 W. R.

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

Annual value of holding how to be ascertained.

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

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

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

The first paragraph is unchanged. The remainder of the section is entirely new.

As regards the construction to be placed upon the first paragraph, Government has been advised that, in a town where there are both hired and unhired houses, "the annual value of unhired houses should be derived from a comparison of them with the hired houses in the vicinity, making such deductions from, or additions to, the rent of the latter as circumstances require."

"This is the construction which has been put on the 6 and 7 of William IV, from which this section is taken."

"The law does not justify the Commissioners in going into calculations and determining what ought to be the rent from the capital expended on the holding ; nor, on the other hand, to take into consideration the contingency of all the houses being thrown into the market. In the one case the Commissioners would be levying a tax not according to the actual or presumed letting value, but on the capital ; on the other, they would levy the rate on a hypothetical condition of things which had no existence in fact. What they should say in connection with each holding is : 'other things being as they are now, what do we, from a comparison of this unhired holding with such and such a hired holding, consider a reasonable rent ?'" (L. R.)

In Nando Lal Bose v. *The Corporation for the Town of Calcutta*, I.L.R., 11 Cal., 275, it was held that an assessment of rate upon a supposed annual rent calculated on the basis of the costs of the buildings and premises is illegal as being an arbitary test which the law does not sanction. *Per* GARTH, C.J.—That section 104 of the Calcutta Act providing what shall be deemed to be the annual value of property must be taken as explanatory of the other sections in which the term "annual value" is used. *Per* WILSON, J.—It seems doubtful as to whether such a provision is of the nature of an interpretation clause, or merely directory as containing instruction to the Commissioners how to proceed.

As regards the present section, there seems little room for doubt that the first clause, at all events, must be considered to furnish a general definition of annual value, though the remaining clauses would seem to be rather of a directory nature: the third and fourth are obviously so.

The main principles of the law of rating as stated in *Rosher on Rating* are as follows:—

(1) *Rating must be equal*, that is to say that the method of assessment must be such as to affect all occupiers fairly and equally in proportion to the value of the property.

(2) *Property must not be rated twice over*, i.e., "Except in the case of a joint occupation, there cannot be two persons liable to be rated for the same thing." *Per* FIELD, J., in *Smith & Son* v. *Lambeth*, 9 Q. B. D., 585.

(3) *Property must be rated "rebus sic stantibus,"* that is to say, (*a*) it must be assessed at the value it possesses at the time the assessment is made; if it increases or diminishes in value from time to time, there will be a corresponding increase or diminution in the rate, for that must be always proportional to the then existing value, and the value of the property in the past or the future is immaterial. Moreover, (*b*) the hypothetical tenant must be assumed to use the property in the same way as the actual occupier, and to have the same facility for deriving profit from it, no more and no less. In *Staley* v. *Castleton* (33 L. J. M. C., 178; 5 B. & S., 505), BLACKBURN, J., said, "The Legislature intended that the rate should be made upon the rent which might be reasonably expected from a tenant who took the property from year to year *rebus sic stantibus*.

(4) *Property must be rated at its value "communibus annis."* This principle is complementary to that of *rebus sic stantibus*.

Although by the principle of *rebus sic stantibus* property is to be rated at its present value, it must be added that its present value means, not the value shown by the balance sheet of the particular year, but, the value which under present circumstances it would be worth to let *in an average year*, or taking one year with another. This is the principle of *communibus annis*.

(5) *Property must be rated in accordance with the principle of "enhanced value."*

Since the measure of the rateable value of a hereditament is the rent which it might reasonably be expected to fetch, and since that rent would be proportional to the benefits the tenant would derive from the occupation, it follows that any profits which the tenant would receive in virtue of the occupation must be taken into consideration in making the assessment

It matters not that these profits are of such a nature as to be not rateable *per se*. If they are due to the occupation, they are to be taken into consideration in estimating the value of the occupation. The practical result of this is that trade profits are indirectly brought under

contribution to the rates ; *when*, that is, the occupation of something that is rateable *per se* is the meritorious cause of their existence, *and so far as* their existence would influence the rent obtainable in the market for the occupation. Lord DENMAN, C. J., said in *R.* v. *The Grand Junction Ry. Co.* (15 L. J. M. C., 94 ; 4 Q. B., 18). "If the ability to carry on a gainful trade on land adds to the value of the land, that value cannot be excluded on the ground that it is referable to the trade," and in *R.* v. *G. W. Ry. Co.* (15 L. J. M. C., 80 ; 6 Q. B., 179), he says that although the profits of trade carried on by the occupier of land upon it cannot be made directly the subject of the rate assessed in respect of such occupation, and the value of the occupation alone is the proper subject of rating, yet in that value is to be included whatever at the time forms part of it, whether permanently or not, and from whatever source derived, and, therefore, of course, not the less so although derived in any proportion from the fact of the trade being so carried on upon it. It must be borne in mind that trade profits, however directly arising out of the occupation, cannot be directly rated ; the rate must be upon something which is *per se* rateable, but in assesssing anything that is so rateable, regard may be had to the fact that it is enhanced in value by being available for earning profits. For instance, a railway company is practically rated on profits, but it is solely in the capacity of an occupier of land it is rateable at all.

Now, although a railway company is practically rated on its actual profits, the profits made by an ordinary tradesman, who could remove to another shop next door or in the next street and still make the same profits as before, do not affect the amount of his assessment. His profits are not due to the occupation of a particular hereditament, but the profits of a railway company are attached to the particular hereditament they occupy.

The principles of the English law of rating as applied to municipal assessments in this country have been discussed at considerable length in *The Secretary of State* v. *Madras Municipality*, I. L. R., 10 Mad., 38 :—

"Under section 123 of the City of Madras Municipal Act, the gross annual rent at which a building might reasonably be expected to let from month to month or from year to year is for the purpose of assessment to house-tax under the Act, to be deemed the annual value of such building. The Lying-in Hospital at Madras, built and supported by Government, having been assessed by the President of the Municipality as on a rental of Rs. 1,000 a month, the Magistrates on appeal reduced the assessment, finding, that Rs. 7,920 per annum would be a reasonable rent, having regard to the letting value of the buildings in the neighbourhood, but, at the request of the Municipality, referred the following questions to the High Court:

"Whether (as contended by Government) the property in question should be valued and assessed on the rent which, on the property being offered in the open market without reserve, a person desirous of securing it would have to pay ; or whether (as contended by the Municipality) it should be valued and assessed on the highest reserve rent which an owner of the property offering it in the open market would reasonably demand, and below which sum he would not be willing to let :

"*Held*, that the standard value was what the hypothetical tenant requiring the building for use as a hospital would be willing to pay rather than rent a less suitable building and adapt it to his requirements at his own expense, and that in this sense the contention of the Municipality was correct."

As the questions involved are of very great importance, the following extract from the judgment in the above case is here given :—

"The standard of value is certainly, as observed by the Magistrates, the value of the property to the owner, which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant on the terms laid down by the Legislature. Having regard to the course of decisions under the English Statute, there are several matters which ought to be kept in view in fixing the rateable value. The standard value is the rent which the building would be worth to a hypothetical tenant on the terms laid down by the statute. The terms on which any particular property is, in fact, let are, therefore, immaterial, and the tenancy from month to month or year to year is prescribed as the standard by which all buildings should be valued in order that their assessments might be equal. Again, the standard value is the value which the building possesses at the time the assessment is made ; hence, the value of the property in the past or future is immaterial. The present value is not the value of any exceptional year but the value which under present circumstances the building would be worth to let in an average year or taking one year with another. Neither exceptional repairs nor exceptional profits made in a particular year are to be considered. In letting a building from year to year, the rent would ordinarily be regulated by two matters as observed by BLACKBURN, J., in the *Queen* v. *London and North-Western Railway Co.* (L. R. Q. B., 134), on the one hand by the benefit which the tenant could be likely to derive from the occupation, because he would not give more ; on the other hand, by the nature of the property, such as local situation, or the number of persons there are who could supply him with an equally eligible building and be willing to let it to him ; for while he would not be willing to give more than he expects to gain by the occupation, he would not give even that if he could get a similar building at a lower price. Further, in rating property, it must generally be assumed that the hypothetical tenant would be in the same position, and use the building in the same way as the party rated, for the object is to ascertain its intrinsic value to the owner in its present condition. In *The Queen* v. *The School Board for London*, (55 L. J., Q. B. D., 53), it was contended, *inter alia*, for the respondent before a Divisional Court of Queen's Bench, that the rent which the School Board might be supposed to be willing to give for the school premises if the Board were in the market anxious to rent premises suitable for use as a school, was a fair test of rateable value. On the other hand, it was urged for the appellant: 1st, that the School Board owning the premises should not be supposed to be in the market anxious to rent premises, but should be excluded from the number of hypothetical tenants who might be supposed to be willing to rent the school premises, and, 2ndly, that the only true indication of rateable value was the rent for which the premises could in their present condition be let to a hypothetical tenant from year to year, supposing they were not used for Board Schools, but were applied to any other use or purpose for which they could be made available for a tenant. The respondent's contention was allowed, and the appellant's objections over-ruled. CAVE, J., said: 'When you want to find what a hypothetical tenant will give, you must not take a man who does not want the premises for the purpose for which they were built, but wants to use them for some other purpose, unless you can first show that they cannot be let for the purpose for which they were built. If they cannot be let for the purpose for which they were

built, then, no doubt, you may go and see what you can do with them for some other purpose, and the best subsidiary purpose you could put them to. But as long as they can be let for the purpose for which they were built, it seems to be idle to say 'well, if this man were not occupying them, they could not be let to anybody else.'

"The Court of Appeal confirmed the decision (the case is not yet reported). Lord Esher, M. R., observed: 'In this case there was no tenant, as the Board were owners and occupiers. All possible tenants must be looked at. In estimating the rent, no tenant was excluded, and the actual occupier might be included and the owner, if he was the occupier, as to whom it might be considered what rent he might be reasonably expected to pay. The School Board might be tenants, and therefore the rent they would be willing to pay might be considered.'

"Lord Justice Brown says: 'The test of rateable value was the rent for which the premises might reasonably be expected to let to a tenant. In estimating that, in the present case, the rent for which the premises might be reasonably expected to be let to the Board themselves may be considered, for how could the only body likely to require the premises be excluded from the estimate, that is, why should the only body likely to require or use the premises be excluded from the estimate of rent payable?'

"Having these principles in view, we are of opinion that the Lying-in Hospital should not be valued at the rent which it would fetch if it were offered in the open market without reserve. Admittedly there is but one building in Madras specially eligible for use as a Lying-in Hospital, and it is occupied by the owner. If the owner, the only person likely to require the premises, were excluded from the market, then the hypothetical tenant would take advantage of the absence of demand for it and pay no more than those who require it for use other than as a hospital would choose to pay. No prudent landlord, who is aware of the fact that only one person requires the building for use as a hospital, would offer it in the open market without reserve."

"Nor can any reserve rent which the landlord may arbitrarily demand, be taken to represent the standard value. If such demand is far in excess of the special convenience or benefit which the hypothetical tenant can expect to derive from the occupation, the tenant would prefer to rent less suitable buildings and adapt them to his requirements, though at some expense, or to forego the special convenience if it is not indispensable."

Determination of rate of tax on holdings.

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

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

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

It follows that when the Act is first extended to any place no such rate can be levied during the quarter then current. Compare notes to sections 9 and 88.

Preparation of valuation and rating list.

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

(*a*) name of the street or road in which the holding is situated ;

(*b*) number of the holding on the register ;

(*c*) description of the holding ;

(*d*) annual value of the holding ;

(*e*) name of owner ;

(*f*) amount of rate payable for the year ;

(*g*) amount of quarterly instalment ;

(*h*) if the holding is exempted from assessment, a note to that effect.

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

It is obvious that the information required by clause (*a*) cannot always be forthcoming in Mofussil Municipalities, as the holding will often not be situated anywhere near a street or road. In such cases the law will be complied with if the remaining particulars are recorded.

Compare section 358, by which no assessment or rating shall be invalid for error or defect of form.

The tax being payable quarterly, it is obviously the duty of the Commissioners to take proper measures for having it paid quarterly, and they are not justified in collecting it half-yearly. Half-yearly collections in advance are illegal, as the rate-payers are only bound to pay quarterly in advance. The Commissioners are not bound by the Act to collect the tax from door to door, but there is nothing in it which prevents their doing so. (L. R.)

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

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

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

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

Only a slight verbal change has been made in this section. The words "such award shall be final" imply that a civil suit would not lie as regards the proportion in question. This appears to follow from the decision in I. L. R., 1 Cal., 409, referred to in the note to section 114, and also from the provisions of section 116.

Tax due from non-resident owner may be recovered from occupier and deducted by him from his rent.

*105. (96) If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the Municipality, or the place of abode of such owner be unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him:

Provided that no arrear of rate, which has remained due from the owner of any holding for more than one year, shall be so recovered from the occupier thereof.

Power of Commissioners in cases of excessive hardship.

*106. (97) Whenever, from the circumstances of the case, the levy of the rate on any holding in the Municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same.

The "excessive hardship" here referred to must be caused by actual indigence. The words cannot reasonably be held to apply to the case of any person who can, without difficulty, afford to pay the rate.

Application for reduction of assessment.

*107. (98) If the value of any holding shall be diminished from any cause beyond the control of the owner thereof, the owner

thereof may apply for reduction of the valuation of the same.

Power to revise valuation and assessment.

108. (99) The Commissioners may, at any time after the publication of the notice required by section one hundred and twelve, value and rate any holding which was, without authority, omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight, or fraud; and may revalue and reassess any holding the value of which has been increased by additions or alterations to any building thereon.

Any rate imposed or enhancement made under this section shall take effect from the beginning of the quarter next following that in which the rate shall be imposed or enhancement made.

Practically unaltered. The note to section 93 may be taken into consideration with reference to this section. The only case in which the Commissioners can enhance an insufficent valuation during the time of its currency is where there has been mistake, oversight, or fraud. Where the value of a holding has been increased by building on it, they may at any time revalue and reassess it. Where a holding has been omitted from the list without authority, they may at any time value and assess it.

The words "mistake" and "oversight" would appear to refer to mistake or oversight as to some existing fact, and not to errors of judgment. For instance, if two buildings were comprised in the same holding, and the assessor, unaware of this fact, and under the impression that one of them was comprised in some other holding, only valued one of them, the holding would have been insufficiently valued *by mistake*. If the assessor overlooked the existence of one of the buildings—as in the case of a range of stables in a remote part of a compound—the holding would be insufficiently valued *by oversight*. But in the case of a wrong valuation of the holding, simply from defective judgment on the part of the assessor, it does not appear that the Commissioners have any power of interference.

The following has an important bearing upon this section :—

"The Hon'ble Baboo Kristodas Pal moved the insertion of the following words at the end of paragraph 7: 'A notice shall be served upon the owner or occupier of every holding which may be so assessed, or the assessment of which might be fixed at a higher sum than was prevailing at the time being.'

"He thought that in every case where an assessment was increased or newly made, notice should be served on the owner or occupier. That was not clear from this or any subsequent section, and he therefore proposed the amendment.

"The Hon'ble Mr. Dampier said he thought the Hon'ble Member would withdraw his amendment if he looked at sections 104

and 106. Any body who had an assessment imposed upon him for the first time, or whose assessment was enhanced in any manner whatever, might appeal according to the procedure laid down for the review of assessments. Now, when was this appeal to be made? Section 106 said within one of two periods, whichever should last expire—either within one month from the publication of the assessment-lis; (which would not apply to a single assessment made within the year), or 'within fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made;' so that, practically, there were fifteen days given to apply for a review whenever an assessment was altered." (*P. C., March* 2, 1876.)

Power to revise assessment list.

*109. (100) The Commissioners may, at any time, substitute for any name mentioned in the valuation and rating-list, the name of any person to whom any holding mentioned therein shall have been transferred.

Such person shall be liable to pay the rate payable on such holding from the first day of the quarter next after the date of the transfer.

Remission or refund on account of vacant holdings.

110. (101) When any holding has been vacant for sixty or more consecutive days during any year, the Commissioners shall remit, and, if the rate has been paid, shall refund, one-half of so much of the rate of that year as may be proportionate to the number of days the said holding has remained unoccupied:

Provided that the owner of such holding, or his agent, has given to the Commissioners notice in writing of the vacancy thereof, and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners.

The amount of tax to be remitted or refunded shall be calculated from the date of the delivery of such notice.

The proviso at the end of the second paragraph is new, and is taken from section 82 of the Calcutta Municipal Act. Its object is obvious.

The Hon'ble Mr. Reynolds said: "He would take this opportunity of mentioning that a representation had been made by the Deputy Commissioner of Darjeeling with reference to the necessity for a definition of a vacant holding. The Deputy Commissioner said, it was a common thing for an unoccupied house in Darjeeling to be kept more or less furnished, and to be left in charge of a chowkidar or caretaker, and it was a question whether, as long as the owner received no rent, the holding should be treated as a vacant holding. Mr. Reynolds did not think that the holding should, under such circumstances, be considered a vacant holding, and he had not therefore brought forward any proposal for defining a vacant holding." (*P. C. February 20th*, 1884.)

The law is clear that a holding under the circumstances stated cannot be held to be vacant; and has been thus stated: "LUSH, J., says:

(*R. v. St Pancras*, 2, *Q. B. D.* 581) 'The owner of a vacant house is in possession, and may maintain trespass against any one who invades it; but so long as he leaves it vacant, he is not rateable for it as an occupier If, however, he furnishes it, and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in the year';—if the owner did not keep the furniture in the house he would have to keep it somewhere else, and he may, therefore, be regarded as making use of the house, at least as a warehouse for the furniture. Slight as such user may be, it is enough when added to legal possession to constitute occupation.

"In *Staley* v. *Castleton* (33 L. J., M. C. 178; 5 B & S. 505), the owner of a Cotton Mill which, through a temporary scarcity of cotton, was not kept at work, was held to be in rateable occupation, on the ground that he was using the mill as a warehouse for the machinery that was in it. In such cases, the amount of the assessment should, of course, be calculated with reference to the nature of the occupation. A building found to be occupied as a warehouse should be assessed at its value as a ware, house, and not at what its value would be if used as a dwelling house or for any other purpose."—*Rosher on Rating*, 60.

Penalty.

*111. (102) Whoever, being the owner of any holding for which a remission or refund of the rate has been made under the last preceding section, fails to give notice of the reoccupation of such holding within ten days of such reoccupation, shall be liable to a fine not exceeding three times the amount of rate payable quarterly on such holding.

Of general provisions relating to the tax on persons and the rate on holdings, and to the recovery of the same.

See Rules 52, 53, and Appendix A of the Account Rules.

Publication of notice of assessments.

112. (103) When the assessment-list of the tax upon persons, or the valuation and rating list of the rate on the annual value of holdings, shall have been prepared or revised, the Chairman shall sign the same, and shall cause it to be deposited in the office of the Commissioners, and shall cause the notice in form (A) or the notice in form (B) of the third Schedule (as the case may be) to be published in the manner prescribed by section three hundred and fifty-four.

Practically unaltered.
See Rules 7—13 of Appendix A of the Account Rules.

Application for review.

*113. (104) Any person who is dissatisfied with the amount assessed upon him, or with the valuation or rating of any holding,

or who disputes his occupation of any holding, or his liability to be assessed or rated,

may apply to the Commissioners to review the amount of assessment, valuation or rating, or to exempt him from the assessment or rate.

Such an application does not require any stamp (Act VII of 1870, section 19, clause 21).

It is most important that applications under this section should be promptly inquired into and decided. See Rule 2, Appendix A, of the Account Rules, *post*.

A form of petition is suggested in Rule 11, Appendix A, of the Account Rules.

Procedure upon review.

*114. (105) Every application presented under the last preceding section shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Chairman. The Commissioners so appointed, after making such inquiries as they may deem necessary, may pass such order as they shall think fit in respect of such application.

The decision of such Commissioners, or of a majority thereof, in such cases shall be final.

This section reproduces section 105 of Act V, and is practically to the same effect as regards appeals from assessments as section 33 of Act III of 1864. The ruling in *Manessur Dass* v. *The Collector and Municipal Commissioners of Chupra* (I. L. R., 1 Cal., 409), with reference to section 33, is, therefore, applicable to the present section. In that case it was held that no suit will lie in a Civil Court to set aside an order under that section. GARTH, C. J., remarking, that "some actions may, no doubt, be brought against the Commissioners for a great variety of acts which they may do under colar of their statutory powers and under a mistaken view of their duties, but not an action of this kind. Their decision upon an appeal against a rate assessment is absolutely final."

The Commissioners should be appointed directly after the completion of a new assessment. See Account Rules, App. A, Rule 4.

Limitation of time for application of review.

115. (106) Unless good cause shall be shown to the satisfaction of such Commissioners for extending the time allowed, and save as is otherwise expressly provided in this Act, no such application shall be received after the expiration of one month from the date of publication of the notice required by section one hundred and twelve relating to the list containing the assessment, valuation, or rating in respect of which the application is made, or after the expiration of fifteen days from the date of service of the

first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire.

Except as regards the number of the former section referred to, this section is unaltered.

*116. (107) No objection shall be taken to any assessment or rating, nor shall the liability of any person to be assessed or rated be questioned, in any other manner or by any other authority than in this Act is provided.

Assessment to be questioned only under Act.

117. (108) By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business.

Office hours for payment of taxes.

The words "and the transaction of business" are new.

118. (109) The amount due by any person on account of the tax on persons, or the rate on holdings, shall be deemed to be the amount entered in the lists the notice relating to which is published under section one hundred and twelve, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due.

Tax payable in advance.

Every instalment of such tax or rate shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

Unaltered except as regards the number of the section referred to.

*119. (110) For all sums paid on account of any tax or rate under this Act a receipt, stating the amount and the tax or rate on account of which it is paid, shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts.

Receipts to be given.

The receipt should be signed, and not stamped with a facsimile signature, as the legal validity of the latter is doubtful.

The form of the receipt is prescribed by Rule 17, Appendix A, of the Account Rules.

120. (111) At any time within six months after any sum has become due on account of any tax or rate, the Commissioners shall cause to be presented to the person liable to the payment thereof a bill for the said sum, which shall contain a statement of the period and of the tax or rate on account of which the charge is made.

Bill and notice of demand to be presented.

If the amount mentioned in such bill be not paid on presentation thereof, a notice of demand in the form marked (A) in the fourth Schedule, with copy of the bill appended thereto, shall be served on the person liable to pay the same, and such notice of demand may be served at any subsequent time:

Provided that no charge shall be made in respect of the service of such notice.

Such notice shall be signed by the Chairman or an officer authorized in that behalf, and shall be served by a person authorized to receive payment.

Practically unaltered. It is obvious that the bill must be presented within six months of the amount falling due, but that if this has been duly performed, the notice of demand can (subject to the ordinary law of limitation) be served at any subsequent period. If due cause is not shown within fifteen days for the non-payment of the amount, and if it be not paid, the Commissioners can distrain under the provisions of the next section.

If the bill has not been presented within six months, the Municipality can only recover by a regular suit under section 129.

See Account Rules, Appendix A, Rules 17—22.

121. (112) If any person, after service upon him of such bill and notice, shall not, within fifteen days of the service of such notice, or from the date of any order made on an application for review under section one hundred and fourteen pay the sum due, either to the Commissioners at their office, or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs on the scale shewn in the table of fees marked (B) in the fourth Schedule, may, at any time within three months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any moveable property belonging to the defaulter, except ploughs, plough-cattle, tools, or

If not paid in fifteen days, process of distress may issue.

implements of agriculture or trade, wherever found, or of any moveable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax or rate.

If the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

This section is practically unchanged.

Distress how to be made.

122. (113) Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the form marked (C) in the fourth Schedule.

Distress shall be made by actual seizure of moveable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

Such officer shall make an inventory of all moveable property seized under the warrant, and shall give not less than ten days' previous notice of the sale, and of the time and place thereof, by beat of drum, in the Municipality or Ward in which the property is situated, and by serving on the defaulter a notice in the form marked (D) in the fourth Schedule:

Provided that, if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.

Under the former section perishable property could only be sold with the consent of the defaulter, after the expiry of twenty-four hours from the seizure.

Huts are not moveable property within the meaning of this section. For a hut is a house [section 6, clause (4)], and a house is immoveable property [section 6, clause (5)]. The fact that the hut may, according to the custom of the country, be removeable by the tenant, does not make it moveable property. See *Mattu Miah* v. *Nand Rani*, 8 B. L. R., 517, where the question as to what constitutes moveable and immoveable property is discussed very thoroughly.

Officer may break open door.

*123. (114) The officer charged with the execution of the warrant may, under the special order of the Commissioners, between

sunrise and sunset, break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any moveable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that he shall not enter or break open the door of any room appropriated for the zanána, or residence of women, which, by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

Sale how to be conducted.

124. (115) If the sum due be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Commissioners, the moveable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners, or in a Court of competent jurisdiction.

Return of sales.

The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the form marked (E) in the fourth Schedule.

Certain persons prohibited from purchasing at sales.

*125. (116) All officers and servants of the Commissioners, and all chaukidars, constables, and other officers of Police, are prohibited from purchasing any property at any such sale.

No penalty is laid down in this Act for a breach of the provisions of this secton. In the case of public servants such an act, in face of the prohibition here enacted, would be punishable under section 169, Indian Penal Code, with simple imprisonment for two years and fine. Constables and other officers of Police are of course public servants. What classes of Municipal subordinates can be held to be public servants is a somewhat doubtful question. There is no doubt that, under clause (10) of section 21, Municipal assessors and tax collectors are public servants. Other Municipal subordinates whose duty it is to receive or expend money would also come within the terms of the clause in question. It is doubtful whether any other classes of Municipal servants would be considered

to be public servants. Labourers and menial servants generally, certainly would not. Such persons when employed by Government have been held not to be public servants.—*Queen* v. *Nachimattu and others*, I. L. R., 7 Mad., 18.

Commissioners to keep account of distresses and sales.

*126. (117) The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes under this Act.

Sale of property beyond limits of Municipality.

*127. (118) If no sufficient goods or chattels belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the Municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his Court for the distress and sale of any personal property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any personal property belonging to the defaulter within the jurisdiction of any other Magistrate whatsoever, and such other Magistrate shall endorse the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

An application filed by a Municipal officer in a Criminal Court requires no stamp.—Act VII of 1870, section 19, clause (18). "The Magistrate" is defined in section 6, clause (8), as the District or Subdivisional Magistrate or any Subordinate Magistrate to whom the District Magistrate may have made over any duties under this Act.

Goods or chattels—Chattels *personal* are evidently referred to here, and not *chattels real* as well as personal. The word "chattel" includes certain kinds of immoveable property as well as moveable, but must be taken here as referring to the latter only. "Any estate in lands and tenements, which amounts not to freehold, is consequently a chattel, but inasmuch as it concerns, or, according to the technical expression savours of the realty, it is denominated a chattel real, in order to distinguish it from things which have no concern with the realty, viz., mere moveables and the rights connected with them; and such things as these are, on the other hand often described as chattels *personal*." (1 *Steph. Com.*, 278.)

"The appellation was originally derived from the technical Latin word *catalla*, which, among the Normans, primarily signified only beasts of husbandry, or as we still call them cattle; but, in a secondary sense, was applicable to all moveables in general, and not only to these, but to whatever was not a *fief* or *feud* to which, among the Normans, there were two requisites, a given degree of duration as to time and immobility with regard to place." (*Ibid.*)

*128. (119) No distress or sale made under this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any error, defect, or want of form in the bill, notice, summons, warrant of distress, inventory, or other proceeding relating thereto.

Distress or sale not unlawful for want of form.

The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect the demand where the directions of the Act have been substantially complied with, the Commissioners being protected by this section against such mistakes. (See *Gopee Kishen Gosain* v. *W. H. Ryland*, 562 C. R., 9 W. R.)

*129. (120) Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

Commissioners may bring suit instead of distraining or on failure of distress.

*130. (121) The Commissioners may order to be struck off the books the amount of any tax or rate which may appear to them to be irrecoverable.

Irrecoverable taxes.

It is most important that this should be done regularly and promptly. See Appendix A, Rule 2, of the Account Rules, *post*.

Of the Tax on Carriages, Horses, and other Animals.

131. (122) When it has been determined that a tax on carriages, horses, and other animals specified in the fifth Schedule shall be imposed, the Commissioners at a meeting shall make an order that every carriage, horse, and every other animal of the kind specified in the said Schedule, which is kept or habitually used within, or which is let for hire within or without the Municipality, and habitually used within it, shall pay the tax, and shall cause such order to be published in the manner prescribed by section three hundred and fifty-four.

Tax on carriages, horses, and other animals.

Such order shall be published at least one month before the beginning of the half-year in which such tax shall first take effect; and shall specify at what rates, not exceeding the rates given in the said Schedule, such tax shall be levied.

But such tax shall not be imposed on—

(*a*) horses or ponies belonging to officers doing regimental duty, at the rate of one animal for each officer;

(*b*) animals exempt from any Municipal tax under section 25 of the Indian Volunteers' Act, 1869;

(*c*) carriages or animals belonging to Government, or to the Commissioners, or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers;

(*d*) animals used by, or exclusively for the purposes of, any regiment;

(*e*) horses or ponies used by police officers, at the rate of not more than one for each officer;

(*f*) carriages the wheels of which do not exceed twenty-four inches in diameter;

(*g*) carriages or animals kept for sale by any *bonâ fide* dealer in such carriages or animals, and not used for any other purpose.

This section is practically unaltered, except that the exemption of animals under eleven hands in height has been omitted. On this point the Select Committee remarked in their Preliminary Report as follows:—

"We have struck out the exemption of animals under eleven hands in height. It has been represented to us that the effect of this exemption is, that ponies under eleven hands are commonly employed in order to avoid taxation in drawing heavy carriages, and that much cruelty to animals is the result."

Section 25 of the Indian Volunteers Act (Act XX of 1869) is as follows:—

"Every mounted officer, and every mounted orderly of a Corps of Volunteers, and every member of such corps, while he belongs to a troop of cavalry in such corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any Municipal or other tax imposed upon horses."

It will be observed that carriages which are kept within the limits of a Municipality are liable to pay the tax, whether used or not. On a reference from the Dacca Municipality, an opinion to that effect was given by the Legal Remembrancer, who has also held that a carriage so damaged as to be unfit for use is not liable to the tax. For the definition of a carriage is a vehicle used for the conveyance of human beings, etc., and if it is unfit for use, it obviously cannot convey human beings.

"Habitually used within." The word "habitually" here probably means "usually," "generally." See note to section 142.

Tax so fixed to continue in force until altered.

*132. (123) Any order of the Commissioners imposing a tax under the last preceding section shall continue in force until rescinded, and the tax shall be levied at the rates

specified in the order published as aforesaid; unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

Licenses how to be obtained.

133. (124) In any Municipality in which a tax has been imposed under section one hundred and thirty-one, the owner of every carriage, horse, and other animal specified in the said Schedule shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages, horses, and other animals liable to the tax, for which he is bound to take out a license.

Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses, and other animals specified in such statement, according to the rates specified in any order for the time being in force under the two last preceding sections.

This section is practically unaltered.
Rule 87 of the Account Rules refers to this section.

Proportionate tax on carriages, &c., acquired during half-year.

134. (125) If any person acquires possession, at any time after the commencement of any half-year, of any carriage, horse, or other animal specified in the Schedule, in respect of which no license has been given for such half-year, he shall forward a statement as above required within one month of the date on which he may have acquired possession thereof, and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

Practically unaltered.

On payment of tax, Commissioners to give a license.

*135. (126) On receiving the amount of the tax due as aforesaid, the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a license for the several carriages, horses, and