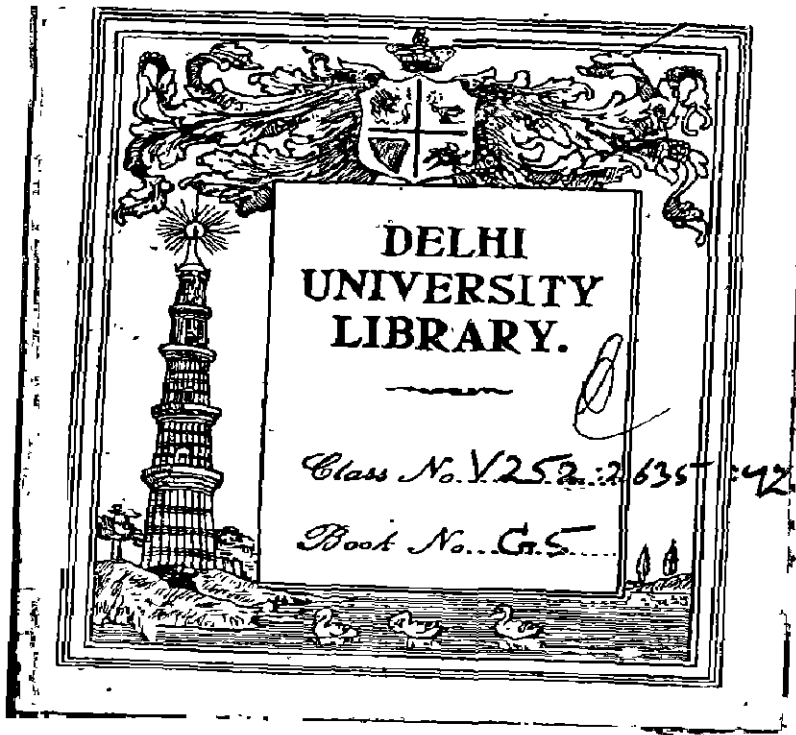





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**LAW
OF
Elections and Election Petitions**

Relating to

Municipal Boards

in the

United Provinces of Agra and Oudh

BY

JAGAT NARAIN, B.A., LL.B.,

Advocate

SECOND EDITION

(Thoroughly Revised, Enlarged and Brought Up-to-Date)

WITH A FOREWORD

BY

**The Hon'ble Mr. Justice E. BENNET, I.C.S., LL.D.,
Barrister-at-Law**

Judge of the High Court at Allahabad

Price Rs. 4-10

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SEAL
HIGH COURT
AT ALLAHABAD.

HIGH COURT :
Allahabad, July 21, 1935

FOREWORD

MR. JAGAT NARAIN has shown me the typed copy of his new edition of Election and Election Petitions Relating to Municipal Boards in the United Provinces. This edition has been thoroughly revised, enlarged and brought up to date. Numerous decisions have been cited and the book is well arranged. The appendices contain much useful matter. I trust that the book will have as much success as the first edition had.

(Sd.) E. BENNET,
Judge, High Court.

TO
The Hon'ble Sir J. P. Srivastava, Kt.

MINISTER OF EDUCATION, U. P.

This Little Book

is

by his kind permission

Respectfully Dedicated

CONTENTS.

	PAGES.
1. Preface	i
2. Table of Cases Cited	iii
Part I—Introductory	1
Part II—Extent of Franchise... ..	5
Part III—Registration	22
Part IV—The Candidate	37
Part V—Nomination	46
Part VI—The Poll	61
Part VII—Election Petitions	94
Part VIII—Miscellaneous	142
Appendix I—Election of Chairman	161
Appendix II—Chapter III of Municipalities Act (Some sections)	164
Appendix III—Municipal Election Rules	173
Appendix IV—Model Petitions and Forms	207
Appendix V—Notified Area Elections	213
Appendix VI—Town Area Elections	230
Appendix VII—Election Offences and Inquiries Act	246
INDEX	251

PREFACE.

The success which attended the first edition of the Law of Municipal Elections and Election Petitions in the United Provinces of Agra and Oudh encouraged me to bring out its second and revised edition. The book has been thoroughly revised and enlarged. Attempt has been made to incorporate all available Indian Election cases. Where the language of Municipalities' Acts of other Provinces has been found to be similar to the language of the United Provinces Municipalities Act, cases decided by the High Courts under the territorial jurisdiction of which the said Municipalities are situated, have been cited as a guide for interpretation. Sections of the Municipalities Act dealing with elections, and Municipal election rules, have been separately given for convenience of reference. Appendices have been added, giving the Election Offences and Inquiries Act and Election to Town Areas and Notified Areas. Some model petitions have been given to serve as a guide. These forms are only expressions of the opinion of the author and are only meant to be suggestive.

If the book is found useful by those for whom it is intended, the author will feel amply compensated.

JAGAT NARAIN.

FATEHGARH :

Table of Cases Cited

A

	Pages
A. I. R. 1933 Cal. 819	3
A. I. R. 1932 Mad. 9	3
A. I. R. 1931 All. 277 F. B.	3
A. I. R. 1931 All. 380	3
A. I. R. 1931 All. 307	3
A. I. R. 1930 All. 175	3
A. I. R. 1929 All. 593 F. B.	3
1933 A. L. J. 1203	3
A. I. R. 1933 All. 789 F. B.	3
A. I. R. 1930 Bom. 597	3
Agra District N. M. R. Case, I. E. P. Vol. 4, page 4	4
A. I. R. 1928 Lahore 609 F. B.	4
A. I. R. 1934 Cal. 3	4
A. I. R. 1931 All. 767 A. L. J. 1931, 122	4
A. I. R. 1930 All. 265 F. B.	5
A. I. R. 1924 All. 328 F. B.	5
A. I. R. 1927 Bom. 278 F. B.	5
A. I. R. 1927 All. 707	5
A. I. R. 1933 Nag. 192 F. B.	5
A. I. R. 1932 Oudh 210 F. B.	5
A Commonwealth V. Hazedel, 1921 P. C. 224 at 227	5
Ahmadabad and Surat City Case, I. E. P. Vol. 4, page 1	13
Arnold's Corporation, pages 11-13	13, 14
A. I. R. 1924 All. 135	45
A. I. R. 1930 All. page 939	45
Aligarh, Muttra and Agra Districts Case, I.E.P. Vol. 2, page 7	49, 56, 107
Azamgarh District Case, 4 I. E. P., page 18	51
Aligarh District West Case, 2 I. E. P., page 4	52
Aligarh East, 2 I. E. P., page 3	52
Aligarh District East, 2 I. E. P., page 3	55
Agra District, 4 I. E. P., page 6	57
Agra City Case, I. E. P. Vol. 2, page 156	92

	Pages
Agra City, 3 I. E. P., page 137	... 93
Akola South Case, 2 I. E. P. Vol. 2, page 2	... 97
Aligarh District Case, I. E. P. Vol. 2, page 3	... 97
Ahmad Thambai V. M. Raicar V. V. S., Basaw Marcayar, A. I. R. 1933 Mad. 254	... 100
Amritsar City Case, I. E. P. Vol. 2, page 10	... 104, 123
Agra District Case, I. E. P. Vol. 4, page 4	... 107
Abdul Rahman V. Abdul Rahman, A. I. R. 1925 All. 380 F. B.	... 113
A. Narsinha Ayyanger V. K. Ramyya Chettier, A.I.R. 1933 Mad. 560	... 114
Ahmadnagar District Case, I. E. P. Vol. 3, page 180	... 116, 118
Agra City Case, I. E. P. Vol. 3, page 145	... 133, 137
Aligarh District West, I. E. P. Vol. 3, page 4	... 135
Agra City Case, I. E. P. Vol. 3, page 5	... 135
Ashrafi Lal V. Municipal Board of Agra, 22 A. L. J. 1	... 138
Abdul Rahman, 23 A. L. J. 385 F. B.	... 139
A. I. R. 1933 Nag. 193 F. B.	... 139
A. I. R. 1923 Oudh, page 12	... 139
A. I. R. 1934 Mad. 174	... 140
A. I. R. 1934 Nag. 193 F. B.	... 140
Abdul Rahman V. Abdul Rahman, 23 A. L. J. 385	... 140
Astal V Corporation of Southampton, 16 Ch. D. 143...	... 141

B

Balbhader Singh V. Lakshmi Ram, 1930 A. L. J. 623	... 4
Bengal National Chamber of Commerce, I. E. P. Vol. 2, page 38	... 5
Bengal Marwari Association Case, I. E. P. Vol. 2, page 34 at 37	... 11, 25
Bombay City North N. M. U. 2 I. E. P., page 53	... 12
Bengal National Chamber of Commerce, I. E. P., Vol. 2, page 16	... 19
Bengal Marwari Association, I. E. P. Vol. 1, pages 4, 5	... 19
Bengal District Case, I. E. P. Vol. 2, page 31	... 19
Belgaun District Case, I. E. P. Vol. 2, page 31	... 47
Balamau Rural, 3 I. E. P., page 228	... 51
Betul District Case, 4 I. E. P., page 32	... 52
Betul Case, 4 I. E. P., page 33	... 54
Balamau Case, 3 I. E. P., page 228	... 55, 56, 57
Belgaun Case, 2 I. E. P., page 31	... 55
Bombay City North, 2 I. E. P., page 53	... 57

	Pages
Buckrose, 4 O' M. & H. 111	... 82
Berwich on Tweed, 3 O' M. & H. 182	... 85
Bareilly Case, I. E. P. Vol. 2, page 27	... 91
Ballia District Case, I. E. P. Vol. 1, page 13	... 97
Bengal Marwari Association, I. E. P. Vol. 2, page 33	... 97
Bhandara District Case, I. E. P. Vol. 4, page 22	... 97
Belgaun District Case, I. E. P. Vol. 2, page 31	... 98, 100
Barrow Farness, 4 O' M. & H. 770	... 99
Bulandshahar East Case, I. E. P. Vol. 1, page 27	... 100
Bareilly Case, I. E. P. Vol. 2, page 27	... 100
Benglore North Case, I. E. P. Vol. 1, page 16	... 102
Burma Legislative Council West Rangoon Case, I. E. P. Vol. 3, page 136.	... 104
Bengal National Chamber of Commerce 2nd Case, I. E. P. Vol. 2, page 43.	... 105
Betul Case, I. E. P. Vol. 4, page 32	... 108
Barrow and Farness, 4 O' M. & H. 77	... 120
Bareilly Case, I. E. P. Vol. 3, page 59	... 121
Bareilly City Case, I. E. P. Vol. 2, page 27 at 29	... 121
Bareilly District, I. E. P. Vol. 3, page 59 at 63	... 121
Bombay City South Case, I. E. P. Vol. 4, page 48	... 122
Boston Case, 2 O' M. & H., page 167	... 123
Bareilly City Case, I. E. P. Vol. 2, page 17 at 22	... 123
Bareilly District Case, I. E. P. Vol. 3, page 56	... 125
Barrow of Guildford Case, 1 O' M. & H., page 120...	... 125
Blackburn Case, 1 O' M. & H. 200	... 128
Bareilly Case, I. E. P. Vol. 1, page 16	... 130
Bulandshahar District West Case, I. E. P. Vol. 2, page 55	... 132
Bareilly Case, I. E. P. Vol. 3, page 59	... 132
Bombay City South Case, I. E. P. Vol. 4, page 40	... 135, 135
Borough of Durham Case, 2 O' M. & H. 133	... 135
Bareilly City Case, I. E. P. Vol. 2, page 127	... 136
Bombay Legislative Council, I. E. P. Vol. 3, page 180	... 137
Bengal Legislative Council Case, I. E. P. Vol. 3, page 125	... 137
Bhai Shanker V. Municipality of Bombay, 31 Bom. 604	... 139
Bhai Shanker V. Nanbai, I. L. R. 26 All. 594	... 139
Balaji Rao Nudin, <i>in re</i> , A. I. R. 1932 Mad. 849	... 141
Behar and Orissa Legislative Council Case, I. E. P. Vol. 1, page 54	... 148

C

	Pages
Commissioner of Inland Revenue V. William Ransom & Sons Ltd. 2 K. B. 709	... 16
Commissioner of Inland Revenue V. The Cavan Central Corporative Agricultural Society, 12 T. C. 1	... 16
Cassey's Case, A. I. R. 1930 Pat. 44	... 16
Cashel Case, 1 O'. M. & H. 283	... 126
Commerce and Industry Case, I. E. P. Vol. 3, page 123	... 19
Cawnpore District Case, I. E. P. Vol. 4, page 62	23, 57, 102
Central Provinces Mohammedan Constituency to Legislative Assembly Case, I. E. P. Vol. 3, page 127	... 24
Cirencester, 4 O'. M. & H. 197	... 77
Contra Kennington, ib 94	... 39
Central Shahabad Case, I. E. P. Vol. 3, page 168	... 48
Cooper V. Ogden 24 Times L. R. 242	... 81
Cirencester Case, 4 O'. M. & H. 397	... 83
Champaran, 2 I. E. P. page 64	... 96
Chingleput Case, I. E. P. Vol. 2, page 66	... 95
Chaterbhay V. Raghuber, 13 A. L. J. 629	... 108
Chota Nagpore Division Case, I. E. P. Vol. 2, page 67	... 148

D

Duncankier V. Sillescu, 7 T. C. 473	... 16
Dungarvan, 2 P. R. & D. 308	... 39
Dacca City Case, I. E. P. Vol. 2, page 72	... 91, 147
Doraisami Nader V. Joseph L. Mother, A. I. R. 1926 Mad. 319	... 97
Dhandhara District Case, I. E. P. Vol. 4, page 27	... 100
Dwarkanath Datt V. Chander Mohan Roy, A. I. R. 1926 Cal. 605	... 101
District Board Kheri & others V. Abdulmajid Khan and another, A. I. R. 1930 Oudh 434	... 101
Dinajpur Case, I. E. P. Vol. 2, page 75 at 77	... 121
Doraisami Nader V. Joseph L. Mother, 92 T. C. 129	... 138

E

Eleven All. 267 at 287	... 5
Ekambra Narkih V. Commissioner of Madras Corporation, A. I. R. 1927 Madras 22	... 10

	Pages
Emperor V. Prabhat Chander Barua, 1 I. T. C. 284 ...	... 16
East Bengal N. M. Constituency, I. E. P. Vol. 3, page 233	... 23
East Dorset, 1 O'. M. & H. page 22 at 49 per Pickford J.	... 39
Exeter 6 O'. M. & H. 233	... 69
Exeter 6 O'. M. & H., page 228	... 72
Emperor V. Raja Kushal, 1931 All. 447, page 114	... 113
East Bengal Non-Mohammedan, I. E. P. Vol. 3, page 223	... 133

F

Fourteen Cal. 67 F. B.	... 5
Ford V. Hart, 9 L. R. C. page 273, followed	... 13
Farrukhabad Case, I. E. P. Vol. 3, page 22	... 115
Farrukhabad District Case, I. E. P. Vol. 3, page 22	... 129, 132
Ferozepore Case, I. E. P. Vol. 2, page 80	... 132
Farrukhabad District Case, I. E. P. Vol. 3, page 22	... 134, 135, 136
Farrukhabad City Case, I. E. P. Vol. 3, page 22	... 137
Farrukhabad Case, I. E. P. Vol. 3, page 49	... 148

G

Golaghat Case, I. E. P. Vol. 2, page 83	... 19, 102, 131
Golaghat Case, I. E. P., page 83	... 52, 55, 57
Galway Case, 2 O'. M. & H. 57	... 131
Gurgaon cum Hissar, I. E. P. Vol. 2, page 86	... 186
Gurcharan Das V. Harsarup, 9 A. L. J. 383, 34 All. 391	... 138

H

Harpershad V. Emperor, 1 I. T. C. 417 at 418	... 16
Howrah Municipal N. M., 3 I. E. P., page 25	... 53
Howrah Municipal, I. E. P. Vol. 3, page 207	... 105
Hissar Case, I. E. P. Vol. 2, page 96	... 118
Hertford Case, 4 O'. M. & H. 13	... 124
Hanthawady East General Rural, I. E. P. Vol. 2, page 94	... 132
Hissar Case, I. E. P. Vol. 1, page 35	... 136
Hissar District Case, I. E. P. Vol. 1, page 53	... 137

(viii)

I

	Pages
I. E. P. Vol. 1, page 43	1
I. E. P. Vol. 2, page 97	1
I. E. P. Vol. 3, page 80	1
I. E. P. Vol. 1, pages 32 and 65	1
I. E. P. Vol. 2, page 33	3
I. E. P. Vol., page 151	25
I. E. P. Vol. 3, pages 207, 228, 232	25
I. E. P. Vol. 3, pages 134, 124, real page 113	40
I. E. P. Vol. 1, pages 54, 55	54
<i>In re</i> Salafally Mamooji, 34 Bom. 659	141
<i>In re</i> Mutty Lal Ghosh, 19 Cal. 192	141

J

Jaunpore Case, I. E. P. Vol. 1, page 37	67
J. B. Petil V. Municipal Corporation of Bombay, 1927 Bom. 627	85
Jessor North, I. E. P. Vol. 2, page 101	91

K

Khangul V. Lakhan Singh, A. I. R. 1928 Lahore 609 F. B.	4
Kalyan Das V. Municipal Board of Chandausi, A. L. J. 1931, page 1097 ; A. I. R. 1932 All. 158	59
Kandasami Chettier V. Foulkes, A. I. R. 1926 Mad. 394	106
Karnal Case, I. E. P. Vol. 4, page 71	106
Kangra cum Gurdaspur Case, I. E. P. Vol. 2, page 103	116, 124
Kheri and Sitapore Case, I. E. P. Vol. 2, page 108	131
Kingston Case, 6 O' M. & H. 389	135
Kuly V. Vidiarath Kunabali Haji, 59 M. L. J. 194	140

L

London V. Dikson V. Sall, 10 L. C. 341	16
Lunga Reddi, 2 I. T. C. 353 ; A. I. R. 1927 Mad. 848	16
L. Permeshwari Das V. Municipal Board Bareilly and another, A. I. R. 1932 All. 58(2)	20
Lahore Case, I. E. P. Vol. 1, page 80	98
Lucknow cum Cawnpore Case, I. E. P. Vol. 2, page 2	125

	Pages
Londonderry Case, 1 O'. M. & H. 278	... 128
Lichfield Case, 1 O'. M. & H. 25	... 129
Longford Case, 2 O'. M. & H. 16	... 131
Lahore Case, I. E. P. Vol. 1, page 43	... 141
L. Permeshwari Das V. Municipal Board of Bareilly, A. I. R. 1932	
All. 58(2)	... 138

M

Municipal Board of Agra V. Ashrafi Lal, 20 A.L.J., A.I R. 1922 All.	10
Municipal Board of Agra V. Ashrafi Lal, 20 A.L.J., A.I.R. 1927 All....	10
Maharani Janki Kunwar, 5 I. T. C. 42	... 16
Mahendra Chand Nandi V. Prabhatchand Mitra, 51 Cal.	... 25
Midnapore South Case, I. E. P. Vol. 2, page 117	... 49
Midnapore, I. E. P., page 113	... 56
Mamudi Kuar V. Shamsuddin Saheb, 1925 Mad. 1207	... 68
Madura Trichnopoly cum Srirangam Case, I. E. P. Vol. 2, page 109	... 93
M. Laksmanaya & others V. S. Rajjan Ayyar & others A. I. R. 1930	
Mad. 195	... 97
Maing Gyce V. W. Basin, A. I. R. 1928 Rang. 245	... 114
Midnapore Case I. E. P. Vol. 2, page 113	... 105
Mallow Case, 2 O'. M. & H. 221	... 126
Muzaffarnagar Case, I. E. P. Vol. 2, page 120	... 137
Molla Atani Haq V. Chairman of Maniktola Municipality, 24 C. W. N.	
769	... 138
Mohammad Inamul Haq V. Mohammad Ahsan, 12 A. L. J 495 F. B.	139
Muttra District Case, I. E. P. Vol. 2, page 118	... 148

N

North East Darbhanga Case, 4 I. E. P., page 72	... 55
North West Monghyr, 4 I. E. P., page 104	... 55
North East Town Case, 4 I. E. P., page 73	... 57
North Meath Case, 4 O'. M. & H. 130	... 131
Nagpore, East N. M. Case, I. E. P. Vol. 3, page 235	... 133
Narman V. Municipal Corporation of Bombay, 47 Bom. 809	... 138
Nand Ram V. Chottey Lal, 11 A. L. J. 945 F. B.	... 140

P

Pendai V. Ramsawmi, 45 Mad. 710	... 16
---------------------------------	--------

	Pages
Presidency Divisions Landholders Case, I. E. P. Vol. 2, page 123 ...	47
Punjab North East Town Case, 2 I. E. P., page 143 ...	56
Punjab North, 2 I. E. P., page 134 at 141 ...	72
Phillips V. Goff, 17 O. B. D. 805 ...	78
Punjab North, 2 I. E. P., pages 142-148 ...	92
P. C. Larrie V. V. R. C. Joseph, A. I. R. 1925 Mad. 614 ...	92
Punjab North, I. E. P. Vol. 2, page 134 ...	93
Punjab North Case, 2 I. E. P., page 134 ...	96
Patna University Case, I. E. P. Vol. 4, page 77 ...	99, 107
Punjab Legislative Council Case, I. E. P. Vol. 1, page 85 ...	137

R

Riazuddin V. M. Phula Devi, A. I. R. 1929 All. 977 F.B. ...	4
Ratamsi Mirji V. Emperor, A. I. R. 1929 Bom. 274 ...	4
R. V. Exeter L. R. 4. Q. B. 110 ...	12
Raja Narendra, 4 I. T. C. ...	14
Rawalpindi and Lahore Divisions Case, I. E. P. Vol. 2, 149 ...	23
Raipore North Case, 2 I. E. P., page 146 ...	51, 53, 56
R. V. Thwaites, I. E. & B. 704 ...	69
R. V. Fox 16 Cox C.C. 166 ...	69
Raja Bahadur V. Vishnath Raddai, A. I. R. 1930 Mad. 93 ...	92
Rohtak North Case, I. E. P. Vol. 2, page 119, 159 ...	96, 104
Raipore North Case, I. E. P. Vol. 3, page 175 ...	102
Rangoon East Case, I. E. P. Vol. 3, page 235 ...	104
Ram Nath V. Emperor, A. I. R. 1924 All. 684 ...	113
Ram Nath V. Emperor, 22 A. L. J. 497 ...	114, 140
Rohtak Case, I. E. P. Vol. 1, page 57 at 65 ...	121
Rohtak North West Case, I. E. P. Vol. 2, page 150... ...	123
Raghunandan Pd. V. Sheo Prasad, 11 A. L. J. 348 ...	140
Richardson V. Methby School Board, 3 Ch. D. 510 ...	141

S

Simatie Bazar V. Rangoon Municipality, 1928 Rang. 87 at 94 ...	5
Smith's leading cases 295 ...	10
Sarwathama Rao & others V. the Municipal Council Saidapat and others ...	16
Shiv Lal Gangaram, 2 I. T. C. 426 ...	16

	Pages
Stepney Case, 4 O'. M. & H. ...	23
South Belore Case, I. E. P. Vol. 3, page 93 at 97 ...	23
Shahpore Case, I. E. P. Vol. 4, page 98 ...	23
Sarwathama Rao & others V. The Municipal Board Saidapat, A. I. R. 1923 Mad. 475, Mad. 585 ...	25
Stepney Case, 4 O'. M. & H. 38 ...	39
Stepney, page 31, 117 ...	39
Saharanpore District Case, 4 I. E. P., page 96 ...	52
Samastipore Case, 4 I. E. P., page 99 ...	53
Shahabad Case, 2 I. E. P., page 175 ...	53
Samastipore Case, 2 I. E. P., page 172 ...	54
Sarwathama Rao V. The Chairman M. C. Saidapat A. I. R. 1923 Mad. 465 ...	54
Shahabad Case, 3 I. E. P., page 232 ...	55,57
Sultan Buksh V. Abdul Hamid Beg, 21 A. L. J. 639... ..	60
Sligo W. & D. 22 ...	69
South Balore Case, I. E. P. Vol. 3, page 93 ...	123, 133
Sheikhpura Case, I. E. P. Vol. 2, page 176 ...	123
Staleybridge Case, 1 O'. M. & H. 67 ...	127
Staleybridge Case, 1 O'. M. & H. 70 ...	128
Strafford Case, 2 O'. M. & H. 228 ...	130
Sheikhpura Case, I. E. P. Vol. 1, page 74 ...	123, 130
Saran South, I. E. P. Vol. 2, page 173 ...	132
Sultanpore District Case, I. E. P. Vol. 3, page 93 ...	133
Southampton Case, 1 O'. M. & H. 223 ...	133
Salisbury Case, 4 O'. M. & H. 128 ...	135
Sultanpore District Case, I. E. P. Vol. 3, page 71 ...	136
Sadhapat V. Abdul Gafoor, 24 Cal. 167 ...	138
Sarvothamarao & others V. The Chairman Municipal Council Saidapat & another, A. I. R. 1923 Mad. 475 ...	138
Surat Municipality V. Chuni Lal, 30 Bom. 49 ...	140
Shaunumaga Mudaliar V. Subraya Mudaliar, 404 I. C. 540 ...	141

T

The Borough of Exeter Case, 6 O'. M. & H., page 235 ...	23
Tirhut Division Landholders Case, 2 I. E. P., page 180 ...	57
Taunton, Fale & F. 295 ...	69

	Pages
The Purnea Case, I. E. P. Vol. 1, page 54	97, 102
The Rohtak Case, I. E. P. Vol. 1, page 57	... 97
The Salem & Coimbatore cum North Arcot Case, I.E.P. Vol. 1, page 68	101
Tanjore Case, I. E. P. Vol. 1, page 77	... 101
The Sheikhpura Case, I. E. P. Vol. 1. page 71	... 104
The Great Yarmouth Case, 5 O. M. & H. pages 189, 187	... 123
The Rodmin Case, 1 O'. M. & H., page 120	... 126
The Westbury Case, 1 O'. M. & H. 47	... 126
The Westminster Case, 1 O'. M. & H. 3	... 126
Tomworth Case, 1 O. M. & H. 72	... 126
The Windsor Case, 1 O'. M. & H. 31	... 126
The North Norfolk Case, 1 O'. M. & H. 240	... 127

U

U. P. Southern Divisions Constituency Legislative Assembly, I. E. P. Vol. 2, page 127	... 105
--	---------

V

Venkatarama Ayyer V. Kuppasami Ayanger, 1930 M. W. N. 676	... 37
Venkataramah V. Subbha Reddi, A. I. R. 1925 Mad. 1173	... 92
Vai Dayanath V. Murangiah, A. I. R. 1928 Mad. 2077	... 96

W

West Bromwich, 6 O'. M. & H. 256	... 76 78
Woodward V. Sarson, L. R. 10 C. P. 750	... 76
Wigtown, 2 O'. M. & H. 221	... 78
West Bromwich, 6 O'. M. & H. 257	80, 81, 85
Walsall Case, 4 O'. M. & H. 223	... 99
Wakefield Case, 1874, 2 O'. M. & H. 102	... 122
Windsor Case, 1 O'. M. & H. page 118	... 124
Westminster Case, 1 O'. M. & H. 92	... 127
West Patna Case, I. E. P. Vol. 3, page 80	... 136

PART I.—INTRODUCTORY.

The present Municipalities Act was passed in 1916, and, but for minor amendments made from time to time, has remained substantially the same as it was originally passed. The various amending Acts have been noted at appropriate places.

“ Self-Government implies Government by the people through representatives elected by them. In any form of Self-Government, the problem of the selection of the representatives is the most important problem, and accordingly the right to vote, the conditions under which that right can be exercised, the proportional value of each vote, the qualifications of voters, the safeguards against improper exercise of the franchise, the regulations under which elections are held, corrected or set aside, the penalties imposed on those who abuse the system, and above all, the nature of the tribunals to whom the decision of all those matters is committed, all these things must, or ought to be, of vital importance to every thoughtful citizen (Halsbury's Laws of England, volume 12, page 135).”

The law of elections relating to Municipal Boards in the United Provinces of Agra and Oudh is to be found in :—

- (1) The Municipal Boards Act ;
- (2) Rules made by the Government in pursuance of the rule-making power given to it by the Act.
- (3) In the absence of express provision in the Act or the rules, the reports of English Election cases, which will be followed as representing the principles of justice, equity, and good conscience (I. E. P. Vol. 1, page 43 ; I. E. P. Vol. 2, page 97 ; and I. E. P. Vol. 3, page 80).

- (4) Report of Indian Election cases tried by Election Commissioners appointed under the rules relating to elections to Legislative Councils, the Legislative Assembly and Council of State.
- (5) Reports of cases decided by the various Indian High Courts, which reached the said High Courts, either by the power of reference provided in the particular Acts dealing with the election in question, or by way of an appeal or revision in regular suits. Rulings in cases arising out of one Local Act, will serve as guide for cases under a different Act, only where the provision of law in both the Acts is the same.

Reports of English election cases have been cited and even followed in the various reported Indian cases. But English Cases should be used with caution. It may be true that Indian Election Law is based on English Statutes, but it differs from English Law widely in numerous particulars and should be regarded as a separate corpus, the Indian Legislature having adopted some and discarded others of the English election provisions. It seems that the Indian Legislature intended to make their statutory provisions complete in themselves, and there is nothing whatever to indicate that there was any intention that the Indian Courts should administer English Common Law provisions.

This is quite a different thing to saying—and this is certainly a proposition for which there is authority that, in default of any provisions of the statute law, the Indian Courts may fall back on the principles of English Common Law. Principles are *entirely different in essence to specific provisions and the English Common Law principles* are duly adopted, because they are considered to represent the principles of justice, equity, and good conscience upon which the law as a whole is to be administered. But these principles can be utilized where no

statutory provision exists. (Lahore Case I. E. P. Vol. 1, page 45.)

Executive orders are issued by the Government for the guidance of subordinate officers. These orders have not the force of law (I. E. P. Vol. 1, pages 32 and 65).

Rules of Interpretation.

The cardinal principle of interpretation of statutes is that the intention of the legislature is to be gathered from the language of the enactment (Doorga Charan V. Bhavani Charan, 34 Cal. 97 at 99, A. I. R. 1931 All. 163, 23 Cal. 563 P. F.) It is the duty of the court to find out the meaning of a statute from the language used, and not to be led away by any supposed notion of what the legislature ought to have meant (Lala Suraj V. Gopal Chand, 27 Cal. 722 at 725 ; A. I. R. 1933 Cal. 819 ; A. I. R. 1932 Mad. 9). No equitable construction is allowed to override the clear words of an enactment. Statute prevails against equity, however wholesome the latter might be. (A. I. R. 1931 All. 277 F. B. ; A. I. R. 1931 All. 380 ; A. I. R. 1931 All. 307 ; A. I. R. 1930 All. 175).

The courts are bound to apply the law as they find it, and should not allow their decision to be influenced by any consideration of hardship. Law should be enforced by courts regardless of consequences (A. I. R. 1929 All. 593 F.B. ; 1933 A. L. J. 1203, A. I. R. 1933 All. 789 F.B. ; A. I. R. 1930 Bom. 597 ; I. E. P. Vol. 2, page 38).

In interpreting a statute it is not only the ordinary etymological meanings of the words that are to be considered. In order to arrive at the real meaning of a word it is always necessary to get the exact conception of the aim, scope, and the object of the whole Act. The words of a statute ought to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the legis-

lature has in view. It is not because the words of a statute will cover the case, that it is the right sense. Grammatically, they may cover it, but whenever a statute or a document is to be construed, it must be construed according to the ordinary general meaning of the words as applied to the subject matter with regard to which they are used, unless there is something which renders it necessary to read them in the sense which is not their ordinary sense in English language as so applied. (Agra District N. M. R. Case I. E. P. Vol. 4, page 4).

Difficulty arises when the language of the particular enactment sought to be interpreted is either ambiguous or is inconsistent with the language used in some other part of the same enactment, or some other enactment. In such cases, where two constructions are possible, a statute should be so construed as to best harmonize with other provisions and avoid inconsistency (Mani Mohan V. Ramratan, 43 Cal. 148; A. I. R. 1928 Lahore 609 F. B.; A. I. R. 1934 Cal. 3. The context and purpose of the Act must be looked in to explain an ambiguity (A. I. R. 1931 All. 767, A. L. J. 1931, 122). Legislature will be presumed to use the same word in the same sense, and where same words are used in different parts of an enactment they should be given the same meaning unless a contrary intention appears from the context (Balbhadar Singh V. Lakshmiram, 1930 A. L. J. 623; Riazuddin V. Mt. Phula Devi, A. I. R. 1929 All. 977 F. B.)

Not only should the language of a statute be so construed as to best harmonize with the words of another part of the same statute, but should be so interpreted as to be consistent with the language of other enactments which it does not expressly modify or repeal (Ratamsi Mirji V. Emperor, A. I. R. 1929 Bom. 274; Khangul V. Lakhan Singh, A. I. R. 1928 Lah. 609 F. B.; I. E. P. Vol. 2, page 38)

Where the words of a statute have been understood in a particular manner for a considerable period and effect given

to such interpretation, so that a practice has been established on the basis of such interpretation, courts should not disturb the practice and put a different interpretation on the statute concerned.

In case of ambiguity, an interpretation should be put which would prevent abuse of process of law and carry out the purpose of enactment (A. I. R. 1930 All. 265 F. B. ; A. I. R. 1924 All. 328 F. B.). The interpretation should further the object of the enactment and not to frustrate it (Halim Bhai V. Famoroz Edulgee, A. I. R. 1927 Bom. 278 F. B. ; A. I. R. 1927 All. 707, A. I. R. 1933 Nag. 192 F. B. ; A. I. R. 1932 Oudh 210 F. B.).

There can be no estoppel against a statute, and where a particular act is declared void by statute, a party cannot by representation any more than by other means, raise against himself an estoppel so as to create a state of things which he is under a legal disability from creating (Khan Gul V. Rabba Singh, A. I. R. 1928 Lah. 609 F. B. ; Bengal National Chamber of Commerce, I. E. P. Vol. 2, page 38).

A disabling statute must be strictly construed in favour of the subject (Simatie Bazar Co. V. Rangoon Municipality, 1928 Rang 87 at 94, 5 All. 354 at 381, 14 Cal. 67 F. B. ; A Commonwealth V. Hazedell, 1921 P. C. 224 at 227; 1928 P. C. 287 at 290 ; 10 A. L. J. 426 I. E. P. Vol. 4, page 62). The law is presumed to permit every thing, and unless a thing is expressly prohibited, it shall be taken as permitted, and therefore its doing legal (11 All. 267 at 287 ; 1882 A. W. N. 202 F. B.).

PART II.—EXTENT OF FRANCHISE.

ELECTIONS.

14. (1) A person shall not be deemed an elector for any purpose of this Act or of any rule under this Act unless he is enrolled as an elector.
- Qualification of Electors.

NOTE.—Compare section 19 (2) (a).

(2) The following persons shall, if not subject to a disqualification specified in sub-section (3), be entitled to be enrolled as electors, namely :—

- (a) every person who in any year is on such date as is fixed by rule in this behalf, assessed directly and on his own account to municipal taxes, other than octroi or toll or any similar tax, the aggregate value whereof at their annual rate is not less than such amount as is fixed by rule in this behalf, and
- (b) every person who, having for a period of not less than twelve months next preceding the aforesaid date resided in the municipality, is on the aforesaid date

Act-II of 1919.

- (i) a graduate of any University, or
- (ii) a payer of income-tax, or
- (iii) an owner of a house or building in the municipality of a minimum annual value to be fixed by rule in this behalf, or
- (iv) an occupier of a house or building in the municipality of a minimum annual value to be fixed by rule in this behalf, or
- (v) in receipt of a minimum annual income to be fixed by rule in this behalf, or
- (vi) an owner in his own right of land in respect of which land revenue amounting to a minimum sum per annum to be fixed by rule in this behalf is payable, or
- (vii) an owner in his own right of land free of revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with land revenue payable in respect of other land of such owner, amounts to a minimum sum to be fixed by rule in this behalf, or

(viii) a fixed rate tenant, ex-proprietary or occupancy tenant of land in respect of which rent amounting to a minimum sum per annum to be fixed by rule in this behalf is payable, or in the hill patts of the Kumaun division a Khaikar :

Provided that no qualification specified in sub-clauses (ii) and (viii) of clause (b) shall apply to any municipality, unless the qualification is made applicable by rule thereto :

Provided further that no qualification in sub-clause (iii) (iv), (vi), (vii) or (viii) shall be higher than the corresponding qualification prescribed for the electors on the United Provinces Legislative Council Electoral Roll .

Provided lastly that, notwithstanding anything contained in this section, no person shall be entitled to be enrolled in any municipality as an elector for the purposes of the first election held after the commencement of the United Provinces Municipalities (Amendment) Act, 1922, unless he either was entitled to be enrolled as an elector in the municipality immediately before the commencement of the United Provinces Municipalities (Amendment) Act, 1922, or is enrolled in the United Provinces Legislative Council Electoral Rolls.

NOTE.—Under clause (b) (i) a graduate is given a statutory qualification as an elector. The other qualifications mentioned in this sub-section are not statutory and do not apply to any municipality unless made applicable thereto by a rule. This list of qualifications is, however, exhaustive, i.e., while a rule be made prescribing any other qualification for any municipality, no rule may be made prescribing any other qualification for any municipality.

(3) A person notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he, on the aforesaid date,—

- (a) has not attained the age of twenty-one years, or
- (b) is not a British subject, or

(c) has been adjudged by a competent court to be of unsound mind, or

(d) is an undischarged insolvent, or

(e) has been sentenced to imprisonment for a term exceeding one year or to transportation for an offence which is declared by the Local Government to imply such moral turpitude as to unfit him to be an elector or ordered to find security for good behaviour in consequence of proceedings taken under section 109 or section 110 of the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or

(f) is in arrears in the payment of any sum to which section 166 applies :

Provided that a disqualification under clause (e)

U. P. Act no. XII of
1929.

shall not last for more than five years from the date of the release of the disqualified person from imprisonment or of the expiry of such sentence or order and it may be removed at any time by an order of the Local Government.

Notification No 1747-
XI-976E, dated June
28, 1928, as subse-
quently amended.

RULE 1.—For the purposes of sub-sections (2) and (3) of section 14 of the Act the date fixed is September 1 for all Municipalities except the Municipalities of Mussoorie and Naini Tal.

(Naini Tal is the only Board constituted under section 10 of Municipalities Act. Municipal Manual, page 191).

Representation of joint Hindu families and, in the case of Cawnpore, of registered Companies.

RULE 2.—(1) When property is held or payments are made jointly by the members of a Hindu joint family, and in the case of Cawnpore by a company registered under the Com-

panies Act, the family or company shall be adopted as the unit for deciding whether a qualification exists as set forth in section 14 of the Act, other than a qualification set forth in subclause (1) or subclause (iv) of clause (b) of section 14 (2) of the Act, and if the qualification does exist the person qualified shall, in the case of a Hindu joint family, be the member nominated in that behalf by the majority of the family, or, if no member is thus nominated the manager of the family or in the case of a company the person duly authorized by the company in this behalf by a power of attorney.

(2) Where, in the case of Mussoorie Municipality a company registered under the Indian Companies Act for the time being in force, or a firm registered under the Indian Partnership Act, 1932, or a society governing an educational institution, situate within the Municipality and incorporated in any foreign country under the law for time being in force, or registered under the law for time being in force in British India for the registration of societies, is possessed of the qualification set forth in section 14 (2) (a) or section 14 (2) (b) (iii) or (iv), the person qualified under the aforesaid section shall be the person duly authorized by the said company, firm or society in this behalf by a power-of-attorney.

(3) The nomination of a representative under this rule shall be made by notice in writing to the returning officer in the same way as a claim or objection under these rules.

(4) A person may be qualified in his personal capacity or in his capacity of representative of a joint family, company, firm or society but not in both capacities.

The right to vote is not a common law or a natural right of any one, and cannot be classed with the rights of life, liberty and property. It is a right which is purely a creation of statute, and no such right can be claimed unless it is conferred by statute; which is fully competent to define its operation and extent (9 R. C. L. p. 979). But a right of

franchise conferred on a citizen is a valuable right. Where a duly qualified person entitled to be upon the electoral roll, or a candidate's list is wrongfully omitted therefrom, or misdescribed therein, so as to deprive him of his due exercise of such right, he is entitled to recover damages which may be made punitive, where the omission is malicious. (Municipal Board of Agra V. Asharfi Lal, 20 A. L. J. 1, A. I. R. 1922 All.; Smith's Leading Cases 295). But where the Act by which the right is interfered with, is an act done in a judicial capacity, no action lies unless the action is done maliciously, which in this context means dishonestly (Sarwothama Rao and others V. The Municipal Council Sailapat and another, A. I. R. 1923; Madras 475; 47 Mad. 585).

The various statutes either expressly or by implication, provide that the right to vote or to nominate a candidate (Ekambra V. Commissioners of Madras Corporation A. I. R. 1927 Mad. 1926, Mad. W. N. 842), or to stand as a candidate at an election is a part of franchise (Municipal Board of Agra V. Asharfi Lal 20 A. L. J. 1, A. I. R. 1927 All. 1). But a right to canvass for or against a candidate, cannot be regarded as a special right of a voter much less a part of franchise of a voter. If indeed it be a right, it is a right which a voter enjoys, perhaps with thousands of others who are not voters, and it is impossible to recognise or give effect to any such in law (Ekambra Narkeeb V. Commissioners of Madras Corporation A. I. R. 1927 Madras 22).

Section 14 provides both the qualifications which entitle a person to become a voter, as well as the statutory disqualifications on account of which a person, even though he be possessed of the required qualifications, will not be entitled to franchise, if he is subject to such disqualifications.

Sub-section (1) of section 14 seems to make enrolment as an elector a part of the right of franchise. To speak more correctly, registration is necessary for the exercise of

the right of franchise. By itself it does not confer any right (see notes under Part III). Clause (2) of section 14 deals with the various kinds of qualifications which entitle a person to become an elector. The said qualifications are qualifications based on (a) payment of taxes and (b) residence. It would appear that mere possession of tenancy rights or ownership of property does not entitle an individual to become a voter. A person who has not resided within the Municipal limits for the statutory period, can become a voter only under clause (a) if he is assessed to certain taxes.

Persons.

For the purposes of election the word person means a natural person, an individual human being. It does not include a company, a firm or other juristic persons for the purposes of election. Therefore firms cannot be enrolled as voters (Bengal Marwari Association Case I. E. P. Vol. 2, page 34 at 37) (Section 17 *infra*).

Resided.

The word reside is not defined in this Act. Election rule 2 clause (f) of Behar and Orissa Municipal Act lays down that a person shall be deemed to be resident within the limits of a Municipality if he (1) ordinarily lives within those limits, (2) has his dwelling house within those limits and occasionally visits it, or (3) maintains within those limits a dwelling house ready for occupation in the charge of servants and occasionally occupies it.

The purpose of this sub-clause is that the person who claims the franchise on the basis of residence, and not on the basis of some property within the Municipal area, and who claims to have a share in the selection of counsellors or it may be, to become counsellor, must be a person who has in fact become a member of the community, and who has a

reasonable interest in its welfare. Some sort of permanent residence and not mere temporary residence is therefore contemplated by this section (55 I. C. 573).

A person is said to reside at a place where he lives with his family and sleeps at night, not at his place of business, or one of his several places of business. (Parker's Election Agent and Returning Officer, page 243). Working at a place in the ordinary course of business hours does not constitute residence at that place (Bombay City North N. M. U. 2 I.E.P. page 53). But where an elector resides during part of the week, month, or year in one place and during the other part in another place, each would seem to be the place of his residence.

"It is always, if the inhabiting is bonafide, a question of more or less. The question is whether there has been such a degree of inhabitation as to be in substance and in common sense, residence. When a person has a country house and a town house, it is mere a question of fact whether he has two or only one residence.....It is a pure question of fact. (R. V. Exeter L. R. 4 Q. B. 110). "A person may inhabit a place without sleeping there or he may sleep there without inhabiting it. The fact that a person sleeps in a place is generally a very important ingredient in deciding whether he inhabit it, but it is not conclusive." (Rogers on Elections, Vol. 1, page 15).

B kept a public house in a town, but had a house in the country where he usually slept. Occasionally he slept at the public house where a bed was kept for him. It was held that he was not residing in the public house (Rogers on Elections, Vol. 1, page 16).

A person is said to reside at a place where he keeps at least a sleeping apartment, but an uninterrupted living at such place is not contemplated. A person may reside at a place constructively. For constructive legal residence two

things are necessary : (1) the liberty of returning at any time to the house or apartment and (2) no abandonment of the intention to return whenever it may suit the party's pleasure or convenience to do so. (Ahmadabad and Surat Cities Case L. E. P., Vol. 4, page 1, Ford V. Hart 9 L. R. C. P. 273 followed, Rogers on Elections, Vol. 1, page 17).

Occupier.

"The primary element of occupation is possession but it includes something more, for mere legal possession cannot constitute an occupation. The owner of a vacant house is in possession, though not in occupation; but if he furnishes the house and keeps it ready for habitation he is an occupier, though he never resides in it during the year. So a trader occupies premises by merely keeping his stock, tools, vehicles, or other goods upon those premises. A merchant or businessman occupies an office or counting house by using it during ordinary business hours by himself or his clerks for the purpose of his business. The occupation of a servant may be the occupation of the master for the purpose of qualifying the latter for franchise, and a person may occupy by his family.

"In every case, however, in order to qualify, the occupation must be exclusive in law, i.e., the occupier must hold the premises free from limitation or restraint by other person." (Halsbury's Laws of England, Vol. 12, page 161, para 341)

Occupation by a servant who is not merely permitted to occupy his master's premises, but is required to do so as part of contract of service, does not qualify the servant for franchise (20 Q. B. D. 285; Arnold's Corporations, pages 11—13) A person who was only responsible for upkeep and cleanliness of a temple was held not to be its occupier (15 A. L. J. 187).

Occupation by a mere licensee is not enough to qualify for franchise (Arnold's Corporations, page 11; 45 Cal. 950), but if the occupation is unbroken during the statutory period, it need not have been under same title, or even under an unimpeachable title (2 Q. B. D. 58 and 1 Q. B. D. 259).

Revenue.

Revenue is a term used for what is paid to Government by landowner in contradistinction to rent which is paid by tenants to landowners (Raja Naredra Dev 4 I. T. C. ; I. L. R. 9 Pat. 1).

Tenant.

The word tenant is not defined in this Act. A tenant was defined by Agra Tenancy Act II of 1901 as a person by whom rent is, or but for a contract expressed or implied, would be payable and including "a thekedar but not a mortgagee of proprietary rights or a rent-free grantee" (Act II of 1901 section 4 (5)). Some change was made in this definition by Agra Tenancy Act III of 1901, by which a groveholder has been included in the definition of a tenant, while a thekedar has been excluded from it, except for certain purposes expressly provided by the Act (Agra Tenancy Act III of 1901 section 3 (6)). The Oudh Rent Act of 1886 defines a tenant as "any person, not being an underproprietor, who is liable to pay rent, but a thekedar or a person to whom the collection of rents in a village or a portion of a village has been leased by the landlord is to be deemed to be a tenant only for certain purposes enumerated in said Act, and no others (Section 3 (10) Oudh Rent Act 22 of 1886). Liability to pay rent is therefore the test for determining whether an individual is to be deemed a tenant or not according to the tenancy laws of these provinces. But the Tenancy

Act excludes a thekedar except for certain purposes. A question arises whether a thekedar as such, should be held to be a tenant for the purposes of a franchise under the Municipal Boards Act. It is submitted that on broad principles of the law relating to landlord and tenant, he should be held to be a tenant and as such entitled to franchise.

Land.

Nor is the word land defined in this Act. The word "land" was defined in the Agra Tenancy Act III of 1901 as land which was let or held for agricultural purposes (section 4 (2)). Land has been defined by Act III of 1926 as "land which is let or held for agricultural purposes or as grove land or for pastorage. It also includes land covered by water used for the purposes of growing Singharā or other similar produce, but does not include land for the time being occupied by dwelling houses or manufactories or appurtenant thereto (Act III of 1926 section 3 (2)). The Oudh Rent Act 22 of 1886 does not define the term land but states that "land" includes the ungathered produce of land, whether spontaneous or not whether growing in earth or in water, but shall not include land for the time being occupied by dwelling houses or manufactories, or appurtenant thereto, so long as that land is not let to agricultural tenants" (Act 22 of 1886, Section III (3)). To avoid inconsistency between the Tenancy Act and the Municipal Boards Act the operation of the word land shall have to be confined to land let or held for agricultural purposes, and consequently a tenant of land in urban area used for purposes other than agricultural, will not come within the definition of a tenant and as such not entitled to a franchise.

What is an agricultural purpose is sometimes not easy to define. Agriculture means according to the New Oxford Dic-

tionary the cultivation of the soil for fruit products or any other useful or valuable growth of the garden, tillage husbandry, also by extensive farming including any industry practised by a cultivator of a soil, in connection with such cultivation, as forestry, fruit raising, breeding and rearing of stock, dairying, market gardening, etc. The term "husbandry" is not restricted to tillage or cultivation of the soil, but includes the use of land for the purpose of grazing sheep (*Duncankeir V. Sillespie* 7 T. C. 473; *Commissioners of Inland Revenue V. William Ransom and Son Ltd.* 2 K. B. 769), for poultry farming (*Lancan V. Dikson V. Sall* 10 T. C. 341), and dairying (*Commissioners of Inland Revenue V. The Cavan Central Corporative Agricultural Society* 12 T. C. 1). It has been held that pasture, live stock, cereal, vegetable cultivation, flower cultivation, cultivation in sugarcane, tea, betel, cotton, jute, flax, tobacco and the like are all included in agriculture (*Pendai V. Ramsania* 45 Mad. 710; *Cassey's Case* A. I. R. 1930 Pat. 44). Stocking timber in forest (*Emperor V. Prabhatchand Barua* 1 I. T. C. 284, *Har Pershad V. Emperor*, 1 I. T. C. 417 at 418). Use of land for making brick kilns and manufacturing bricks (*Maharani Janki Kunwar*, 5 I. T. C. 42), the establishment of a salt factory for extracting salt by elimination of the chemicals (*Linga Reddi* 2 I. T. C. 353, A. I. R. 1927 Mad. 848) working of stone quarries in cultivable but uncultivated lands (*Shivlal Gangaram* 2 I. T. C. 426) are not agricultural purposes, and hence a tenant who holds land for such purposes is not a tenant within the meaning of the sub-section and therefore not entitled to a franchise.

Joint Family.

"The language of the section and of rule 2 shows that the object of the provisions is to confer a right of vote which would not otherwise be possessed. Without these provisions a

joint Hindu family could not vote in any way. In other words, the members of a joint Hindu family could not vote. To prevent a Hindu joint family, which owns sufficient property, from being without a vote, because its particular members could not vote as not being themselves owners, the joint family is given one vote by these provisions. A qualification as occupier is not given by these provisions, and it is reasonable that this right should not be extended to a joint Hindu family of so little status that it does not possess, for example, but only the qualification of an occupier.

The result is that the manager of a joint Hindu family or the representative chosen by the members is not an occupier because rule 2 of the election rules does not apply to section 14 (4) of the Municipalities' Act. Nor can the members of a joint family which pays a certain rent. It must, therefore, be taken that the occupier qualification does not apply either to the representative or to the members of the joint family in their capacity as members of the family. They must depend on other qualifications, either in their individual capacity as regards their private property or income, or on a qualification of the joint family which is admissible under rule 2 (Government Notification No. 2284-11-976-E).

Sub-section (3) of section 14 (cf. section of District Boards Act) enumerates the statutory disqualifications which would disentitle a person for franchise, even if otherwise qualified. The disqualifications arise on account of minority, lunacy, insolvency, felony, nationality, and default in payment of taxes.

Over and above the disqualifications enumerated in this section, statutory disqualification arises under section 13 part (2) of Election Offences and Inquiries Act 39 of 1920. Section 13 runs as follows :—

Section 13. Any person who has been convicted of an offence under section 171 E or 171 F of the Indian Penal

Code, or has been disqualified from exercising any electoral right for a period of not less than five years, on account of malpractices in connection with an election, shall be disqualified for five years from the date of such conviction or disqualification from—

- (a) being appointed to or acting in any judicial office ;
- (b) being elected to any office of any local authority when the appointment of such office is by election or holding or exercising any such office to which no salary is attached ;
- (c) being elected or sitting or voting as a member of any local authority, or
- (d) being appointed or acting as a trustee of a public trust.

Provided that the Governor General in the case of an election to the Council of State or the Legislative Assembly and the Governor in the case of an election to the Legislative Council, may exempt any such person from such disqualification.

Person suffering from statutory disqualifications are incapable of casting a valid vote and if they have voted, their votes will be struck off on scrutiny (Sholapur Case I.E.P. Vol. 3, page 193). The register is conclusive as to qualification (section 15 (2) (a) infra), "persons who from failure in the incidents or elements of franchise could have been, but were not successfully objected to, on the revision of the register such as persons whose residence or other qualifications are insufficient, etc., may, as they are on the register vote ; but persons who from some inherent or for the time being irremovable quality in themselves, have not either by prohibition of statute or by common laws the status of parliamentary electors.....cannot vote although on the office register." (Parker's Election Agent and Returning Officer, page 472 ; C. E. Commerce and Industry Case

I.E.P., Vol. 3, page 123 ; Golaghat Case I.E.P., Vol. 2, page 83 ; 38 and Bengal National Chamber of Commerce I.E.P. Vol. 2, page 16 ; Bengal Marwari Association I.E.P., Vol. 2, page 34, Rogers on Elections, Vol. 1, pages 4, 5.)

Registration being the earliest stage of election, no disqualification should exist at that date. Therefore, where the name of a person disqualified is allowed to remain on the register by mistake, but the disqualification is removed either by efflux of time or by an order of the Government, before the date of nomination or election, such a person would not be entitled to be nominated or to cast a valid vote, as he was disqualified at the date of registration and the fact that his name was not removed will not make his registration valid (Belgaun District Case I.E.P., Vol. 2, page 31).

Minority.

The age of minority is fixed at 21 years for the purposes of franchise. "Full age is completed at the first moment of the day preceding the twenty-first anniversary of a person's birth, for the law does not notice a fraction of a day, and a person is thus of full age though he may not have lived *twenty-one years by nearly forty-eight hours*. Thus a person born at any hour on the 1st January 1870, attained his majority immediately after midnight on the night of 30th December 1890." (Parker's Election Agent and Returning Officer, page 86).

Insolvency.

Whether or not a person is an undischarged insolvent has to be seen from the order of a competent insolvency court.

The validity of the order of discharge cannot be questioned before the officers entrusted with the conduct of elections. Thus where an insolvent was adjudicated an insolvent immediately on the granting of an application for

adjudication it was held that he was discharged for the purposes of section 14 (3) of Municipalities Act (L. Permeshwari Das V. Municipal Board Bareilly and another A. I. R. 1932 All. 58 (2)).

Defaulters of tax.

Sub-section (f), section 166, runs as follows :—

“166 (1) As soon as a person becomes liable for the payment of—

- (a) any sum on account of a tax other than octroi or toll or any similar tax payable upon immediate demand, or
- (b) any sum payable under clause (c) of section 196 or section 229 or 230 in respect of the supply of water or payable in respect of any other municipal service or undertaking, or
- (c) any other sum declared by this Act or by rule to be recoverable in the manner provided by this chapter, the board shall, with all convenient speed, cause a bill to be presented to the person so liable.

(2) Unless otherwise provided by rule, a person shall be deemed to become liable for the payment of every tax and license fee upon commencement of the period in respect of which such tax or fee is payable.”

Section 196 (c) runs as follows :—

Subject to the provisions hereinafter contained with respect to the rights of customary sweepers and of agriculturists, the board may—

- “(c) on the application or with the consent of the occupier, at any time undertake the house scavenging of a house or building or the removal of nightsoil from any latrine or cesspool in any building or on any land or the removal of other offensive matter or rubbish from a building or land on terms to be fixed by byelaw in this behalf.”

Section 229 runs as follows :—

“229. Every board may by agreement supply any owner or occupier of land with any water that he may require for any purpose for such remuneration, consistent with any rate or rates prescribed by rule, and on such terms and conditions consistent with this Act and with any rule, as are agreed to between the board and such owner or occupier,” and section 230 runs as follows :—

“230. (1) When any building or land is connected with a main, the board may, so far as is consistent with any agreement made under section 229, charge the owner, lessor, or occupier, whichever is prescribed by rule, for all water consumed at the rate or rates so prescribed.

(2) Provided that the board shall deduct from the charge on account of water supplied in any month one-twelfth the water-tax assessed on the building or land.”

It is clear that section 166 only applies to certain sums payable under section 196 (c), 229 or 230, or any other sums which are declared to be recoverable under that section either by the Act or by rule, made in that behalf. Sub-section (2) of section 166 does not seem to be happily worded inasmuch it throws out a suggestion that a license fee would also be recoverable under that section. But a closer study of the section shows that a mere license fee, viz., license fee for the keeping of a vehicle does not come within the purview of the section. A license fee is not one which is recoverable under section 166, and consequently failure to apply for a license for a vehicle does not make a man a defaulter within the meaning of sub-clause (f), though it might expose him to any other penalty.

PART III.—REGISTRATION.

Electoral Roll—Preparation of.

15. (1) The elected members of a board shall be persons
Electoral Rolls. elected by the electors of that municipality.

(2) Provided that when a municipality is divided into wards for electoral purposes :

- (a) a separate roll or separate rolls shall be prepared for each ward, and
- (b) no person shall be entitled to enrolment on more than one ward roll, and
- (c) a member representing a ward shall be elected by electors on the roll or rolls of the ward :

(3) Provided also that where any class of the community in any municipality is declared by rule to be entitled to special representation among the elected members of the board:

- (a) a separate electoral roll or separate rolls be prepared for such class, and
- (b) no person belonging to such class shall be entitled to be enrolled on a roll other than a roll prepared for his class, and
- (c) a member representing such class shall be elected by electors on the roll or rolls of the class.

“Although a person may possess the necessary personal and property qualification he will not be entitled to record his vote at an election unless his name appears in the electoral roll” (Halsbury's Laws of England, Vol. 12, page 198). The next step at an election after the determination of the right to vote is the preparation of electoral roll.

Two distinct kinds of electoral roll are contemplated by this section, one a general electoral roll and the other a special electoral roll, where any class or community in any

Municipality is declared by rule to be entitled to separate representation.

A person cannot be enrolled both in a general and a special constituency. Nor can a person who is entitled to be enrolled in a special constituency be enrolled in a general constituency and vice versa (Rawalpindi and Lahore Divisions Case I. E. P., Vol. 2, page 149).

The section provides that no one will be entitled to be enrolled in more than one ward of a Municipality. There is no bar to the enrolment of a person in the electoral roll of more than one Municipality provided the necessary qualifications are present.

If an individual is enrolled in the electoral roll of more than one ward and votes more than once at the same election both would be void (Sholapore Case I. E. P., Vol. 3, page 199, Rawalpindi and Lahore Divisions Case I. E. P., Vol. 2, page 149). The voter casting a second vote would not be guilty of personation, if he did not act with a corruptive intention. The Indian cases differ from English Law where it has been held that the first vote cast by a voter enrolled more than once is valid, and subsequent votes alone are void. (Stepney Case 4 O' M. and H., page 43. The Borough of Exeter Case 6 O' M. and H., page 235). But such a person is entitled to cast one valid vote, and if votes only once his vote does not become invalid, because his name appears more than once (Cawnpore District Case I. E. P., Vol. 4, page 62). So also a person whose name appears in the electoral roll of more than one ward is not on that account debarred from being nominated and contesting the election (South Belore Case I. E. P., Vol. 3, page 93 at 97; East Bengal N. M. Constituency I. E. P., Vol. 3, page 223; Shalhpore Case I. E. P., Vol. 4, page 98).

A person enrolled as a voter in the electoral roll of any one of the wards into which a Municipality is divided is entitled to stand as a candidate for any other ward though he

a public servant a notice under section 80 C. P. C. will be necessary for a suit against him.

Rule 4.—(1) On or before each first day of September (or in the case of the municipalities of Mussoorie and Naini Tal, each tenth day of July) preceding an ordinary election of the members of the board the returning officer shall cause to be prepared in the form shown in schedule 1 an electoral roll or electoral rolls containing the names of persons entitled to be enrolled as electors.

(2) The electoral roll or rolls shall be alphabetically arranged and the names therein shall be serially numbered.

Rule 5.—(1) (i) A person claiming to be enrolled under section 14 (2) (b) (i) as a graduate of a university may apply in writing to the returning officer for the entry of his name, and shall furnish proof of his qualification if so required.

(ii) In every municipality the executive officer or secretary shall compile from the assessment registers (if any) maintained in the municipal office a list of persons (if any) entitled to be enrolled by reason of their assessment to municipal taxes of a certain amount, and shall note against the name of any defaulter the arrears due from him at the time of the preparation of the list.

(iii) A person claiming to be enrolled under section 14 (2) (b) (ii) may apply in writing to the returning officer for the entry of his name, and shall attach to his application a certificate from an income-tax officer.

NOTE.—Persons assessed to income-tax can obtain certificates of payment from an income-tax officer free of charge.

(iv) For the purpose of determining any claim to a qualification under section 14 (2) (b) (vi) to (viii) the entries in the land revenue records of the Fasli year preceding the elections shall be conclusive evidence of the facts stated therein.

(v) In municipalities where all residents who own or who occupy a house or building of a certain annual value

are entitled to be enrolled, the list of persons so entitled shall, if there is a tax assessed on the annual value of buildings, be compiled under the direction of the executive officer or secretary from the assessment registers of such tax. Where there is no such tax a list approved by the board of the houses and buildings of which the valuation is not less than the prescribed minimum shall be maintained in the municipal office and shall be corrected by the board from time to time in view of such information as may come to its notice either in the form of application for sanction to erection of buildings or otherwise. On the thirty-first day of July preceding an ordinary election the board shall publish this list at the Municipal Office for information and objections. The board shall prepare for the information of the returning officer a list of the objections received, and shall show on this list in which cases the list has been corrected in accordance with the objections and in which cases the objections have been rejected.

(2) Where any list has been prepared from a register maintained in the Municipal Office each entry shall contain a reference to the item in the register on which it is based, and the register shall be furnished to the returning officer who shall cause them to be compared with the list delivered to him under the succeeding rule.

Rule 6.—On or before such date as the District Magistrate may appoint the list referred to in rule 5 shall be furnished to the returning officer, who shall cause to be compiled therefrom the electoral roll or rolls in accordance with the provisions of the Act and of the next following rule. Reasons shall be recorded in cases where any electoral roll differs from the lists.

In case of a person who is possessed of the requisite qualifications in more wards than one, shall be enrolled in the ward in which he resides. He is, however, given the right to get himself enrolled in any other ward in which he

The following form is suggested for making a claim.

Name of Municipality.

Notice of claim under rule 10 of Municipal Election Rules.

Name of claimant with
parentage, residence, occupa-
tion, etc.

Qualifications on which
claim is based, together with
the name of the ward, if any,
which the claimant seeks to
be entered as an elector.

Prays claimant's name to be entered in the electoral roll
of ward No.....

Signature.

*Form of objection to the inclusion of the name of another
person in the electoral roll.*

Objection under rule 10 of Municipal Election Rules.

Name of objector with his
number in the electoral roll.

Name of person objected
to with his number.

Grounds of objection.

Prays the name of the person objected to be removed
from the electoral roll.

Signature.

The rule permits an objection only by a person who is
himself registered as a voter. A person who is not himself a
registered voter cannot prefer an objection.

Rule 11.—(1) The claims and objections shall be heard and the orders made thereon shall be pronounced in open sitting at such place and time on some or one of the last fifteen days of October (or in the case of the municipalities of Mussoorie and Naini Tal between the first and the seventh day of August) as the returning officer may appoint in this behalf by a revising committee consisting of the returning officer and two members of the board appointed by a resolution of the board. The returning officer shall notify the date on which and the time and place at which the claims and objections will be heard three clear days before the holding of the sitting by notice given to each person lodging a claim or preferring an objection or to whom objection has been made and published in the places prescribed by rule 9 for the publication of the electoral roll.

(2) If the returning officer refuses to act or becomes incapable of acting, the District Magistrate shall appoint another in his place. If one or both of the members of the board appointed to the committee refuses to act or becomes incapable of acting, the chairman of the municipal board may, if he deems necessary, fill up the vacancy or vacancies.

The revising authority for the purpose of municipal election is composed of the Returning Officer who, as has been shown above, is a person appointed by the District Magistrate of the district within which the municipality is situate, and two members of the Board concerned, appointed by a resolution of the Board. The Board as such has no hand in the preparation of the electoral roll, a task entrusted to the Returning Officer. The Board's nominees have a hand in the correction and revision of the electoral roll, as members of the Revising authority.

It seems that the Revising authority is only empowered to decide claims and objections, and is not empowered to make corrections in the electoral roll *suo motto*. The revising

authority's duties in England are not confined to hearing claims and objections alone. *The said authority can correct any mistakes in the electoral roll of its own motion, of course after reasonable notice to the person or persons to be adversely affected by its decision. The revising authority has inherent power to regulate its own business, including the power to limit the time during which contentious business is to be undertaken. The Revising Barrister is, in England, authorised to order any person to be removed from his court "who interrupts the business or refuses to obey his lawful orders"* (Halsbury's Laws of England, Vol 12, page 222).

Power has been given to the Chairman of Municipal Boards to nominate one or both of the representatives of the boards to the revising authority, "to obviate the necessity of calling an emergent meeting of the board for the purpose, which it may not be always easy to arrange." It seems that the nomination of members to the Revising authority by a chairman is not obligatory, and the Returning Officer would be legally entitled to go on with the work of revising the electoral roll, even if both nominees of the Board refuse or become incapable of acting and no nominations are made by the chairman.

A person who objects to the name of any person being entered on the electoral roll and prays for the removal of the latter's name should prove that the latter is not qualified. In the absence of such proof the entry in the electoral roll will remain (Halsbury's Laws of England, Vol. 12, page 231, para 404).

The right to oppose another person's name being included in the electoral roll is given by the mere presence of the objector's name in the electoral roll. The validity of such entry cannot be questioned in order to determine the validity of his objection (Halsbury's Laws of England, Vol. 12, page 209).

When a claim is made on behalf of or by any person for the inclusion of his name in the electoral roll, any person whose name is entered in the electoral roll, may oppose the claim (Halsbury's Laws of England Vol. 12, page 229).

Rule 12.—If at any time before the close of the last day fixed for the disposal of claims and objections the returning officer sees reason to believe that there are any omissions from an electoral roll other than those in respect of which claims have been made, or that there are any entries in an electoral roll, other than those in respect of which objections have been made, which should be removed or corrected, he may, after causing such notice as he considers reasonable to be given to the persons affected, and after making such inquiry as he deems necessary, order that such omissions or entries be supplied or removed or corrected.

Rule 13.—The proceedings of the revising committee in respect of each claim or objection of which notice has been given and of the returning officer in respect of each omission or irregular entry of which he has taken cognizance shall be reduced to writing and shall within seven days after the last sitting of the revising committee be submitted to the District Magistrate, whose orders thereon shall be final. A brief memorandum of the evidence produced in support of the claims and objections shall also be attached to the proceedings of the revising committee and of the returning officer.

This rule confers very wide powers on the Returning Officer. While his powers while acting with the nominees of the Board seem confined to deciding claims and objections only, his powers as Returning Officer, acting singly are much wider, and authorize him to make correction *suo motto* after notice to persons who may be adversely affected. Rule 13 makes it quite clear that the proceedings taken by the Returning Officer as such are distinct and separate from the work done by him as a member of the Revising authority.

District Magistrate's Power of Review.

Rule 14.—(1) Subject to any orders of the District Magistrate of the proceedings of the revising committee or returning officer and to any correction in any electoral roll enjoined by the District Magistrate of his own motion or on application being made to him at any time within fifteen days after the last sitting of the revising committee but always before the tenth day of November

- (a) the orders made by the revising committee or by the returning officer shall be final;
- (b) the electoral roll shall be amended in accordance with those orders; and
- (c) the electoral roll so amended shall not be altered so long as it continues in operation:

Provided that the District Magistrate may, while an electoral roll is in operation, order the removal therefrom of the name of any person who is dead or who has become disqualified under section 14(3) of the Act, or the correction of any clerical mistake.

He may also direct the entry in the electoral roll of the name of the heir of deceased person whose name he has ordered to be removed from the roll, provided that such heir is otherwise qualified to be an elector.

(2) Every correction enjoined by the District Magistrate, shall be made in the electoral roll under the signature of the returning officer and shall be notified to the persons affected.

This rule provides further safeguard for the correct preparation of the electoral roll. The District Magistrate is given the power to correct mistakes either on his own motion or on application made to him. That is to say the District Magistrate is empowered to hear claims and objections as also to correct the list on his motion. The rule does not say that a claim is to be preferred by the person on whose behalf the claim is made. An application for a review may be made to

the District Magistrate by any one whom the District Magistrate may allow to do so. A claim for the inclusion of a name or an objection to the inclusion of the name of any person in the electoral roll may be made by an application by any one who need not necessarily be himself entered on the electoral roll. It seems that objections should generally be entertained only from persons who are themselves voters. Notice of objection should in every case be given to the person sought to be adversely affected by the objection, and orders should be passed only when such person has been heard, if he cares to appear, and after inquiry into the objections.

The following forms are suggested for a claim or objection before the District Magistrate.

Form of application for a claim before the District Magistrate.

To—

The District Magistrate,

.....*District.*

Name and address of the
claimant.

Nature of his qualification.

If he made a claim before
the revising authority, state
its result.

The ward or sub-division
in which he claims to be
entered.

Person on whose behalf
the claim is made.

Prays that the name of the claimant or the person for
whom the claim is made be enrolled.

Signature.

FORM OF OBJECTION.

To—

The District Magistrate,

..... District.

Name and address of the
objector with his number
on the electoral roll.

Name and address of the
person objected to with his
number on the electoral roll.

Nature of the objection.

If the objection was made
before the revising authori-
ty, state the result briefly.

Prays that the name of the person objected to be removed
from the electoral roll.

Signature.

Similar forms may be used where the applicant only wants
some mistake in the name, address, etc., to be corrected.

It would be better if the applications are made in dup-
licate, specially in case of objections, so that one copy may be
served on the person objected to, to enable the latter to meet
the objections raised against him.

Finality of the Electoral Roll.

Rule 15.—The electoral rolls shall be completed by the
seventh day of November (or in the case of the municipalities
of Mussoorie and Naini Tal by the fourteenth day of August),
and shall come into operation on the 10th day of November
(or in the case of the municipalities of Mussoorie and Naini
Tal on the twenty-fifth day of August) and, subject to correc-

tion as provided by rule 14, shall continue in operation until the tenth day of November (or the twenty-fifth day of August in the case of the municipalities of Mussoorie and Naini Tal) preceding the next ordinary election for the ward, class or municipality.

Rule 16.—The electoral roll or rolls made and revised under rules 1 to 15 shall, on or before the day on which that roll or those rolls come into operation, be fixed up at the municipal office, and be kept fixed up there so long as the roll or rolls continue in operation. Copies shall also be made available for purchase by residents of the municipality at a reasonable price to be fixed by the chairman of the board.

FINALITY OF ROLL.—The electoral roll once completed is not to be tampered with in any manner except the removal of dead and disqualified persons, or persons entered more than once in the electoral roll. It may be noted that as has been shown before, the votes of persons disqualified will be struck off on scrutiny even if their names were inadvertently allowed to remain on the rolls, and even votes cast by a person entered more than once will be so struck off, if he votes more than once. A dead person cannot vote. Therefore, for practical purposes, the electoral roll once prepared is final until the preparation of new electoral roll. An election held under a 6-year old electoral roll was upheld (Venkatarama Ayyer V. Kuppaswami Ayyanger 1930 M. W. N. 676).

PART IV.—THE CANDIDATE.

Section 15.—(1) Subject to the exceptions stated in Candidate list. Sub-section (2) every person enrolled as an elector in the Municipal electoral roll shall be qualified for election.

(2) A person, notwithstanding that he is otherwise qualified, shall not be entitled to stand as a candidate for election if he —

- (a) has been dismissed from Government service and is debarred from re-employment therein, or
- (b) is debarred from practising as a legal practitioner by order of any competent authority, or
- (c) holds any place of profit in the gift or disposal of the Municipal Board, or
- (d) is disqualified under section 27 or 41, or
- (e) is a stipendiary magistrate or police officer, or
- (f) is unable to read and write English or at least one of the vernaculars of the province :

Provided that in case (a) and (b) the disqualification may be removed by an order of the Local Government in this behalf.

Section 17.—For the purposes of sections 14, 15 and 16—

Definition of certain terms in sections 14, 15 and 16.

(a) “person” means an individual human being, and

(b) a person shall be deemed to pay a tax directly, if he pays the tax himself or through a legally appointed agent.

Section 18.—The provision of Sections 14, 15, 16 and 17

Provision by rule for enrolment of managers, trustees, etc.

shall be subject to any rule conferring on the manager or representatives of an undivided family or of any company or firm or other association or body of individuals, or on any trustee of any land, a right to vote or to be elected a member of a board.

NOTE.—See rule 2 at page 191 of the Manual (Appendix III).

Sub-section (1) of section 16 entitles every voter to be a candidate subject to restrictions imposed by sub-clause (2), which provides that mere possession of the requisite qualifications is not enough to entitle a person to be a candidate.

He should not also be subject to disqualifications enumerated in sub-section (2).

The word candidate is not defined in the Act. Section 12 only speaks of qualifications which must be possessed by a voter to qualify him for seeking election. It follows therefore that a person seeking election is a candidate. (Halsbury's Laws of England, Vol. 12, page 264). In some cases it becomes very important to decide as to when a particular person became a candidate. A man cannot become a candidate unless there is an election to be held. "An election is process ending in a single, valid, and recognized return of duly qualified candidate (Dungarvan 2 P. R. and D. 308). "There is no definition of the time at which an election is to be deemed to have commenced or ended, there cannot be an election until there is a candidate, and there may be a candidature without there being an election ; but, *prima facie*, an election does not commence until the vacancy arises, or the writ of election issues. The election judges have almost invariably declined to lay down any principle from which the commencement of the election may be determined, and in a recent case one of the judges stated that in his opinion it was not possible to find one (East Dorset 1 O' M. and H. page 22 at 49 per Pickford J.) The question is one to be determined by the facts of each particular case but until the law is more settled, the safest course is to consider that the election has commenced as soon as any definite step is taken in respect of the candidature, or preparation for, or towards the conduct or management of, the election of any particular (Stepney Case, 48 M. and H. 38; Contra Kennington, *ib* 94); thus, the holding by the sitting member of two meetings several weeks before the dissolution was held to be the commencement of the election campaign (Stepney, *Dat*, 31, 117; Parker's Election Agent and Returning Officer, pages 219-20). In a case under the Assam Legislative Council Electoral Rules, it was held that no election can be in

contemplation until a vacancy actually occurred, and no one can be a candidate before that date. But that case was based on an interpretation of Assam Electoral Rules (4 I. E. P., page 107).

A person disqualified from nomination but who is in fact nominated is a candidate and may ever file a petition if other conditions are satisfied (I. E. P. Vol. 3, pages 131, 127, Vol. 2, page 113 ; see also notes to section 24 infra).

Section 27 relates to disqualifications arising out of being found guilty of corrupt practices and runs as follows :—

Section 27.—The court may declare any candidate to have committed any corrupt practice under the preceding section to be incapable, for any period not exceeding five years, of being elected as a member of the board or of being appointed or retained in any office or place in the gift or disposal of the board.

Disqualification for corrupt practice.
NOTE.—See section 16 (2) (d).

Section 40 runs as follows :—

Section 41.—(1) A member removed under clause (a) of sub-section (1) of the preceding section shall, if otherwise qualified, be eligible for further election or nomination.

Disabilities of members removed under section 40.

(2) A member removed under clause (b) of sub-section (1) of the preceding section shall not be eligible until he has obtained his discharge.

(3) A member removed under sub-section (3) of the preceding section shall not be so eligible for a period of three years from the date of his removal.

(4) A member removed under any other provision of the preceding section shall not be so eligible until he is declared to be no longer ineligible, and he may be so declared, by any

order of the Local Government or the Commissioner, whichever of these authorities passed the order of removal.

NOTE.—See section 16 (2) (d).

Section 40 referred to in section 41 runs as follows :—

Section 40. (1) The local Government, in the case of
Removal of members. a city, and the Commissioner, in any other
case, may remove from the board any
member who—

- (a) has absented himself for more than three consecutive months from the meetings of the board and is unable to explain such absence to the satisfaction of the board ; or
- (b) is an undischarged insolvent ; or
- (c) has become subject to disqualification mentioned in section 14 (3) (e) ;
- (d) has, within the meaning of section 82, knowingly acquired or continued to hold without the permission in writing of the Commissioner, directly or indirectly, or by a partner, any share or interest in any contract or employment with, by or on behalf of the board ; or
- (e) has knowingly acted as a member in a matter other than a matter referred to in clause (d) or (e) of sub-section (2) of section 82, in which he or a partner had, directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a client, principal or other person ; or
- (f) being a legal practitioner, in any suit or other proceeding, acts or appears on behalf of any other person, against the board, or against the Secretary of State litigating in respect of nazul land entrusted to the management of the board, or acts, or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the board.

(2) A member removed by an order of a Commissioner under clause (d), (e) or (f) of sub-section (1) may appeal therefrom, within one month of receiving the order to the Local Government and the Local Government may, thereupon, if it thinks fit, cancel the order and reinstate the member.

(3) The Local Government may remove from the board a member who in its opinion has so flagrantly abused in any manner his position as a member of the board as to render his continuance as a member detrimental to the public interest.

(4) Provided that when either the Local Government or the Commissioner, as the case may be, proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the member concerned, and when such action is taken, the reasons thereof shall be placed on record.

NOTE 1.—A chairman removed under this section thereupon ceases to be chairman under section 48 (1).

NOTE 2.—The Act gives no power of simple suspension as opposed to complete removal.

The effect of sections 40 and 41 is that a member removed for being absent from meetings of the board for more than 3 consecutive meetings is eligible for re-election, if otherwise qualified, a member removed on account of being an undischarged insolvent becomes eligible for election on his being discharged, a member who has been removed for having flagrantly abused his position as such member after the lapse of 3 years, but a member removed on account of becoming subject to disqualifications arising under clauses (c), (d), (e), (f) of sub-section (1) never becomes eligible for being a candidate except by a declaration by the Local Government or the Commissioner to that effect.

Section 82 runs as follows :—

Section 82 (1) A member of a board, who otherwise than with the permission in writing of the Commissioner knowingly acquires or continues to have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment, with, by, or on behalf of, the board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

*Penalty on member
acquiring interest in con-
tract etc.*

NOTE.—See also section 40 (1) (d) and (e).

(2) Provided that a person shall not be deemed for the purposes of sub-section (1) to acquire, or continue to have any share or interest in a contract or employment by reason only of his—

- (a) having a share or interest in any lease, sale or purchase of land or buildings, or in any agreement for the same, provided that such share or interest was acquired before he became a member, or
- (b) having a share in a joint stock company which shall contract with, or be employed by, or on behalf of, the board, or
- (c) having a share or interest in a newspaper in which an advertisement relating to the affairs of the board is inserted, or
- (d) holding a debenture or otherwise being interested in a loan raised by, or on behalf of, the board, or
- (e) being retained by the board as a legal practitioner,
- (f) having a share or interest in the occasional sale of an article in which he regularly trades to the board to a value not exceeding, in any one year, such amount as the board, with the sanction of the Government, fixes in this behalf, or

NOTE.—The power of the Local Government under this clause has been delegated to Commissioner, see page 362 of this Manual.

- (g) being a party to an agreement made with the board under the provisions of section 196 (c) or of section 229.

Section 196 (c) runs as follows:—The board may,

- (c) on the application or with the consent of the occupier, at any time undertake the house-scavenging of a house or building or the removal of nightsoil from any latrine or cesspool in any building or on any land or the removal of other offensive matter or rubbish from a building or land, on terms to be fixed by byelaw in this behalf; and

NOTE 1.—This is a new provision to provide for cases where a board may not find it convenient to impose a scavenging-tax or a fee for the cleansing of latrines and privies and may prefer to arrange for scavenging on special terms by contract. Such terms may be regulated by byelaw under section 298 (2) J (d).

NOTE 2.—For recovery of sums payable under this clause see section 166 (b).

Section 229 runs as follows:—

Every board may by agreement supply any owner or occupier of land with any water that he may require for any purpose for such remuneration, consistent with any rate or rates prescribed by rule, and on such terms and conditions, consistent with this Act and with any rule, as are agreed on between the board and such owner or occupier.

NOTE 1.—For rules with reference to this section, see model rules 9 and 12—16 at pages 395 to 397 of this Manual.

NOTE 2.—For "consistent with this Act" see the provisions of section 230 (2) 231, 232 and 233.

NOTE 3.—For the recovery of sums payable under this section, see section 166 (b) and rule 2 at page 299 of this Manual.

Place of Profit.

The words "place of profit in the gift or disposal of the Municipal Board" do not cover any ordinary commercial contracts. The words denote position and employment in the sense of having a title attached to such employment and a definite standing and partaking of the nature and character of that of a master and servant (A. I. R. 1924 All., page 135). Under sub-section (c) therefore a person would be disqualified from being a candidate if he "holds any place of profit etc." But a person may not hold a place of profit etc. "within the meaning of sub-section (c) but be disqualified under sections 41 and 82 above. Section 82 (1) is wider in its application than sub-section (c) of section 16 and applies to all kinds of contracts with the board. Permission of the Commissioner legalises contracts mentioned in sub-section (1) of section 82, but no sanction can legalise the disqualification arising under sub-section (c) of section 16. In order to escape the penalties of section 82 a member of the board acquiring share or interest in any contract must obtain permission in writing of the Commissioner. Where there is doubt as regards the interest, the Commissioner should be applied for permission (A. I. R. 1930 All., page 939).

Sub-section (e) of the Municipalities Act confines the disqualification only to stipendiary magistrates and police officers. It follows that honorary magistrates and Government servants other than those specified above and eligible for election.

Section 80B of the Government of India Act lays down that "An official shall not be qualified for election as a member of a local Legislative Council" and section 134 of the said Act lays down that the expression "official" and "non-official" where used in relation to any person mean respectively a person who is or is not in the civil or military service of the Crown in India." But this wider restriction does not apply to municipalities.

Section 18 makes the provisions of sections 14, 15, 16, and 17 subject to any rule conferring on the manager or representative of an undivided family, etc., a right to vote or to be elected as a member. Rule 2 cited above provides for the exercise of franchise by such juristic persons through some natural person. As has been shown above the right of franchise can be exercised through a natural person in the manner provided in rule 2.

PART V.—NOMINATION.

Conduct of elections and kindred matters. **Section 29.**—The following matters shall be regulated and governed by rule, namely:—

- (a) with reference to section 14 the minimum amounts, salaries or sums qualifying a person to be an elector;
- (b) the qualifications of candidates for election;
- (c) the preparation and revision of electoral rolls and candidate lists;
- (d) the nomination of candidates;
- (e) the dates, time and manner of holding elections, general or casual;
- (f) the prohibition of corrupt or improper practices committed in connection with elections and the punishment of persons guilty of the same;
- (g) any other matter relating to elections or election petitions in respect of which this Act makes no provision or insufficient provision is, in the opinion of the Local Government, necessary.

NOTE.—Rules under (a) and (b) have been made separately for each board. For model rules under (a) and (b) see pages 399 to 400 of this Manual. For rules under (c) pages 191 to 212 of this Manual.

Section 29 A.—In the year 1936 and thereafter in every fourth year there shall be a general election of members of municipal boards.

General election.

Provided that in the Naini Tal and Mussoorie Municipalities the next general election shall be held in 1933 and thereafter in every fourth year.

NOTE.—The system of triennial elections introduced by resolution No. 1244/XI-372E, dated June 19, has been changed to quadrennial elections by Act V of 1932.

Rule 21.—Every candidate for election as a member of the board shall be nominated in writing.

Nomination is one of the earliest stages of election and none of the grounds of uneligibility for election should exist on the date of nomination or even at the time of application for a nomination paper. If any of such disqualifications exists at any of these dates, the election of the candidate suffering from such disability would be invalid (Belgaun District Case I. E. P., Vol. 2, page 31 and Presidency Divisions Landholders Case, I. E. P., Vol. 2, page 123).

Rule 22.—The writing (hereinafter called the nomination paper) shall be subscribed by a proposer and seconder each of whom shall affix his signature thereto if he is literate or his thumb-impression if he is not.

Rule 23.—An elector who desires to be nominated as a candidate shall, on or before November 15—

- (a) deliver or cause to be delivered to the returning officer a written application for a nomination paper, and shall in the application indicate in which constituency, and if there are wards in which ward, he seeks election; and
- (b) shall deliver or cause to be deposited with the returning officer the sum of Rs. 50 in cash or in government promissory notes of equal value at the market rate of the date.

A deposit with the Returning Officer cannot be confined to a case of payment into his hands. The money may be paid to his cashier sitting in his presence or deposited in the treasury of which he is the head as district officer. Deposit with the Returning Officer implies that the money should be so deposited that the Returning Officer must have dominion or control over it. (Central Shahabad Case, I. E. P., Vol. 3, page 168).

The following form is suggested for an application for a nomination paper.

FORM OF APPLICATION FOR A NOMINATION PAPER

Municipal Board election.....Municipal Board.

Application for a nomination paper under rule 23 of the
Municipal Board Election Rules.

To

The Returning Officer.

.....*Municipal Board.*

Name of applicant with parentage
and description.

Name of the ward in which the
applicant seeks election.

Number of the intending candidate
in the electoral roll with the
name of the sub-division and
class, etc., in which he is enroll-
ed as an elector.

The fact that the deposit required
by sub-rule (b) is made, with
the name and description of the
person by whom it is made.

Prays that a nomination paper be prepared for the appli-
cant.

Signed.

Rule 24.—No person shall be nominated whose name is not entered in the electoral roll.

Rule 25.—The nomination paper shall be in the form shown in schedule II.

Rule 26.—The Returning Officer shall fix a date for the nomination of candidates which shall be not less than twelve days before the time fixed for a poll, if any. On that date the proposer and seconder of an elector who has applied for a nomination paper shall appear before the Returning Officer at such time and place as the latter may appoint. The proposer shall bring with him either the candidate in person or a written declaration signed by the candidate stating that he assents to be nominated.

The rules do not require that the candidate should personally deliver the application for a nomination to the Returning Officer. It is enough if he causes it to be delivered by some agency.

Nor is personal attendance by the candidate required at the time of the preparation of the nomination paper. It is enough if a written declaration signed by the candidate is brought to the Returning Officer by the proposer. But the proposer and seconder must be present in person.

The assent of the candidate need not be given at any particular time nor is it necessary that the declaration of assent should be in the handwriting of the candidate (Aligarh Muttra and Agra Districts M. R., I. E. P., Vol. 2, page 7; Midnapore South N. M. R., I. E. P., Vol. 2, page 117).

Rule 27.—(1) The returning officer shall in the presence of the proposers and seconders and of such candidates as attend, proceed to pass order on the applications received under rule 23. If after such summary inquiry and after taking such evidence as he may think necessary as to the identity of the proposer and seconder, and as to the identity of candidate if he attends, or as to the authenticity of his

declaration if he does not attend, the returning officer is satisfied that the name of the candidate is entered in the electoral roll, that he assents to be nominated and that his proposer and seconder are entered in the roll of the ward and class in which the candidate is to be nominated, and if the deposit prescribed under rule 23 has been made, he shall fill up the entries in the nomination paper and shall obtain thereto the signatures or thumb-impression of the proposer and seconder, and also of the candidate if he attends. He shall thereupon declare the elector to be duly nominated as a candidate for the constituency.

(2) If the returning officer is not satisfied as to the identity of the proposer or of the seconder or of the candidate or as to the authenticity of the candidate's declaration, or if the candidate is absent and no declaration on his part is presented or if the name of the candidate is not entered in the electoral roll or if the proposer or the seconder is not entered in the electoral roll of the ward and class in which the candidate is to be nominated or if no deposit has been or is made under rule 23 the returning officer shall refuse to prepare the nomination paper and shall briefly record his reasons on the application received under rule 23. He shall then return the deposit, if any, to the person by whom it was made.

Provided that, if the elector or his proposer and seconder so demands, the returning officer shall before finally refusing to prepare the nomination paper adjourn the proceedings to the next day or to the next day but one enable the elector or his proposer and seconder to rebut the objection raised against the nomination. On the date so fixed, the returning officer shall finally record his decision.

(3) The returning officer shall attach the written declaration (if any) of assent to nomination to the nomination paper, if a nomination paper is prepared, or to the application for a nomination paper if no nomination paper is prepared.

The task of filling in the nomination paper is entrusted to the returning officer unlike Council Elections where the nomination paper is to be presented duly filled. Strictly speaking there can therefore be no improper acceptance or rejection of a nomination paper, but the improper refusal to prepare or improper preparation of a nomination paper will have the same legal consequences as the improper rejection or acceptance.

There is nothing to prohibit a candidate from applying for a nomination paper in respect of more wards than one, or being so nominated or elected. In District Board election rules, a provision is made by which the Returning Officer is authorized to ask a candidate or his proposers and seconders in case he is not present from which of the constituencies, if application for a nomination paper for more than one constituency has been made on his behalf, he elects to be nominated. A nomination paper can in such a case be prepared in respect of one constituency only (See Rule 24 of District Board Election Rules). Under the municipal election, there is nothing to prevent a candidate from being elected from more wards than one, only he cannot represent more than one ward ; and will have to resign his seats except one.

Identity of Proposer and Seconded.

The rules do not require any literal correspondence between the entries in the electoral roll, and those in the nomination paper (Rawalpindi and Lahore Divisions Case, 2 I. E. P., page 149; Azamgarh District Case, 4 I. E. P., page 18 ; Bhandara District Case, I. E. P., page 22), and the fact that a person is misdescribed in the electoral roll will not disentitle him from being a proposer or seconder provided that there be no doubt as to his identity (Raipur North Case, 2 I. E. P., page 146; Balamau N. M. Rural Case, 3 I. E. P., page 228). No inaccurate description of any person should hinder the

operation of law with respect to that person provided that the description given be such as to be commonly understood and the identity of the person concerned be clear after a summary inquiry (Aligarh District West Case, 2 I. E. P., page 4; Golaghat Case, 2 I. E. P., page 83).

The question whether the person who actually appears before the returning officer and claims to be the proposer or the seconder is or is not identical with the person whose description is given in the electoral roll against the number given by him in the nomination paper, ought not, however, to be confounded with what is required to be given in the nomination paper. It is one thing to say that proposer or seconder is not identical with the person whose description is given in the electoral roll, and quite another to say that the form has not been properly filled in (Betul District Moham-medan Rural Case, 4 I. E. P., page 32). Where, therefore, the rules do not require the names of fathers of proposers and seconders to be given in the nomination paper, the omission of such names cannot be a ground for the rejection of the nomination paper (4 I. E. P., page 32 above).

Even where the nomination paper, required certain particulars to be furnished the nomination paper should not be rejected if the misdescription is trivial. Thus the misdescription of the name of the constituency as Aligarh East for Aligarh District East was held to be trivial misdescription which did not vitiate the nomination paper (Aligarh District East, 2 I. E. P., page 3). But the failure to specify the name of the subdivision of the constituency where the constituency is subdivided into several subdivisions was held to be a material irregularity which vitiates a nomination paper (Saharanpore District Case, 4 I. E. P., page 96). In a subsequent case it was held that the object of the provision requiring the mention of the name of the subdivision of the constituency in the electoral roll, is that there should be no difficulty in identifying

the person or tracing the name in the list of voters. If this object can be achieved even without strict adherence to the form by the particulars given therein, it would be contrary to justice, equity, and good conscience to invalidate the nomination paper and to deny the electors a fair and free opportunity of electing a candidate according to their preference (Samastipur N. M. Rural Case, 4 I. E. P., page 99 at page 100). Where this object is achieved and there is no doubt as to the identity of the persons concerned, the absence of the name of subdivision will not invalidate a nomination paper. Thus where an electoral roll was divided into Male and Female subdivisions but the nomination paper did not mention the fact that the proposer and seconder were enrolled in the Male subdivision, the omission was held to be trivial (Howrah Municipal Board N. M., 3 I. E. P., page 207). Again, where the constituency was subdivided according to Revenue subdivisions and the polling station falling within each area was included in each subdivision, it was held that the description of the subdivision by the name of the Revenue subdivision was sufficient compliance with form of nomination paper requiring the giving of the name of the subdivision, and that the nomination paper was wrongly rejected because the name of the subdivision was not given according to the name of the polling station. (Shahabad Case, 2 I. E. P., page 175). But where the subdivisions were given separate serial numbers, the omission to specify the name of the subdivision, where the number of the electoral roll was to be found in more than one such subdivision, was held to be a material irregularity and the nomination paper was held to have been rightly rejected on that ground (Raipur North, 2 I. E. P., page 146).

Where a seconder described himself as "Modo Sahu" son of Mannilal Sahu elector of Kasba Union Committee Circle No. 11, but in the register of electors there was no entry of Modo Sahu, son of Mannilal Sahu, but there was an entry

as Modo Sahu son of Mannilal Sahu and the Returning Officer rejected the nomination paper on the ground of want of identity of the seconder, it was held that the returning officer should have determined the identity of the seconder by a summary inquiry. The seconder was found to be only misdescribed in the electoral roll, and it was held that the nomination paper was wrongly rejected (I. E. P. Vol. 1, pages 54, 55). Similarly one Lajia was held to be mere a misdescription of Lajja (I. E. P., Vol. 1, page 4). In another case where a seconder described himself as Nirsan Thakur, but the entry in the electoral roll which he claimed to refer to him, was as Nisar Thakur son of Manbhawan Thakur, and the proposer described himself as the son of Gopal Thakur but the entry in the electoral roll showed the parentage of the elector as Daun Thakur, and the Commissioners were not satisfied from the affidavit filed by the petitioner about the identity of the electors, it was held that the nomination paper was rightly rejected, the tribunal remarking that a misdescription of the father's name was a serious discrepancy (Samastipur Case, 2 I. E. P., page 172).

The courts are loath to reject nomination papers merely on mere misdescription or on omissions which are not material. Thus it was held that a nomination paper should not have been rejected on the ground that the number of the ward was not given in the nomination paper or on the ground that the thumb mark of the seconder had not been attested (Sarvothama Rao V. Chairman M. C. Saidapat A. I. R. 1923 Mad. 465). Again it has been held that the signatures of a person do not become bad because they are made in a form different from the one in which he generally makes them. Literal compliance is not required. (Betul Case, 4 I. E. P., page 33). The addition of words "da" and "Ba khas" which are only abbrations of "Daskhat" and "Ba Qalum Khud" does not alter the identity of the person sign-

ing and no nomination paper can be rejected on that ground (North East Darbhanga Case, 4 I. E. P., page 72). Where however the rules require that the names of the proposer and seconder should be given, it is not enough to give the initials alone. There is no rule requiring that a candidate should only sign a nomination paper after the proposer and seconder have signed the same, and a nomination paper is not to be rejected because a candidate signed it before the proposer and seconder. (North-West Monghyr Case, 4 I. E. P., page 104 ; Midnapore South, 2 I. E. P., page 113).

Identity of Candidate.

It is the duty of the returning officer to ascertain by a summary inquiry the identity of a candidate, if the same is challenged (Golaghat Case, 2 I. E. P., page 83 ; Rawalpindi and Lahore Divisions Case, 2 I. E. P., page 149).

It has been held that it is the duty of the returning officer to ascertain by a summary enquiry not only the identity of a candidate, but also that he is not disqualified from standing as a candidate. A person must be qualified to stand as a candidate at the moment he offers himself for nomination. If there is any ground for disqualification his nomination should be refused. (Chota Nagpur Division, 2 I. E. P., page 67; Shahabad Case, 3 I. E. P., page 232; Aligarh District East, 2 I. E. P., page 3). It would appear that a returning officer is also authorized to decide about the eligibility of a candidate by a summary enquiry, and his decision is not to be confined to points enumerated in rule 27 (Balamau Case, 3 I. E. P., page 228). Nomination being one of the earliest stages of election, none of the disqualifications provided by laws should exist on that date (Belgaun Case, 2 I. E. P., page 31; Presidency Divisions Landholders, 2 I. E. P., page 123).

As has been remarked before, the task of actually filling in the nomination paper is entrusted to the Returning Officer,

and the candidate is only required to deliver or cause to be delivered a written application for a nomination paper. It is submitted that on the analogy of the rulings cited above, a defect in the application will justify a refusal to prepare a nomination paper.

Authenticity of Candidate's Declaration.

No particular form is prescribed for the declaration by a candidate which is required by rule 23. Nor is any time fixed for making such a declaration. The assent to be nominated may be declared by the candidate long before the date of nomination (Midnapore Case, 2 I. E. P., page 113). The declaration need not be made in the handwriting of the candidate (Aligarh, Muttra and Agra Districts, 2 I. E. P., page 7).

A rigid adherence to the electoral roll is not required even in the case of a candidate. It is enough if the description in the electoral roll is sufficient to identify the candidate, (Balamau Case, 3 I. E. P., page 228) and the Returning Officer should not refuse to prepare a nomination paper on account of any misdescription in the electoral roll, provided the name of the candidate appears in the electoral roll, and there is no doubt about his identity (Raipore North Case, 2 I. E. P., page 146).

In one case it was held that the omission to give the candidate's electoral number in the nomination paper is not fatal to it (Midnapore Case, 2 I. E. P., page 113). But in another case where the electoral roll was subdivided into several subdivisions and each subdivision was serially numbered the omission to specify the description of the subdivision was held to vitiate the nomination paper, as it was held that it is not the duty of the Returning Officer to search every subdivision to find out where his name appeared (Punjab North-East Town Case, 2 I. E. P., page 143).

Improper acceptance or rejection of a nomination paper.

The improper rejection of a nomination paper has been held a grave irregularity which vitiates an election (Golaghat Case, 2 I.E.P., page 83; Tirhut Division Landholder's Case, 2 I.E.P., page 180; Balamau Case, 3 I. E. P., page 228; Shahabad Case, 3 I. E. P., page 232; Agra District, 4 I. E. P., page 6; Cawnpore District, 4 I. E. P., page 62; North-East Town Case, 4 I. E. P., page 75). The principle on which the improper rejection of a nomination paper is held to vitiate an election is, that the electorate is deprived of the chance of voting for the particular candidate. It seems that the case is different when a nomination paper which is invalid is wrongly accepted, because in that case the electorate is not prevented from voting for any candidate, but some votes are cast in favour of the person wrongly nominated. But in such cases also, where there are more than two candidates, it cannot be said that if the person whose nomination paper is improperly admitted, were out of the field, as to which of the remaining candidates the votes cast in his favour would have gone. It has therefore been held that the improper acceptance of a nomination paper is also a material irregularity which vitiates an election (Bombay City North, 2 I. E. P., page 53). Nomination means valid nomination by a legal nomination paper, and a person whose nomination paper is wrongly accepted, does not thereby become validly nominated. (Parker's Election Agent and Returning Officer, page 659.)

Publication of a Nomination.

Rule 28.—(1) As soon as may be after a nomination paper has been prepared the returning officer shall send notice of the nomination to the person nominated and inscribe such person's name in a list of nominations which shall be fixed at the place prescribed by rule 9 for the publication of the electoral roll.

(2) The list of nominations shall be in the form shown in schedule III.

District Magistrate's Power of Revision.

Rule 29.—On an application being made to him or on his own motion the District Magistrate may at any time within three days after the order has been passed revise an order passed by the returning officer under rule 27.

This rule does not say as to who can make the application referred to in it. Presumably, the application may be made by any voter of the constituency or by any person who is not even a voter, provided the District Magistrate thinks fit to allow him to do so.

Rule 30.—Five days before the day for the election the returning officer shall prepare, for each ward or class if any, and otherwise for the whole municipality, a schedule, alphabetically arranged, of the candidates, for election whose nomination is valid and who have not withdrawn from their candidature. The schedule shall be in the form prescribed by rule 28, except that there shall be a heading describing the ward or class, if any.

Rule 31.—The schedule shall be posted at the place prescribed by rule 9 for the publication of the electoral roll.

Death of Candidate before the Poll.

Rule 32.—If a candidate who has been nominated dies before the date appointed for taking of a poll the deposit made under rule 23 shall be returned to the person by whom it was made or to his legal representative.

Withdrawal of a Candidature.

Rule 33.—(1) A candidate may withdraw his candidature by notice in writing delivered to the returning officer. If the withdrawal is made within seven days from the date of

nomination the deposit made under rule 23 shall be returned to the person by whom it was made. If the withdrawal is made after the expiry of seven days from the date of nomination, the deposit paid shall be forfeited to the board.

(2) A candidate who has withdrawn his candidature shall not be allowed to cancel his withdrawal or to be renominated as a candidate for the same election.

Forfeiture of Security.

Rule 34.—If a candidate is not elected and the number of votes polled by him does not exceed that fraction of the total number of votes polled which is obtained by dividing the fraction of $\frac{1}{8}$ th by the number of seats for which the election is being held, the deposit shall be forfeited to the board. For the purpose of this rule the number of ballot papers shall be deemed to be the number of ballot papers other than spoiled ballot papers and tendered ballot papers.

This rule is intended to prevent the setting up of bogus candidates by interested persons.

Ballot papers mean valid ballot papers, and the words do not include ballot papers rejected on account of some defect. Where the ballot papers were all rejected for want of official mark, it was held that there were no valid votes and the security could not be forfeited (Kalyan Das V. Municipal Board of Chandausi, A. L. J. 1931, page 1097 ; A. I. R. 1932 All. 158).

Refund of Security.

Rule 35.—A deposit which has not been returned to the candidate or forfeited under the preceding rules shall be returned to the person by whom it was made as soon as may be after the publication of the result of the election in the Gazette.

Rule 36.—(1) If the number of candidates who are entered in the schedule and who have not withdrawn their candidature before the time fixed for the poll exceeds the number of the vacancies a poll shall be taken on the day for the election in the manner hereinafter provided.

(2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be elected.

(3) If the number of such candidates is less than the number of vacancies all such candidates shall be declared to be elected and the board shall call for fresh nominations for the remaining vacancies to be made upon a fixed date and may also, if necessary, fix a fresh date for the poll, if any, in accordance so far as possible with rules 18 and 19.

(4) If during the poll a candidate withdraws his candidature and the number of candidates who have not withdrawn their candidature is not greater than the number of vacancies, the poll shall be stopped and the candidates who have not withdrawn their candidature shall be declared to be elected.

Sub-clause (4) of Rule 36 gives statutory recognition to the ruling in *Sultan Baksh and others V. Mirza Abdul Hamid Beg*, 21 A. L. J. 639). The rule only provides for the withdrawal of candidates. It does not say as to what should be done if a candidate dies during the poll. The Returning Officer should therefore not take notice of the death of a candidate after the poll has been opened but should proceed as if he were alive, and, if elected, should return his name ".....A new writ of election will then issue" (*Parker's Election Agent and Returning Officer*, pages 340-341).

PART VI.—THE POLL.

Time and Place of Election.

Rule 18.—(1) The time of the ordinary election shall be such day between the first and the tenth of December (or in the case of the municipalities of Mussoorie and Naini Tal between the twenty-fifth and the thirtieth day of September) as the board at a meeting in October or November (or in the case of the municipalities of Mussoorie and Naini Tal at a meeting in August) may in consultation with the District Magistrate determine. The board shall immediately forward a copy of their resolution to the returning officer.

(2) Where a vacancy occurs on a board by reason of—

- (a) the death, resignation, removal or avoidance of the election of an elected member, or
- (b) any increase in the number of elected members on a board effected under section 9 or 10 of the Act, or
- (c) any termination of office of an elected member effected under section 38 (4) of the Act,

the vacancy shall, unless in case (a) a board has under section 13 of the Act directed that it be left unfilled until the next ordinary election, be filled by means of another election to be held on a date to be fixed by resolution of the board. The date so fixed shall be a date within one month of the occurrence of the vacancy, or in the case of vacancy which occurs between the thirtieth day of September and first day of April in Mussoorie or Naini Tal, before the first of May next following.

Provided that if from any cause the election be not held on the date fixed, the board shall fix another date for the election.

It would appear that the Board has to fix the date of an ordinary election in consultation with the District Magistrate, while in a case where a casual vacancy has to be

filled, no such consultation is necessary, and the board is empowered to fix any date it thinks fit.

The date fixed may be a public holiday, or even a Sunday. There is no legal bar to this. In England in reckoning time for the purposes of Ballot Act, "Sunday, Christmas day, Good Friday, and any day set apart for a public fast or public thanksgiving shall be excluded; and where anything is required by the Act, to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned."

It is suggested that the date fixed for the poll shall not be a public festival.

Rule 19.—The hours during which, and the place where, if there be a poll, the votes of the electors will be taken, shall be determined by the board at the said meeting.

Rule 20.—Fifteen days at least before the day for the election the executive officer or the secretary shall prepare and sign a notice thereof, and of

- (a) the number of persons to be elected to represent each ward or class ;
- (b) the time and date of the nomination of candidates, and
- (c) the hours during which, and the place where, if there be a poll, the votes of the electors of each ward or class will be taken ;

and shall publish the notice in the same manner as is prescribed by rule 9 for the publication of the electoral roll.

The giving of a notice is a ministerial act, and may be done even on a Sunday. (Parker's Election Agent and Returning Officer, page 228).

No particular form is prescribed for a notice under this rule. It is enough if the notice given complies substantially with the requirements of the rule.

Of the Manner of Taking Votes.

Rule 37.—The board shall provide one or more suitable buildings or booths (hereinafter termed the polling station) for each area in which a poll will take place.

It is the duty of the returning officer to provide as many polling stations as are necessary for effectively conducting the election in the manner provided by the rules.

“There are no requirements as to the architectural form of the polling stations. One convenient feature is to provide each polling station with two doors—marking the same respectively with placards “Entrance” and “Exit” or “in” and “out” and with index fingers and if possible, with a third door at the back of the tables for officials. The presiding officer’s seat should face the entrance, his poll clerks should be seated on either side of him, and the candidates’ polling agents next beyond the polling clerks. There should be a drop bar a barrier to separate the officers and the candidates’ agents from the voters, and sufficient number of seats for these officers and agents must be provided (Parker’s Election Agent and Returning Officer, pages 290-1).

Rule 38.—The District Magistrate shall appoint as many polling officers, and polling clerks as may be required for the recording of votes under these rules and shall from among the polling officers appoint one officer as presiding officer to preside over the election at each polling station.

If before or at the time of the election any polling officer refuses to act or becomes incapable of acting as such, the District Magistrate shall appoint another fit person to act in his stead.

Rule 39.—Every polling officer shall be supplied with a copy of the electoral roll, and with a copy of the schedule of valid nominations of candidates for elections referred to in rule 30.

Rule 40.—Each presiding officer shall keep order at his station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the persons nominated to assist the presiding officer, the clerks, the candidates, and the constables on duty and such other persons as the presiding officer may from time to time admit for the purpose of identifying electors; provided that a candidate may appoint by written authority an agent or agents to appear in his stead at each polling station.

Keep Order at the Station.

The duty to keep order at the polling station implies the power to do all things that may be necessary to keep order. "If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near the station.....Any person so removed if charged with the commission in such polling station of any offence may be kept in custody until he can be brought before the proper authorities." "But the powers conferred by this provision are not to be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such election." (Halsbury's Laws of England, Vol. 12, page 321).

Where the taking of the poll is interrupted by riot or open violence the returning officer or his deputy may, in England, adjourn it till next day, and may, if necessary, adjourn it again until the riot or violence has ceased and again proceed to hold the poll on the day to which it was adjourned after giving notice. (Halsbury's Laws of England, Vol. 12, page 307). Under this rule the presiding officer has by implication as it were, all powers to enable him to

see that the election is fairly conducted." In England, if the power of adjournment is exercised by deputy to the returning officer, he has to forthwith report the matter to the returning officer. In elections held under these rules, it is submitted that if it becomes necessary to adjourn the poll to another day, a report should forthwith be made to the returning officer, and another date should be fixed with the approval of the latter, and reasonable notice should be given to the electors concerned of the adjournment, and of the new date fixed.

Polling Agents.

Polling agents are also called personation agents, whose principal function is to "detect personation in the polling station." (Parker's Election Agent and Returning Officer, page 30). No particular qualification is provided for a polling agent. In Council election no one can be appointed an election agent who is not himself eligible for election as being subject to any of the qualifications arising out of conviction under Chapter 9-A of the Indian Penal Code, or having been reported guilty of corrupt practices under the electoral rules (Rules 11 and 17 of Council Election Rules). Even in the case of Council elections the restrictions regarding appointment apply only to election agents. Under the present rules no such restriction is made, and it seems that any one including a disqualified person may be appointed an agent. In England, if in a petition, it is proved that any candidate "personally engaged at the election to.....which such petition relates as canvasser or agent for the management of the election any person, knowing that such person has within 7 years been found guilty of any corrupt practice by any competent legal tribunal.....the election of such candidate shall be void." (31 and 32 Vice, c. 125, ses. 44.) At any rate, as the duties of the polling agent demand tact, judgment,

and discretion, it is obvious that it is only persons endowed with these qualities that can be deemed competent to perform such duties, and considerable care should be taken in selection of persons to be appointed as polling agents. A familiarity with the appearance of the voters in the polling district is very desirable." (Parker's Election Agent and Returning Officer, page 31).

Rule 41.—Votes must be given in person at the polling station and no votes will be received by proxy.

Rule 42.—Votes shall be given by ballot, and the ballot of each voter shall consist of a paper (hereinafter called ballot paper) in the form shown in schedule IV. The list of candidates in this form shall be printed in the same order as in the schedule prescribed by rule 30.

Rule 43.—(1) At any time before a ballot paper is delivered to an elector the polling officer or his assistant or any clerk appointed to check the voters by reference to the electoral roll may of his own accord, and shall, if so required by a candidate or his agent, put to the elector either or both of the following questions:—

(a) Does the following entry refer to you ?

(reading the whole of the entry from the roll).

(b) Have you already voted at the present election in this or any other ward ?

(2) The elector shall duly answer the questions and shall not be supplied with a ballot paper if he refuses to answer one of the questions nor if he answers the first question in the negative, and the second question in the affirmative.

(3) The name of every person presenting himself to vote and his number on the electoral roll shall be entered in a list maintained in the form shown in schedule V and the voter shall thereafter, if he is literate, sign his name in the column provided for that purpose in the said list, or if he is

illiterate affix his thumb-impression thereto. Any thumb-impression so made shall be attested by any candidate or his agent who may be able to recognize the voter or by any other person who may be admitted by the presiding officer for the purpose of identifying electors. The list shall be maintained in separate sheets, which shall be consecutively numbered ; but it is not essential that only one such sheet shall be in use at the same time.

(4) The voter shall then present the list mentioned in the preceding clause to the polling officer, who after satisfying himself that the list has been duly signed or impressed and attested shall state the number of votes which may be given, and the conditions, if any, attaching thereto and shall give to the voter the counterfoil of a ballot paper bearing on each side an official mark at the same time noting on the corresponding counterfoil the number of the voter in the electoral roll and making a mark against the entry of the voter's name in the electoral roll to denote that the elector has received a ballot paper ; this entry shall not indicate which ballot paper he has received.

The first stage in the recording of the votes is the giving of the signature slip to voters. Until the signature or the thumb-impression of a voter has been duly attested, he cannot be allowed to vote. This rule provides that the person attesting the signature or thumb-impression must be one who is able to identify the voter. Candidates and their agents should be very careful in this matter. They should never attest the signature or the thumb-impression of a voter whom they do not know personally, as in case of a mistaken identification, they will not be heard to say that they attested the signature by mistake, and the election would be set aside on the ground of false personation, if the person voting is not the real person (Jaunpore Case, I. E. P. Vol. 1, page 37 ; Farrukhabad Case, I. E. P. Vol. 3, page 22).

The above questions can be put to a voter in case of a doubt as to his identity as also in case of doubt as to his right to vote. Does the power given to the polling officer extend to an inquiry into the qualifications of a voter which entitle him to be on the roll, or is he competent to inquire into the disqualifications that disentitle a voter from voting though his name may appear on the roll, or are the powers confined to the inquiry about the identity of the voter only? The questions given above show that the powers of a polling officer are confined only to an inquiry about the identity of the voter. We have seen above that the electoral roll is final as to the qualifications that entitle a man to be on the register, and not even an election court can reject a vote on the ground that the person voting was not entitled or did not possess the qualifications necessary to entitle him to be a voter. The election court, as we have seen above, is entitled to go into the question of statutory disqualifications, and any vote cast by a person suffering from such a disability will be struck off on scrutiny. (Part 2—Extent of Franchise). The words "right to vote," it is submitted, are to be treated as confined to the right arising out of enrolment in the electoral roll of the particular circle in which a voter claims to vote.

All that the polling officer has to see when the voter presents himself to him is, whether his name is on the roll; he need not wait till the end of the day in respect of any voter in order to see if any one of the same name appears and claims that he is a voter on the roll (*Mamudi Konar V. Shamsbuddin Saheb*, A. I. R., 1925 Mad. 1207). The inquiry is not whether the voter's name is A. B. but whether he is the person whose name (whatever that may be) appears as A. B. He is not asked whether the name on the register is his real name, but whether he is the person whose name appears on the register. The person actually registered may therefore safely answer this question in the affirmative, although his

name is incorrectly stated on the register (R. V. Thwaites I. E. & B., 704 ; Sligo W. & D., 227 ; Taunton, Fale, & F., 295 ; Oldham, 1 O' M. & H. 152, 153) ; or although it be a totally different name from the real name of the voter, provided it was intended by that name to designate the voter and no one else ; and in such a case the voter may apply for a ballot paper, and may answer the questions (see the first question) and vote in the name by which he appears on the register (R. V. Fox, 16 Cox C. C., 166 ; and see Exeter, 6 O' M. & H., 233). Therefore, a ballot paper must not be refused on account of any mere misnomer or inaccurate description in the register if the presiding officer be satisfied of the identity of the person applying to vote with the person whose name was intended to appear on the register. (Parker, pages 328, 329).

No question or inquiry as to the right of any person to vote other than the above statutory questions shall be permitted (Parker's Election Agent and Returning Officer, page 331).

Rule 44.—(1) The voter, on receiving the ballot paper shall unless he elects to proceed under sub-rule (3), forthwith proceed to the place set apart for the purpose and there mark a cross against the name of every candidate for whom he intends to vote ; he shall fold the ballot paper so as to conceal his vote and shall put his ballot paper so folded up into a box (hereinafter called the ballot box).

(2) If the elector before placing the ballot paper in the ballot box inadvertently marks the paper or otherwise deals with it, so that it cannot be used as a valid ballot paper, he may return it to the polling officer, who, if he is satisfied that the ballot paper was inadvertently spoilt, may give the elector another ballot paper and shall mark the spoilt ballot paper and its counterfoil as cancelled.

(3) If the voter is illiterate or by reason of infirmity is unable to vote in the manner prescribed under sub-rule (1) or

desires that the polling officer should mark the ballot paper for him, the polling officer shall, at his request, and in the view of the candidates or their agents mark the ballot paper according to the direction of the elector and shall cause the ballot paper so marked to be placed in the ballot box.

(4) The ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom without the box being unlocked.

(5) Just before the commencement of the poll the polling officer shall show the ballot box empty to such persons as may be present at the polling station and shall then lock it up and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

(6) The polling officer shall not hand a ballot paper to an elector except during the hours appointed for the polling. But if an elector has received a ballot paper during the appointed hours, but has not recorded his vote, he shall be allowed reasonable opportunity for doing so after the closing hour.

Forthwith etc.

The presiding officer should not allow any undue delay in voting to take place, and if the voter does not quit the polling station as soon as he has put his ballot paper into the ballot box, he may, after being ordered to leave by the presiding officer, be removed, by order of the presiding officer (Parker's Election Agent and Returning Officer, pages 322-323).

Mark a Cross.

The rule provides that a cross mark be made against the name of the candidate for whom the voter intends to vote. The same words are used in Regulations for Council elections

(Regulation 24 of Regulations for election of members to the Legislative Council of United Provinces). In England the law requires that the voter shall "mark his paper with the pencil provided in the compartment, by placing a cross (X) on the right hand side of the ballot paper opposite the name of each candidate for whom he votes" (Ballot Act Schedule II, Directions to Voters No. 24, Parker's Election Agent and Returning Officer, page 319). In spite of this, voters have been found, both in England and in this country, who have made all sorts of marks on the ballot papers supplied to them, and the question whether a particular ballot paper should be held to be a good ballot paper is at times difficult to decide.

A circle or cross surrounded by a circle, or several marks in one column, but clearly indicating that the vote was cast for one candidate only, a voting paper containing several cross marks all over the name of one candidate and a clear cross in the column for the marking, a voting paper with straight line in the column for marking against one candidate, were all held good voting papers (Parker's Election Agent and Returning Officer, pages 365-381). The view held in an English case (4 O' M. & H. 37) that a circle is a bad mark, is, it is submitted, not sound.

A ballot paper with a clear cross mark against the name of the petitioner, but with a partial cross mark against the name of another candidate being a partial imprint of the cross mark against the name of the petitioner, or a ballot paper with a clear cross mark against the name of one candidate and another mark against the name of a rival candidate the latter however, having been crossed out, a voting paper with a clear cross against the name of the petitioner, but with a line against the rival candidate, or a ballot paper with a cross and certain Urdu letters which were struck out, a ballot paper with a cross and another mark against the

name of one candidate, a ballot paper with a cross and a line against the name of the candidate were all held to be valid voting papers. But a voting paper with a thumb mark was held to be invalid (Punjab North, 2 I. E. P., page 134 at page 141) as by a thumb mark a voter could be identified. The following extract from the well known cases will be of great help in deciding whether a ballot paper has been properly marked or not.

REJECTED BALLOT PAPERS.

410

1	Sarsons	
2	Woodward	× C. W.

844

1	Sarsons	= Sarsons
2	Woodward	

638

1	Sarsons	×
2	Woodward	

E. Prews

This ballot paper bears the name of the voter, E. Prews which is to be found on the burgess roll.

Name of candidate written.

889

1	Sarsons	Sarsons
2	Woodward	

Name of candidate written.

1	Durant	o
2	Issacson	.

VALID BALLOT PAPERS.

433

1	Sarsons	x x
2	Woodward	

183

1	x Sarsons	
2	Woodward	

641

1	Sarsons	*
2	Woodward	

190

1 x	Sarsons	
2	Woodward	

117

x 1	Sarsons	
2	Woodward	

505

x 1	Sarsons	
2	Woodward	

155

1 x	Sarsons	
2	Woodward	

842

1	x Sarsons	
2	Woodward	

174

1	x Sarsons	
2	Woodward	

875

1	Sarsons	I
2	Woodward	

VALID BALLOT PAPERS.

926

1	Sarsons	✕.
2	Woodward	

926. A ✕ in pencil had evidently been rubbed with a damp finger.

1920

1	Sarsons	
2	Woodward	✕

1374

1	Sarsons	
2	Woodward	✕

This paper was torn through the middle where indicated by the dotted line.

1413

1	✕ Sarsons	
2	Woodward	

1632

1	Sarsons	
2	Woodward	✕.

1362, similar to 926.

2140

1	Sarsons	✕ I
2	Woodward	

3562

1	Sarsons	✕ P
2	Woodward	

911

1	Sarsons	✕
2	— Woodward —	

911. The name "Woodward" has a pencil line through it, diagonally across the paper.

928

1	Sarsons	✕
2	Woodward	

928. Had evidently been marked with a ✕ in ink and folded up, thereby making a corresponding mark on the other part of the papers.

1364

1	Sarsons ✕	✕
2	Woodward	

1364, same as 928.

VALID BALLOT PAPERS.

1391

1	Sarsons	
2	× Woodward	

2592 and 2619

1	Sarsons	
× 2	Woodward	

1426

1	Sarsons	× ×
2	Woodward	

3672

1	Sarsons	
2	Woodward	×

×

1726

1	× Sarsons ×	×
2	Woodward	

1	Home	
2	McLaren ¹	×

The limbs of the × intersected in the space opposite McLaren's name a good vote for McLaren.

Papers marked with the official mark on the back, but not on the face, were held good.

The following has been held to be a bad ballot paper
 Ballot papers held to be bad. (Exeter, 6 O' M. & H. 228):—

1	Duke × × × ×	
2	St. Maur	

So also where the ballot paper has the name of the candidate in addition to a cross (Exeter, 6 O' M. & H. 229);
Thus:—

1	Duke	Up Duke x
2	St. Maur	

FRONT OF BALLOT PAPER

BALLOT PAPER

1	Durant (John Charles Durant of Clement's House, Clement Inn Passage, W. C. Printer)	
2	Issacson (Frederick Wootton Issacson of 152, Harley Street W., Gentleman)	x

BACK OF BALLOT PAPER

1219

Election for the Stepney Division

Borough of

The Tower Hamlets.

November, 1885.

Ballot papers held to be bad.

The weight of authority is certainly in favour of the above vote being bad, and the returning officer should therefore reject any ballot paper so marked.

Initials in addition to a cross (West Bromwich, 6 O' M. & H. 256; Woodares V. Sarsons, L. R. 10 C. P. 750); thus:—

1830

BALLOT PAPER

1	Hazel	
2	Lewisham	× Bs

So also where the cross extended over the name of the candidate thus:—
 Ballot papers held to be good.

1	Lawson Henry Lawson Webster Law- son, Orkney Cottage, Taplow, in the county of Bucks, Esquire.	
2	Master Thomas William Chester, Ju- nior, the Abbey, Cirencester, Es- quire.	×

This was held to be a good vote for Master (Day, 58), there being distinct cross against his name, and no mark whatever against the name of the other candidate. There is thus a positive indication on the voter's part of his intention to vote for Master (see Cirencester, 4 O' M. & H. 197).

2705

Ballot paper held to be good.

1	Hazel	
2	Lewisham	

6. Faint marks in the name space of one candidate (West Bromwich, 6 O' M. & H. 256); thus:—

9678

1	Hazel	x
2	Lewisham	

7. A cross or mark blurred, or rubbed with a damp finger and a better formed cross added, for the same (ib) or another candidate (Cirencester, January 1893; Day, 54); thus:—

5592

1	Lawson Henry Lawson Webster Law- son, Orkney Cottage, Taplow, in the county of Bucks, Esquire.	=
2	Master Thomas William Chester Master, Junior, the Abbey, Cirencester, Esquire.	x

8. A figure instead of a cross (Phillips V. Goff, 17 O. B. D. 805).

9. A geometrical figure in lieu of a cross (Buckrose, 8th December 1886; Contra Wigtown, 2 O' M. & H. 221); thus:—

7665

1	McArthur (William Alexander McArthur, of 7, Berkeley Street, Berkeley Square, London, Colonial Mer- chant).	X
2	Sykes (Christopher Sykes, of Brantin- gham Thorpe Yorkshire, Esquire).	

10. A cross placed over the official mark, but within the compartment of the candidate voter for (Cirencester, January 1893; see Day, 56); thus:—

7633

1	Lawson Henry Lawson Webster Law- son, Orkney Cottage, Taplow, in the county of Bucks, Esquire.	
2	Master Thomas William Chester Mas- ter, Junior, the Abbey, Cirencester, Esquire.	

In this case the official mark was an oval with the initials J. W. C. and it will be observed that the cross is placed over and within the official mark, and that the intersection of the cross is within the compartment belonging to Lawson.

11. A monogram or double cross in lieu of a cross (Cirencester, January 1893) ; thus:—

3452

1	Lawson Henry Lawson Webster Law- son, Orkney Cottage, Taplow, in the county of Bucks, Esquire.	
2	Master Thomas William Chester Mas- ter, Junior, the Abbey, Cirences- ter, Esquire.	(×/×/

BALLOT PAPER

x

1	Durant (John Charles Durant, of Clement's House, Clement's Inn Passage, W. C. Printer.)	
2	Issacson (Frederick Wootton Issacson of 152, Harley Street, W., Gentleman).	•

4047

x

BALLOT PAPER

1	Home (David Milne Home of Paxton Houses, in the Shire of Berwick, in Scotland, a Captain in the Royal Regiment of Horse Guards).	
2	McLaren (John McLaren, of 46, Moray Place, Edinburg, Lord Advocate for Scotland).	

In a recent case where a large number of irregularity marked ballot papers came under judicial consideration, the difficulty of deciding for whom the voter intended to vote was increased by the fact that as in the last facsimile (supra) the words "Ballot Paper" were printed on the face of the paper and very wide margins were left outside the parallelogram containing the candidate's name and the voting spaces. In a number of cases where the cross was opposite the words "Ballot Paper" the vote was held to be bad on the ground that the voter apparently intended merely to place his cross opposite these words and not to record a vote for either candidate (West Bromwich, 6 O' M. & H. 257).

Where, however, one of the strokes of the cross extended into the voting space the vote was held good for Hazel (West Bromwich, 6 O' M. & H. 257 ; and see Cooper V. Ogden, 24 Times L. R. 242). Thus :—

3227

BALLOT PAPER

1	Hazel	x
2	Lewisham	

So also when the cross extended slightly into the space occupied by the figure "1" (West Bromwich, supra) and the vote was also held good where the cross was wholly outside the voting space but extended slightly below the top line of the parallelogram (ib). But where the cross was in the same position as in No. 3227, supra, but the down stroke appeared to have been carried accidentally into the voting space as though the pencil had slipped, the court held the vote to be bad (ib).

Where the cross was below the parallelogram, but extended slightly into it or where it was merely opposite to the lower voting space, the vote was held good (West Bromwich, 6 O' M. & H. 257). Thus both the following were held good votes for Lewisham :—

5586

BALLOT PAPER

1	Hazel	
2	Lewisham	

6184
BALLOT PAPER

1	Hazel	
2	Lewisham	

It will thus be seen that if the form of ballot paper used contains the words "Ballot Paper" printed on the face, a distinction may be drawn between a cross which is placed substantially opposite those words and cross placed in the corresponding position below the parallelogram.

Chap. XX.
Ballot Papers void for
uncertainty.

It has hitherto been held that if for an election for a single vacancy there is a clearly good mark against the name of each candidate, the ballot paper is void for uncertainty (Buckrose, 4 O' M. & H. 111); thus the following have all been held to be bad:—

1989

x		
1	McArthur (William Alexander McArthur, of 7, Berkeley Street, Berkeley Square, London Colonial Merchant.)	
2	Sykes (Christopher Sykes, of Branting- ham Thorpe, Yorkshire, Esquire.)	

The following was, however, in a more recent case in the King's Bench Division, held to be a good vote for Ogden (Cooper V. Ogden, 24 Times L. R. 242):—

1	Cooper	1
2	Ogden	x

The ground of this decision was apparently that, although the line, if it stood alone, might be valid indication of the voter's intentions, the presence of the cross, which is the statutory mark, must be taken to indicate his real intention.

Chap. XXII.

If in an election for two vacancies, there is good mark against the name of one candidate, and an ambiguous mark against the name of two other candidates, the ballot paper is, it is submitted, good as to the former and bad as to the latter mark (*See Cirencester, 4 O' M. & H. 397*) and cannot be wholly rejected by the returning officer as it does not fall within any one of the five classes enumerated on p. 361. It cannot be said to be a ballot paper on which votes are given to more candidates than the voter is entitled to vote for, as it is impossible to say for whom the second mark is intended and so far as respects the first mark, it is not void for uncertainty. Thus the following should be allowed as a good vote for Brown, and rejected as void for uncertainty as regards the other two candidates:—

1	Brown	x
2	Smith	
3	Jones	x

So also the following has been held to be a good vote for Lewisham in spite of the mark rather like a query opposite the name of Hazel

Chap. XX.

(West Bromwich, 26th April 1911):—

1324
BALLOT PAPER

1	Hazel	? q
2	Lewisham	

And the following was held to be good vote for Hazel on the ground that there was clear cross for him, the other marks being ambiguous (West Bromwich, 26th April 1911):—

447

Rejected.

Rejection objected to.

Ballot Papers.

1	Hazel		x
2	Lewisham	1	(

If the intersection of the cross is exactly on the line between the compartments of the paper, the ballot paper is void for uncertainty. (Buckrose, 7th December 1886.)

8392

1	McArthur (William Alexander McArthur, of 7, Berkeley Street, Berkeley Square, London, Colonial Mer- chant.)	
2	Sykes (Christopher Sykes, of Bran- tingham Thorpe, Yorkshire, Es- quire.)	

But if a good cross is added to that whose intersection is exactly on the line between the compartments of the paper, the former corrects *uncertainty of the latter* (Cirencester, January, 1893); thus the latter was held to be a good vote for Lawson (Day, 57).

And where the voter marked a long cross, each line thereof being partly in the square allotted to one candidate

and partly in that of the opposing candidate, the ballot paper was allowed as a good vote for the candidate, in whose square the intersection of the cross appeared (Berwick on Tweed, 3 O' M. & H. 182; acc Buckrose, 7th December, 1886); thus :—

1	Home	
2	McLaren	x

1	Home (David Milne Home, of Paxton House, in the Shire of Berwick, in Scotland, a Captain in the Royal Regiment of Horse Guards).	
2	McLaren (John McLaren, of 46, Moray Place, Edinburgh, Lord Advocate for Scotland)	x

The giving of a vote does not necessarily involve the exercise of judgment at all, it involves merely the expression of a wish or choice. That wish or choice may be actuated by judgment but it may also be actuated by mere whim or caprice. The method by which the wish or choice is arrived at, is wholly immaterial so long as the person whom the duty of giving the vote is cast expresses or intimates his wish or choice however arrived at (J. B. Petil V. Municipal Corporation of Bombay, A. I. R. 1927 Bom. 627, 109 I. C. 759).

Illiterate Voters.

In England before a voter can be allowed to require the polling officer to mark his voting paper for him, he is required to make a declaration of illiteracy. "The declaration

of inability to read is to be made at the time of polling before the polling officer, who must attest it in the prescribed manner.....and the said declaration is to be given to the presiding officer at the time of voting." (Halsbury's Laws of England, Vol. 12, page 317). In Indian law, even a scholar can be permitted to vote in the manner provided by rule 47, if he so chooses. Infirmity may be due to any physical cause, e.g., blindness (Halsbury's Laws of England, Vol. 12, page 317).

In View of the Candidates.

This provision is made to safeguard the interests of rival candidates and voters, to prevent the possibility of votes being marked for candidate other than the one for whom the voter intends to vote.

Lunatics, Drunkards, and Infirm Persons.

"If a lunatic, or drunkard, a childish person, a deaf and dumb or infirm person, present himself to vote the right to vote seems to depend on his capacity at the moment of voting to understand what he is about to do. If a lunatic is sufficiently compos mentis, a drunkard sufficiently sober, a childish person or a deaf and dumb or infirm person, of sufficient capacity, by writing or by signs to show that he understands the purpose for which he has come to the polling station, the presiding officer would certainly not be justified in refusing to allow him to vote (In the case of a voter who though compos mentis, is incapable, e.g., by reason of being deaf, dumb, and blind of intimating how he wishes to vote, there is, it seems, no objection to the presiding officer being assisted by some one who knows the voter, e.g., his wife, for the purpose of ascertaining how he wishes to vote (Times newspaper, June 22, 1908). If any candidate's polling agent requires the statutory questions, oaths, or affirmation to be put to such voter, the

voter must further be able to satisfy the presiding officer that he understands the nature of the statutory questions, the obligation of an oath, and the temporal dangers of perjury, and must, by the means aforesaid, be able satisfactorily to answer such questions, and to take the oath or affirmation (see *ib*). Upon these requirements being satisfactorily fulfilled, the voter may receive a ballot paper, but as the question of the competency of the voter is apparently one of fact for the presiding officer to decide at the time, he should carefully

Chap. XVIII

satisfy himself of the facts, so as to be able to explain and justify his decision should it thereafter be called in question. The votes of voters who are incapacitated by blindness or other physical causes, from voting are marked for them by the presiding officer (see *ante*) (Parker's Election Agent and Returning Officer, pages 325-326).

Tendered Votes.

Rule 46.—If a person representing himself to be a particular elector named on the electoral roll, applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in these rules called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number on the electoral roll, and set aside in a separate packet, and shall not be counted by the returning officer. The signature or thumb-impression (as the case may be) of the voter shall not be made in the list prescribed by clause (3) of rule 43, but shall be made in a separate list maintained in a similar form, which shall bear the heading "tendered votes list".

Rule 47 (a).—The presiding officer as soon as practicable after the close of the poll shall in the presence of any candidates or polling agent who may be present make up into separate packets and seal with his own seal and the seal of such candidates or agents as may desire to affix their seal:—

- (1) each ballot box in use at the station, unopened but with the key attached,
- (2) the counterfoils of the voting papers,
- (3) the unused voting papers,
- (4) the spoilt voting papers,
- (5) the tendered voting papers,
- (6) the tendered votes list,
- (7) the elector's identification slips, and
- (8) the marked copy or copies of the electoral roll.

(b) The presiding officer shall deliver the packets to the returning officer together with a statement showing the number of voting papers received at the polling station the number of unused, spoilt and tendered voting papers, and the number of persons who have voted.

Counting of Votes.

Rule 47 (c).—The returning officer shall appoint a date as soon as may be practicable after the close of the votes and shall give notice thereof in writing to the candidates for their agents.

(d) No person shall be allowed to be present at the counting of the votes except the returning officer and such persons as the District Magistrate may appoint to assist him in the counting of votes and the candidates and one agent of each candidate authorized by him in writing in this behalf. No person shall be appointed to assist in counting the votes who

has been employed by or on behalf of any candidate for any purpose connected with the election.

(e) On the day, and at the time appointed the returning officer shall :—

- (1) open the ballot boxes of each constituency one after the other, take out the voting papers, and separate those which he deems to be valid from those which he rejects under rule 45.
- (2) endorse on the rejected voting papers the grounds of rejection.
- (3) count or cause to be counted the valid votes given to each candidate.

If the counting of votes be not completed by 6 p.m. on the date appointed, the returning officer may adjourn the proceedings until the following day at 10 a.m. and in such case shall place all the documents relating to the election under his own seal and the seals of the candidates or their agents if any are present and desire to affix their seals, and shall otherwise take proper precautions for the security of the documents. The returning officer may in like manner adjourn the proceedings from day to day until the counting of the votes has been completed.

Rule 45.— When a ballot box is opened for the purposes of counting the votes a ballot paper shall be rejected—

- (a) if it has not the official mark;
- (b) if there are marks against the names of more candidates than the vacancies to be filled ;
- (c) if no mark is made against the name of any candidate;
- (d) if, for any reason, it is not certain for which candidate or candidates the elector intended to vote ;

(e) if the ballot paper bears any mark by which the elector may be identified.

The decision of the returning officer as to the validity of the ballot paper shall be final subject only to reversal on an election petition claiming the seat.

Rule 47 (f).—The returning officer shall not open the sealed packets of the tendered voting papers or the marked copies of the electoral roll or the counterfoils of the voting paper. He shall verify the statement submitted by the presiding officers under clause (b) by comparing it with the numbers of counted votes and rejected voting papers, the unused or spoilt voting papers in his possession and the tendered votes list. He shall then re-close and re-seal each packet which has been opened by him and shall record on each packet a description of its contents, the name of the constituency and the date of election to which it refers.

(g) The returning officer shall then prepare and certify a return setting forth :—

- (1) the result of verification under the preceding rule,
- (2) the names of the candidates for whom valid votes were given,
- (3) the number of valid votes given for each candidate,
- (4) the name of the candidate elected,
- (5) the number of votes rejected, and
- (6) the number of tendered votes given,

and shall permit any candidate or his representative to take a copy or abstract from the return.

Cause to be counted.

The rule requiring that the counting of votes shall be done by the returning officer, or any one under him is sufficiently complied with when the counting is done under the

supervision of the returning officer sufficient in the circumstances of the case, to eliminate, so far as possible, the chances of a mistaken or false declaration of the result. (Bareilly Case, I.E.P. Vol. 2, page 27).

The decision of the returning officer as to the validity of a nomination paper is final subject to reversal only on an election petition in which the seat is claimed. The words "claiming the seat" are significant. Under section 20 (2) a petition can be made by any candidate in whose favour votes have been cast and who claims the seat. The claim of seat is essential in the case of a petition by a candidate. A petition can be filed by ten or more voters without making a claim for seat. The effect of Rule 45 would be, that the election court shall not be entitled to look to the improper acceptance or rejection of ballot paper in a petition filed by ten or more voters. This creates a curious position, and it is submitted, the law should be altered so as to allow all such reliefs to be claimed by a voter's petition as can be claimed by a candidate.

Official mark.

A ballot paper not bearing an official mark must be rejected (Dacca City, I.E.P. Vol. 2, page 72). But where by mistake a wrong official mark was used it was held that a recognisable official mark being present on the ballot paper, the same could not be rejected for want of official mark (Jessor North, I.E.P. Vol. 2, page 101).

More than one mark.

(See notes under Rule 45 supra.)

The object of marking is that the intention of the voter should be clearly expressed. Where therefore it was clear for whom a voter had voted, there being a clear cross mark against the name of one candidate, but another mark was

made against the name of one more candidate, but the mark had been subsequently crossed, it was held that the ballot paper was a good one. Similarly, where a clear cross mark was made in front of one candidate but a line had been made in front of another candidate the ballot paper was held to be valid (Punjab North, 2 I.E.P. Vol. 2, pages 142-143; Agra City Case, I.E.P. Vol. 3, page 156).

Mark by which the voter may be identified.

(See also notes under the heading "mark a cross" supra)

Secrecy being the chief ingredient of voting by ballot, any thing that tends to violate such secrecy renders the ballot paper void. Thus where a voter wrote his name in the column for marking, it was held that the ballot paper was invalid. (Venkatramiah V. Subbu Reddi, A.I.R. 1925 Mad. 1173). A ballot paper containing a thumb mark, (though faint) and another ballot paper containing some Urdu writing, were rejected on the ground that the voters could be identified by such mark and writing. But where at an election, electors used blue pencils to assure him that they had voted for him, and the election was sought to be set aside on the ground that the secrecy of the ballot had been violated, it was held that unless it could be proved that the blue pencils indicated the persons who used them, the election could not be set aside. (Raja Bahadur V. Vishav Nath Raddiar, A.I.R. 1930 Mad. 97; 57 M.L.J. 481). Similarly, where the name of the candidate for whom the vote was not cast was struck off, it was held that the ballot paper was not invalid. The presence of any mark which is not such by which the particular voter can be identified, will not vitiate the vote (P. C. Zarrie V. E. C. Joseph, A.I.R. 1925 Mad. 614). Also the appearance of a tracing mark of some letters was held not to be a mark by which the voter could be identified, and therefore the ballot paper which bore such mark was held to

be valid (P.C. Zarrie V. Joseph, A.I.R. 1925 Mad. 614). A partial thumb-mark caused by the voter having had ink on his left thumb when his impression was taken on the signature slip was held insufficient for the identification of the voter, and the ballot paper which bore the same was held to be valid (Agra City Case 3 I. E. P., page 137; Punjab North Case, I. E. P. Vol. 2, page 134 at 138). In the latter case, it was remarked that thumb-mark was not such a mark which rendered the ballot paper invalid, as none but an expert can identify a person from thumb-impression, and that too after he gets the impression of the person concerned. The marks in this case were, however, faint and partial, and this case can hardly be called an authority for the proposition that existence of thumb-marks of voters on ballot papers, will not invalidate such ballot papers. Thumb-marks are marks by which an elector can be identified, and would invalidate a ballot paper (Madura and Trichnapoli cum Srirangam Case, I. E. P., Vol. 2, page 109).

Rule 48.—Upon completion of the counting the returning officer shall seal up in separate packets the counterfoils of ballot papers, the tendered ballot papers, the ballot papers which he has admitted as valid and those which he has rejected as invalid, the list prescribed by Rule 43, “the tendered votes list” prescribed by Rule 46 and record on each packet a description of its contents and the date of election to which it relates. He shall forward the return prepared under clause (g) of Rule 47 and all the packets relating to the election to the District Magistrate.

Rule 50.—Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected the determination of the person to whom such one additional vote shall

be deemed to have been given shall be made by lot to be drawn in the presence of the District Magistrate and in such manner as he may determine.

PART VII.—ELECTION PETITIONS.

Section 19.—(1) The election of any person as a member of a board may be questioned by an election on the ground
Power to question
municipal election by
petition.

- (a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in section 28 ;
- (b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes.

(2) The election of any person as a member of a board shall not be questioned—

- (a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls ;
- (b) on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election.

A Court Fee of Rs. 100 is now payable under U. P. Court Fees Amendment Act III of 1933 which runs as follows:—

THE UNITED PROVINCES COURT FEES (AMENDMENT) ACT 1933.

Received the assent of the Governor-General on the 18th March, 1933, and is published in the "U. P. Gazette" dated the 25th March, 1933.

ACT III of 1933.

An Act to amend the Court Fees Act, 1870, in its application to the United Provinces.

Preamble.—Whereas it is expedient to amend the Court Fees Act, 1870, in the application to the United Provinces for the purpose hereinafter appearing; it is hereby enacted as follows:—

1. *Title and extent.*—(1) This Act may be called the United Provinces Court Fees Amendment Act 1933. (2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

2. *Addition of new article to schedule 2 to Act 7th of 1870.*—In schedule 2nd to the Court Fees Act, 1870, the following article shall be added after article 21.

Number.		Proper Fee.
22-Election Petition.	(a) A petition presented to the Commissioner of the Division or to the Collector of a district (or to some other person or tribunal specially appointed by rule in this behalf) under sub-section (2) of section 22 of the U.P. Municipalities Act (Act II of 1916), questioning the election of any person as a member of a Municipal Board.	Rs. 100/- one hundred rupees
	(b) A petition presented to a district Judge (or to some other person or tribunal specially appointed by rule in this behalf) or to a Munsif under sub-section (2) of section 18 of the District Boards' Act (Act 10 of 1922) questioning the election of any person as a member of a District Board.	Do.

No court fee is levied on election petitions in England. Nor is a court fee levied on election petitions relating to elections to Provincial Councils, Legislative Assembly or Council of State. The reasons given for the levy of Rs. 100 as court fee on Municipal and District Board election petitions are not at all convincing. The levy of a court fee on Municipal and District Board election petitions is a highly retrograde step. It is surprising that the elected representatives of the people did not oppose the passage of such a piece of legislation. The proper conduct and purity of elections is a matter which should be the concern of the Government and the people alike, and it is unfair to penalise a man who only seeks to expose wrongful acts or breaches of law.

A corrupt practice.

Section 24 defined what is meant by the term corrupt practice. The election of a person as a member can be questioned on the ground of his having committed a corrupt practice. This means that even one instance of corrupt practice, if brought home to candidate, would avoid his election (Rohtak North West Case, I. E. P. Vol. 2, page 119) (as to doctrine of agency in election law see *infra*).

Improper admission or rejection of votes.

A candidate is entitled to show that votes which should have been rejected have been wrongly accepted and vice versa. In order to ascertain this, it becomes necessary to inspect the ballot papers. A scrutiny of ballot papers can, however, be allowed only when the court is satisfied, by affidavit or otherwise, that there has been an improper admission or rejection of votes, and the court can always refuse a prayer for scrutiny when sufficient cause is not shown (Punjab North Case, 2 I. E. P., page 134 ; Champaran Case, 2 I. E. P., page 64; Chingleput Case, I. E. P., Vol. 2, page 66).

The court is only empowered to consider the question of improper admission or rejection of votes. It is outside the province of an election court to allow any candidate to examine the voters to show how they voted. (*Vai Dayanath V. Murugiahnan*, A. I. R. 1928 Mad 1077 ; 1929 M.W.N. 549).

Where a petitioner alleged misconduct on the part of the officer entrusted with the counting of votes and claimed that there had been an improper acceptance of invalid votes and the allegation was supported by a verified petition, recount and scrutiny were allowed (*M. Lakshumanya and others V. S. Rajjan Ayyar and others*, A. I. R. 1930 Mad. 195 ; 58 M. L. J. 118).

Any other reason.

This is a very wide provision and would cover all kinds of possible breaches of law or rules, which might have been the cause of the election of the successful candidate or the defeat of his rivals. For instance, the improper admission or rejection of a nomination paper has been held to vitiate an election. (*Ballia District Case*, I. E. P. Vol. 1, page 9; *Basti Case*, I. E. P. Vol. 1, page 13; *The Purnea Case*, I. E. P. Vol. 1, page 54; *The Rohtak Case*, I. E. P. Vol. 1, page 57 ; *Shahabad Central*, I. E. P. Vol. 1, page 72; *Akola South Case* I. E. P. Vol. 2, page 2 ; *Aligarh District Case*, I. E. P. Vol. 2, page 3 ; *Bengal Marwari Association Case*, I. E. P. Vol. 2, page 33 ; *Shahabad Case*, I. E. P. Vol. 3, page 232 at 234; *Bhandara District Case*, I. E. P. Vol. 4, page 22 at 24; *Doraswami Nader V. Joseph L. Mother*, A. I. R. 1926 Mad. 319).

Majority of lawful votes.

A lawful vote can be cast only by a person who is registered as a voter, and is not subject to any statutory

disqualification which disentitles him from being a voter. (See *infra*).

Similarly a vote cast in favour of a person who suffers from a statutory disability, and is therefore prohibited by statute from being a voter and a candidate, is not a lawful vote, and the election of such disqualified person would be avoided (See notes under section 14 (3) under statutory disqualifications). Section 15 (1) (c) of the District Boards' Act provides for the avoiding of the election of a returned candidate on the ground that such person though enrolled as an elector, was disqualified for election under the provisions of sub-section (2) of section 12 which is the sub-section which deals with statutory disqualifications which disentitle a person from being a candidate. No such clear provision is made in the Municipalities Act, but it is submitted, that the words "any other reason" are wide enough to cover the case of a person suffering under a statutory disqualification, and his election would be avoided on the ground that the votes cast in his favour are not lawful votes, and have been simply cast away (Belgaun District Case, I.E.P. Vol. 2, page 31). This view is further supported by rule 56 of the Municipal election rules, which contemplates the avoiding of an election on the ground of statutory disqualifications. Rule 56 is as follows:—

Rule 56.—If no election petition is presented within the time prescribed under section 20 of the Municipalities Act of 1916, the Commissioner may of his own motion set aside the election of any person as a member of a municipal board who is proved to have been disqualified under section 16 (2) of the Act.

↑
Provided that the Commissioner before making any order under this rule shall afford such person an opportunity of making any statement which he may desire to make.

Provided further that any person whose election has been set aside by the order of the Commissioner under this rule shall have the right of appealing to the Local Government within one month from the date of the order.

This section and rule 56 speak only of statutory disqualifications enumerated in section 16 (2) which are disqualifications for being a candidate. Similar considerations apply to *disqualifications for being a voter*, so that if a returned candidate suffers from any of the statutory disqualifications viz. minority, which disentitles him from being a voter, his election would be avoided by a petition.

Illegal hiring is made a corrupt practice by section 24 (d) of District Boards Act, which provides that "any person who makes or promises to make any payment to any person on account of conveyance of any elector to or from the booth or who borrows for the purpose of election any boat, vehicle, or animal usually kept for letting on hire except for himself and his agents, and messengers shall be guilty of a corrupt practice. No such provision is made in the Municipalities Act or Municipal Election rules.

Clause (b) deals with what might be termed an illegal practice. "A corrupt practice differs from an illegal practice in that in the former a corrupt intent is an essential ingredient ; whereas in the latter all that has to be ascertained is whether the act done is forbidden by law." (Parker's Election Agent and Returning Officer, page 95). "A corrupt practice is a thing the mind goes with. An illegal practice is a thing the Legislature is determined to prevent whether it is done honestly or dishonestly" (Barrow Farness, 4 O' M. & H. 770). "An illegal practice involves no question of motive, pure or otherwise. The only question the court has to consider is whether there has been a breach of the Act."

(Walsall Case, 4 O' M. & H. 123). *Mens rea* is an essential ingredient of a corrupt practice. The law makes observance of rules and regulations necessary, and entails penalties on their breach. (Dinajpore Case, I.E.P. Vol 2, page 75).

Indian election law differs from English law in the matter of non-observance of rules and other irregularities. In English law, if a candidate succeeds in proving that there has been a non-observance of law, the onus is shifted to the respondent of proving that the proved non-compliance with law did not affect the result of the election. In India, even if a candidate succeeds in proving that there has been a non-observance of law, the onus still lies on him of showing that the proved non-compliance did materially affect the result of election (Bulandshahar East Case, I.E. P. Vol. 1, page 27 ; Lahore Case, I.E.P. Vol. 1, page 43 ; The Twenty-four Parganas Case, I.E.P. Vol. 1, page 80; Bareilly City Case, I.E.P. Vol. 2, page 27; Belgaon District Case, I.E.P. Vol. 2, page 31; West Patna Mohamdan Rural Constituency Case, I.E.P. Vol. 3, page 80 ; Bulandshahar District West Case, I.E.P. Vol. 4, page 52 ; Patna University Case, I.E.P. Vol 4, page 77).

An election cannot be said to be materially affected unless the irregularities which have been proved to have occurred, have actually turned the scale in favour of the returned candidate. It must be shown, that but for the alleged irregularities, the returned candidate would not have secured the majority of the votes. It is not enough to show that the result of the election might have been affected. It must be shown that it was actually affected. (Bulandshahar East Case, I.E.P. Vol. 1, page 27 ; Dhandhara District Case, I.E.P. Vol. 4, page 27 ; Ahmad Thambai M. Raicar V. V.S. Basaw Maracayar A. I. R. 1923 Mad. 254; 72 I. C. 202).

Mere change of place and time of a meeting where an election was to be held was held not to vitiate the election,

where no voter was misled or prevented in any way from voting (Dwarkanath Datta V. Chandermohan Roy, A. I. R. 1926 Cal. 665 at 685.)

In many cases it may not be possible to show the exact number of votes effected by irregularity, but the irregularity or non-compliance with the rules may be of such magnitude as to render the result of election contrary to principles of law, and make it highly probable that the result of election has been materially affected by the proved transgression from law. In such a case, the election would be avoided (District Board Kheri and others V. Abdulmajid Khan and another, A. I. R. 1930 Oudh 434).

The change of a polling station, without sufficient notice to the constituency, was held to be a material irregularity which was held to be enough to avoid an election, where the majority in favour of the respondent was only 7, and it was proved that 32 or 33 voters had in fact gone to record their votes to the place originally fixed for polling, and were prevented from voting on account of the change. (The Salem and Coimbatore Cum North Arcot Case, I. E. P. Vol. 1, page 68). Similarly, where on account of serious floods it was found impossible for a large number of voters to reach the polling station and the date of election was extended by the Government but the information of such extension would not be sent to all polling stations in time on account of floods, and consequently some of the polling stations were closed, depriving a large number of voters of the franchise, it was held that the result of the election had been materially affected (Tanjor Case, I. E. P. Vol. 1, page 77).

Sub-clause (2) (a)—The election of a person as a member of board cannot be questioned on the grounds that the name of a person qualified to vote has been omitted from the

register, or that the name of a person or persons not entitled to vote have been included. The register is conclusive as to the qualifications which entitle a man to be enrolled as a voter and the order of the District Magistrate confirming the order of the returning officer is final about the correctness of the electoral roll (Tahir Husain V. Ikram Husain, A. L. J. 1930, page 763).

The election court is precluded from enquiring into the qualifications which entitle a man to be enrolled as a voter (Benglore North Case, I. E. P. Vol. 1, page 16 ; The Purnea Case, I. E. P. Vol. 1, page 54 ; Raipur North Case, I. E. P. Vol. 2, page 146; Dacca West Case, I. E. P. Vol. 3, page 175). But the electoral roll is not conclusive as to the disqualifications arising out of defects inherent in the voter, such as minority, etc., described in section 12 (2), and the votes of persons suffering from such disabilities will be struck off on scrutiny. (Benglore North Case, I. E. P. Vol. 1, page 16 ; Golaghat Case, I. E. P. Vol. 2, page 83 ; Sholapur District Case, I. E. P. Vol. 3, page 193; Cawnpore District Case, I. E. P. Vol. 4, page 62 at 68).

Section 20.—(1) The petition shall be presented within fifteen days after the day on which the election proceedings were held and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.

(2) The petition may be presented by any candidate in whose favour votes have been recorded and who claims in the petition to be declared elected in the room of the person whose election is questioned or by ten or more electors of the municipality.

NOTE.—It is to be noted that this sub-section requires that an unsuccessful candidate presenting an election petition must in the petition claim to be elected and that he may not in such petition merely call in question the election of a successful candidate.

Clause (1) provides the form of an election petition. The section does not say that the petition is to be in the form of a plaint. Nor is the petition required to be verified. The Code of Civil Procedure has been made applicable only to the hearing of a petition under section 19 of this Act. It has not been made applicable to the frame of a petition. All that the section requires is, that the petition should specify the ground or grounds on which the election of the respondent is questioned, and shall give a summary of the circumstances alleged to justify the election being questioned on such ground. The petition, therefore, divides itself into two parts one dealing with the ground or grounds on which the election is challenged, and the second containing a summary of relevant circumstances. The grounds mentioned in the section should not be mere vague repetitions of the names of corrupt practices but should give specific charges which are sought to be proved. (Karnal Case, I. E. P. Vol. 4, page 71). The second part is analogous to the rule 33(2) of the United Provinces Legislative Council electoral rules, which requires particulars of any corrupt practices to be given in the petition.

A very important question arises as to whether an election court has the power to allow amendment of either part of the petition. There is no provision anywhere, either in the Act or the rules, for allowing amendment; the Code of Civil Procedure, not being applicable to the frame of a petition, order '6, rule 17 will have no application. (Saharanpore District Case, I. E. P. Vol. 1, page 66). It is, however, submitted that the election tribunal under the District Boards' Act has "the same powers and privileges as a judge of the Civil Court". The Civil Court has inherent

powers to do justice and to pass whatever orders it thinks fit in the interest of justice, and to prevent abuse of process of court. Power to allow amendment in a fit case, when it is necessary for the ends of justice and to prevent miscarriage of justice and to decide effectively the real controversy between the parties, is inherent in a Civil Court, and that power has not been taken away. Where, therefore, a petition gives as good a summary of circumstances as the party could give at the time, and there was no attempt at concealment of any facts, the court will allow amendment of the summary by allowing the party to give further and better particulars of the charges made and a petition will not be dismissed in the absence of better particulars than those given in the petition, though the latter may be inadequate. (The Sheikhpura Case, I. E. P. Vol. 1, page 74; Kangra Cum Gurdaspur Case, I. E. P. Vol. 2, page 103). This means that the court will allow better particulars with regard to the instances of corrupt and illegal practices about which a charge is made in the petition, but will not allow a party to give fresh instances of any corrupt or illegal practices alleged in the petition. (Amritsar City Case, I. E. P. Vol. 2, page 10; Rohtak North West Case, I. E. P. Vol. 2, page 159; Burma Legislative Council West Rangoon (General Urban) Constituency Case, I. E. P. Vol. 3, page 136, Rangoon East Case, I. E. P. Vol. 3, page 235).

Clause (2).—This sub-clause makes an important departure from the Council Election rules as well as from English law in two important particulars. It gives the power to file a petition only to a candidate in whose favour votes have been cast, that is to say a petitioner whose nomination paper has been wrongly rejected by the returning officer cannot himself seek redress from an election tribunal, and has to depend on the courtesy of ten or more voters who might file a petition for his benefit. Secondly, it makes it obligatory for a candi-

date, when filing a petition to make a claim for the seat. In English law as well as in Council and Assembly election rules, the claim for seat is regarded as distinct from the prayer for setting aside the election, and it is not necessary for the candidate to claim the seat in order to make his petition entertainable. Under this Act, however, if a candidate chooses to file a petition, he is obliged to make a claim for the seat, however untenable the claim might be, and run the risk of a recriminatory petition. In Council election not only is a candidate allowed only to challenge the election of a successful candidate, but even a candidate whose nomination paper has been rejected, and who has even withdrawn his deposit after the rejection of such nomination paper, is allowed to file a petition, and is treated as a candidate for the purpose. (Midnapore South Case, I. E. P. Vol. 2, page 113). Again an anomalous position is created by permitting a petition without a claim for seat when made on behalf of ten more voters. No other persons than those mentioned above can file a petition under this Act (1924 Allahabad 182; 45 All. 687).

Clause (3).—It follows from this sub-clause that in a petition by a candidate all unsuccessful candidates who have polled more votes than the petitioner must be made party to the petition. Candidates who have polled fewer votes than the candidates for or by whom, a claim for the seat is made, need not be made parties to the petition, even where a claim for seat is made. Presumably in a petition in which no claim for seat is made, only the successful candidates need be made parties.

There is no provision in the Act or rules for making a returning officer a party to a petition (Bengal National Chamber of Commerce 2nd Case, I. E. P. Vol. 2, page 43, at 46; Constituency to Legislative Assembly, I. E. P. Vol. 3, page 127 at 128; Howrah Municipal N. M. O. Case, I. E. P.

Vol. 3, page 207 at 211), or for the substitution of a petitioner in case of death or withdrawal.

An election court is empowered to allow amendment even after the expiry of the time prescribed for filing a petition when the circumstances of the case require such amendment in the interest of justice. (*Kandasami Chettier V. Foulkes*, A. I. R. 1926 Mad. 394). Thus where a petition only alleged that bribery had been committed without any further particulars having been given amendment by way of addition of particulars, was refused as being an abuse of procedure (*Karnal Case*, I. E. P. Vol. 4, page 71).

Section 21.—Every person may give evidence to prove that any person in respect of whom a claim is made, that such person be declared elected in his room or in priority to him, should not be declared so elected, in the same manner as if he had presented a petition against the election of such person.

Recriminatory
proceedings.

This section deals with what are called recriminatory charges against an unsuccessful candidate by or on whose behalf a claim for seat is made. This section is rather unhappily worded. It does not say that the respondent while attempting to give evidence is required to give any notice of his intention to do so to the opposite party. The words "in the same manner" however signify that the respondent will be entitled to give evidence of recriminatory charges in the same manner as if he had filed a petition, against the claimant of the seat. The question arises as to whether the words refer only to the procedure at the hearing of the petition or do they refer to the frame of recriminatory charges also. In other words is a respondent, intending to prove recriminatory charges,

required to file a recriminatory petition, containing the ground or grounds on which the election of the claimant of the seat would have been void, if he had been elected together with a summary of circumstances justifying the charges, as required in the case of a petition under section 16, or can he be permitted to take the other party by surprise by suddenly beginning to lead evidence on charges of which the opposite party had no previous notice, and to meet which, he cannot be expected to be ready. In petitions relating to Council elections, a respondent to a petition cannot be allowed in question even the validity of the successful candidate's nomination paper without filing a recriminatory petition (Aligarh, Muttra and Agra Districts Case, I. E. P. Vol. 2, page 7). This is a wholesome rule, and should be followed in petitions under this Act, even in the absence of any express provision to that effect, as a matter of justice, equity, and good conscience.

The relief for seat is discretionary in cases of petitions filed by ten or more voters. Such a relief, if claimed, can be abandoned at the hearing but it cannot be withdrawn, as in the latter case the right of giving recriminatory evidence would be lost to the respondent. But there is no reason why the petitioner should not be allowed to abandon the claim for a seat. In such a case, however, the relief for a seat still remains, and the respondent would be entitled to give recriminatory evidence (Agra District, I. E. P. Vol. 4, page 4 at page 15).

In case of improper acceptance or rejection of a nomination paper, it has been held that it is open to the respondent to support the order of the returning officer on grounds other than those mentioned in the order (Samastipore Case, I. E. P. Vol. 4, page 99; Patna University Case, I. E. P. Vol. 4, page 77). But in another case it has been held that a

respondent cannot justify the rejection of the petitioner's nomination paper on grounds other than those raised by him before the returning officer (Betul Case, I. E. P. Vol. 4, page 32).

Section 22.—(1) An election petition shall be heard by the Commissioner of the division within which the municipality concerned is situated, unless some other person or tribunal has been appointed by rule in this behalf, and at a place in the district within which such municipality is situated.

(2) An election petition, and any application relating to the hearing of an election petition, may be presented to such Commissioner, or to such other person or tribunal, or to the Collector of the district within which the municipality concerned is situated.

NOTE.—To prevent the inconvenience caused by an election petition having to be presented to a court which is outside the district in which the municipality is situated provision is made in sub-section (2) that such petition and any connected application may be presented to the collector of the district; sub-section (1) also introduces a new provision that the place for hearing an election petition must be within the district in which the municipality is situated.

This section is rather incomplete. It provides that the election petitions shall be heard by the Commissioner within whose jurisdiction the municipality concerned is situated. It also permits the petition or any application relating to the hearing of the petition to be presented to the Collector of the district within whose district the municipality (or any part thereof) is situated. It does not provide for the sending of the petition or application to the Commissioner, to whom presumably it has to be sent.

Section 23.—(1) Except so far as may be otherwise provided by this Act or by rule, the procedure provided in the Civil Procedure Code in

Procedure.

regard to suits, shall so far as it is not inconsistent with this Act or any rule and so far it can be made applicable, be followed in the hearing of election petitions :

(2) Provided that—

- (a) two or more persons whose election is called in question may be made respondents to the same petition, any two or more election petitions may be heard together ; but, so far as is consistent with such joint trial or hearing, the petition shall be deemed to be a separate petition against each respondent ;
- (b) the court shall not be required to record or have recorded the evidence in full, but shall make a memorandum of the evidence sufficient in its opinion for the purpose of deciding the case ;
- (c) the court may, at any stage of the proceedings, require the petitioner to give security or further security for the payment of all costs incurred by any respondent ;
- (d) the court, for the purpose of deciding any issue, shall only be bound to require the production of, or to receive, so much evidence, oral or documentary, as it considers necessary ;
- (e) during the hearing of the case the court may refer a question of law to the High Court under Order XLVI of the first schedule of the Code of Civil Procedure, 1908, but there shall be no appeal either on a question of law or fact, and no application in revision against or in respect of the decision of the court ;

- (f) the court may within one month, but not subsequently review its decision on any point on the application of any person considering himself aggrieved thereby.

Section 24.—(1) Unless it is otherwise provided by rule made in this behalf the election court shall have the same powers and privileges as a judge of a Civil Court, and may, for the purpose of serving any notice or issuing any process or doing any other such thing, employ, with the consent of the District Magistrate, any peon or other officer or clerk attached to the court of the District Magistrate.

Act II of 1919.

Powers of election court.

(2) An order for costs, or an order for the realization of a security bond for costs, passed by the election court, may be sent by that court for execution to the Collector of the district within which the municipality concerned is situated, and an order so sent shall be executed by the Collector in the same manner as if it were an order passed by the Collector in proceedings under the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, as the case may be.

Theoretically the Code of Civil Procedure applies to the hearing of election petitions under this Act. But as would appear from the above, the powers of the court are practically unfettered, the court being empowered even to stop the evidence, oral or documentary, of a party even though it might be relevant. The procedure prescribed is in the nature of a summary trial. The tribunal is the Commissioner of a division, who is not a judicial officer, but the executive head of a division.

In England, up to the time of passing of the Judicature Act of 1868, parliamentary election petitions were tried by

parliamentary committees set up by the House of Commons in proportion to the strength of the principal parties for the time being. These committees were essentially non-judicial bodies, and although they did act in accordance with "definite judicial principles laid down by them, their decisions were necessarily influenced by political considerations to some extent at least. But after making all due allowance for the credit which is due to the parliamentary committees for setting up and honestly trying to uphold just and equitable standards of decision, the inherent unfitness of non-legal tribunals whose impartiality was not above suspicion to deal with election petitions could not fail to become more and more apparent, and so it was gradually recognised by Parliament itself that judicial knowledge and fairness in dealing with these matters was essential to the freedom and purity of elections, and this led at last in 1863 to the voluntary surrender of the real authority to the judges " (Halsbury's Laws of England, Vol. 12, pages 135-6).

The jurisdiction relating to parliamentary election petitions is now "vested in the King's Bench Division of High Court of Justice, which has.....the same powers, jurisdiction, and authority in respect of an election petition and all proceedings thereon as it would have if such petition was an ordinary cause within its jurisdiction. Election petitions are tried by two judges of the King's Bench Division of the High Court of Justice who are selected by rota in accordance with any rule of the court which be made for the purpose." (Halsbury's Laws of England, Vol. 12, page 408).

For the purposes of municipal election petitions, "the election court" consists of a single Commissioner, who "holds his office for a year" and "must be a barrister of not less than 15 years' standing. He may not be a member of the

House of Commons nor may hold any office or place of profit under the Crown."

"The appointment of Commissioners lies with the Judges for the time being on the rota for the trial of parliamentary election petitions."

Even in our Province the desirability of having the election petitions heard by a judicial officer, was in all probability clear to the minds of the members of the Legislative Council at the time of the framing of the U.P. District Boards Act of 1922, and section 18 of that Act provides for the trial of petitions by District Judges, who though permanent officers of the Government, are judicial officers and are expected to act more in accordance with judicial principles than the Commissioners.

In fairness to the learned Commissioners who have tried the election petitions so far, and will try them so long as the Act is not amended, it may be remarked that on the whole they have acted on judicial principles. But the remarks about the inherent unfitness of non-judicial tribunals to decide election matters apply with greater force to them, as over and above the fact that they are accustomed from habits of thought, cultivated during long years of executive service under the Government, to look upon election matters from an administrative point of view, their hands are too full with their own proper work to allow them to devote that time and attention to the petitions as is necessary in the interests of fair trial of petitions and purity of municipal elections.

An election Commissioner is not, independently of any special legislation, amenable to the jurisdiction of the High Court. Section 23 confines the powers of the High Court only to advising and answering the questions of law referred

to it by the Commissioner, and it rests with the Commissioner alone to refer a certain question of law to the High Court (Ramnath V. Emperor, A.I.R. 1924 All., page 684). A power of reference is a power vested in the court which is empowered to make the reference, and is not in the nature of an appeal, and orders of a court from which reference may be made to the High Court are not for that reason appealable to the latter Court (Abdulrahman V. Abdulrahman, A.I.R. 1925 All., page 380 F.B.).

An election court created under a special enactment not a civil court within the meaning of the Code of Civil Procedure or 476 C.P. Code. The term civil court used in para 11 of the Letters Patent of Allahabad High Court was never intended to cover a tribunal created under a particular statute for a particular purpose. The inquiring tribunal is armed with all the powers of a civil court and its decision is intended to be a final settlement of the question in dispute.

A civil court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The inherent powers of a court are very wide and indefinable but the power should not be capriciously or arbitrarily exercised (Chaterbhuj V. Raghubar, 13 A.L.J. 629). The inherent power of a court is reserved only for those cases where no provision is made by law and the court cannot act under its inherent powers where there is a rule of law applicable to the facts of the case (Emperor V. Raja Kushal, 1931 All. at 447 ; 1931 A.L.J. 697).

On the hearing of an election petition, the Commissioner directed prosecution of petitioners on the charge of forgery or abetment thereof in the course of false personation of voters, certain signatures and thumb-impressions had been falsely put on signature slips (furnished by voters to the

polling officers). The petitioners applied to the High Court in revision under section 115, Civil Procedure Code, and section 107 of the Government of India Act, urging that the order was ultra vires, and that the offence charged being substantially an electoral offence under Chap. IX of the Indian Penal Code, no prosecution could be commenced without the previous sanction of the Local Government. Held, the having regard to section 23 (3) of the U.P. Municipalities Act, the order of the Commissioner was final and could not be revised by the High Court. (Ram Nath V. Emperor, 22 A.L.J. 497).

No revision lies even when the election court is a Subordinate Judge who is otherwise subordinate to the High Court (A. Narsimha Ayyangar V. K. Ramya Chettiar, A.I.R. 1932 Mad. 560).

The decrees will be executed as if the same were money decrees under the Tenancy Act and the period of limitation provided for the execution of such decrees will apply in case of decrees for costs, etc., passed by an election court.

An order for costs must be made at the time of the passing of the order deciding the petition. Where costs are not awarded at the time of the order setting aside an election, a subsequent order awarding costs is illegal (Maing Gyce V. W. Basin, A.I.R. 1928 Rang. 245).

Agra Tenancy Act 1901 has now been replaced by Act III of 1926.

Trial to be in open court.

An election petition is to be tried in open court (Halsbury's Laws of England, Vol. 12, page 533).

Withdrawal of Petition.

There is no provision in the Municipalities Act or Election Rules for the withdrawal of a petition by a petitioner. In the case of Council and Assembly election petitions, provision is made for the publication of a notice in the Government Gazette about the application for leave to withdraw an election petition, and the electorate is called upon to raise any objection to the withdrawal of the petition that any voter may have to make. Leave to withdraw a petition is refused in case the Commissioners are of opinion that the application for withdrawal is the result of any improper understanding between the petitioner and the respondent. Such safeguards have been made in order to ensure the purity of elections. In England, even in the case of Municipal election petitions, "a petitioner may not withdraw an election petition without the leave of the election court or High Court on special application made in the prescribed manner and the prescribed time and place." "On the hearing of the application for leave to withdraw, any person who might have been a petitioner in respect of the election in question may apply to the court to be substituted as a petitioner and the court may, if it thinks fair, substitute him accordingly" (Halsbury's Laws of England, Vol. 12, page 509).

It is extremely doubtful if the election court can pass any such orders under its inherent powers in the absence of any express provision of law.

Section 25.—(1) If the court, after making such enquiry as it deems necessary, finds in respect of any person whose election is called in question by a petition, that his election was valid, it shall dismiss the petition as against such person and may award costs at its discretion.

Finding of election court.

(2) If the court finds that the election of any person was invalid, it shall either—

(a) declare a casual vacancy to have been created, or

(b) declare another candidate to have been duly elected, whichever course appears, in the particular circumstances of the case, the more appropriate, and in either case may award costs at its discretion.

(3) In the event of the court declaring a casual vacancy to have been created, it shall direct the board to take proceedings for filling the vacancy.

NOTE.—See section 13.

Where there are more than two candidates for one seat, the claim for the seat cannot be allowed only because the successful candidate has been unseated for some reason or other. The votes cast in favour of the returned candidate cannot be said to have been cast away, and a fresh election would be necessary (Kangra Cum Gurdaspore Case, I.E.P. Vol. 2, page 103; Rohtak North-West Case, I.E.P. Vol. 2, page 159 at 160; Farrukhabad District Case, I.E.P. Vol. 3, page 22; Ahmadnagar District Case, I.E.P. Vol. 3, page 180 at 181).

Section 26.—(1) Notwithstanding anything contained in the preceding section if the court in the course of hearing an election petition is of the opinion that the evidence discloses that corrupt practices at the election proceedings in question have prevailed to such an extent as to render it advisable to set aside the whole proceedings, it shall pass a conditional order to this effect and give notice thereof to every candidate declared elected who has not already been made a party in the case calling upon him to show cause why such conditional order should not be made final.

Avoidance of election
proceedings.

(2) Thereupon every such candidate may appear and show cause, and may have recalled, for the purpose of putting questions to him, any witness who has appeared in the case.

(3) The court shall thereafter either cancel the conditional order or make it absolute, in which case it shall direct the board to take measures for holding fresh election proceedings.

Explanation.—In this clause the expressions “the election proceedings in question” and “the whole proceedings” shall mean all proceedings (inclusive of nomination and declaration of election) taken in respect of a single poll, whether the poll be for the purpose of selecting one or more persons to represent a ward or otherwise.

The policy of the law is that every man upon whom the election franchise is conferred should judge for himself as to who is the best and most suitable candidate, and give his vote accordingly. There are some influences which are called “due” influences, and there are other influences which are called “undue influences.” Among the latter class are bribery, treating, and oppression *i.e.*, “undue and improper pressure upon a man.” (Halsbury’s Laws of England, Vol. 12, page 279). General bribery (Roger, Vol. 2, page 301). General treating (Roger, Vol. 2, page 322). General undue influence (Roger, Vol. 2, page 364), including spiritual undue influence (Roger, Vol. 2, page 347), are grounds on which an election may be avoided at common law. “The election in such a case is bad, however innocent the candidate may be, because of the general incapacity of voters, by reason of the general corruption to give valid and effective votes. (Halsbury’s Laws of England, Vol. 12, pages 280-1).

Section 27.—The court may declare any candidate found to have committed any corrupt practice under the preceding section to be incapable, for any period not exceeding five years, of being elected as a member of the board or of being appointed or retained in any office or place in the gift or disposal of the board.

Disqualification for corrupt practice.

NOTE.—See section 16 (2) (d).

The section is limited in its application to the preceding section, which is section 26 and relates to the cases of general corruption. It follows that under the Municipalities' Act, only a candidate found guilty in an enquiry of general corruption can be disqualified. There is no other ground for disqualification. Therefore in all other cases than those of general corruption, the only penalty on a candidate is loss of the seat under section 25 (2) of the Act. Of course the candidate or any other person guilty of offences falling within the Indian Penal Code can be prosecuted under that Code.

Disqualification arises when a candidate is actually declared incapable of being elected as a member of the Board (Hissar Case, I. E. P. Vol. 2, page 96).

Over and above the disqualifications that a candidate may be subject to, on account of declaration under this section, a person may be subject to disqualification under section 13 of Act 29 of 1920, which applies also to District Boards.

Section 13 aforesaid runs as follows :—

Section 13.—Any person who has been convicted of an offence under section 171 E or 171 F of the Indian Penal

Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connexion with an election shall be disqualified for five years from the date of such conviction or disqualification from

- (a) being appointed to, or acting in, any judicial office ;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached ;
- (c) being elected or sitting or voting as a member of any local authority ; or
- (d) being appointed or acting as a trustee of a public trust :

Provided that the Governor-General, in the case of the election to the Council of State or the Legislative Assembly and the Governor or the Lieutenant Governor in the case of an election to his Legislative Council, may exempt any such person from such disqualification.

Section 28.—A person shall be deemed to have committed
Corrupt practice, a corrupt practice who, directly or indirectly, by himself or by any other
person—

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate ;
- (ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any

candidate, offers or gives any money, or valuable consideration or any place, or employment, or holds out any promise of individual advantage or profit to any person ;

(iii) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote ;

(iv) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i), (ii), and (iii).

Explanation.—A “promise of individual advantage or profit to a person” includes a promise for the benefit of the person himself, or of any one in whom he is interested, but does not include a promise to vote for or against any particular municipal measure.

Corrupt Practice.

In English law a distinction is drawn between a corrupt practice and an illegal practice. In Indian election law the expression illegal practice is not to be found. The term ‘A corrupt practice’ is not defined but section 24 enumerates what are called corrupt practice. An election can be avoided on the ground of the commission of a corrupt practice, as also on other grounds which include non-compliance with law and rules. Such non-compliance would come under the term illegal practice. The distinction between a corrupt and illegal practice is important in as much as mens rea is a necessary ingredient of a corrupt practice. “A corrupt practice is a thing the mind goes with. An illegal practice is a thing the legislature is determined to prevent whether it is done honestly or dishonestly.” (Barrow and Farness, 4 O’ M. & H. 77). “Unless there is corruption and a bad mind and intention, there can be no corrupt practice” (Stepney Case, 4 O’ M. & H. 46).

"There can be no corrupt practice without a corrupt motive and it is the duty of the petitioner to prove mens rea in every case (Rohtak Case, I. E. P. Vol. 1, page 57 at 65; Bareilly Case, I. E. P. Vol. 3, page 59). Thus where a person applied for a voting paper, sharing with the respondent's agent the belief that he was entitled to vote but it subsequently transpired that he was not so entitled, it was held that he was not guilty of false personation as mens rea was absent (Bareilly City Case, I. E. P. Vol. 2, page 27 at 29).

But in another case it was held that where a case comes within the language of the Indian rule the election court will not be concerned with the honesty or otherwise of the act concerned, and a corrupt practice will be held to have been committed (Dinajpore Case, I. E. P. Vol. 2, page 75 at 77). In this case there was one entry in the electoral roll, which was fully applicable to two persons. After making the above observation, the learned judge held that in the circumstances of the case false personation could not be held to have been proved. In another case where the rules required that the agents of a candidate were to identify voters only from personal knowledge, and it was found that the agent of a candidate identified a false person as the real voter, it was held that he was guilty of abetment of personation even in the absence of a corrupt intention (Farrukhabad Case, I.E.P. Vol. 3, page 22). The doctrine that mens rea is a necessary ingredient of corrupt practice was upheld in other case also, and it is submitted, it is settled law that unless there is corruption and bad mind there can be no corrupt practice. (Bareilly District, I. E. P. Vol. 3, page 59 at 63).

The offence of corruption is complete whenever one party gives or procures money for the purpose of inducing a voter

to vote or refrain from voting and the latter accept the promise or money so made or given.

It is not necessary that the vote be given as a result of the corrupt practice. Corruption is complete without the vote being given.

Nor is it a necessary ingredient of a corrupt practice that the person sought to be influenced should possess the necessary qualifications to accept or succumb to the corrupt offer. (Bombay City South Case, I. E. P. Vol. 4, page 48).

Any other person.

These words are calculated to cover the whole range of agency in election law. The words would include agents expressly appointed by a candidate as well as persons who are found to be his agents by the application of the doctrine of agency peculiar to election law.

Nature of agency in election law.

"By election law the doctrine of agency is carried further than in other cases. By the ordinary law of agency a person is not responsible for the acts of those whom he has not authorised, or even for acts done beyond the scope of agent's authority. If a man has given another person authority to buy a horse for him, he is responsible for the acts of that person in that transaction; if he gives him a general authority to conduct his business for him, he is responsible for all his agent's act; but he is not responsible for the acts which his alleged agents chose to do on their own behalf. But if that construction of agency were put upon acts done at elections, it would be impossible to prevent corruption. Accordingly a wide scope has been given to the term." (Wakefield Case, 1874, 2 O. M. & H. 102).

"The law carries the responsibility of a member of Parliament for acts of agents, who are instrumental in procuring the election, a good deal further than the mere common law of agency." (Boston Case, 2 O. M. & H., page 167). In election law agency is inferred from facts in the absence of express appointment. (The Sheikhpura Case, I. E. P. Vol. 1, page 74). "Various attempted definitions of agency have been given, but none has been entirely successful; each case in that respect must depend upon its own ground and it really comes to this that the court must see what the relation of the person charged is from the facts of the case, and it is more a matter of inference from facts than any thing that is capable of being expressed by positive law. (Rohtak North-West Case, I. E. P. Vol. 2, page 159). South Balore Case, I. E. P. Vol. 3, page 93). The relationship is more akin to that of master and servant. (Sheikhpura Case, I. E. P. Vol. 2, page 176).

No express appointment as agent is necessary to constitute a man an agent within the meaning of election law. The crucial test is "whether there has been employment or authorisation of the agent by the candidate to do some election work, or adoption of his work when done". (The Great Yarmouth Case, 5 O. M. & H., page 189). "The substance of the principle of agency is that if a man is employed at an election to get you votes, or if without being employed, he is authorised to get you votes, or if although neither employed nor authorised he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that if his acts have been of an illegal character, you cannot retain the benefit which these illegal acts have helped to procure for you. It makes them (the candidates) responsible for acts which are not only not in accordance with their wish but which are directly contrary to it." (The Great Yarmouth Case, 5 O. M. & H., page 187).

How agency is created.

In the absence of express appointment, agency is to be inferred from facts. When express appointment is proved there can be no difficulty about a particular person being held an agent. But when there is no express appointment, the question arises as to what are those facts from which agency would be inferred. General canvassing has always been held to prove agency. (Rohtak North-West Case, I. E. P. Vol. 2, page 159 at 160). But canvassing is only a strong evidence of agency (Hertford Case, 4 O. M. & H. 13), and canvassing in order to prove agency must be shown to be with authority. "I have already stated," said Wills J., "that in my mind, authority to canvass (I purposely use the word authority and not employment because I mean it to apply to persons authorised to canvass, whether paid or not for their services) would constitute agency" (Windsor Case, 1 O. M. & H., page 3). Therefore a mere volunteer who chooses to act for a candidate or makes speeches does not become an agent by merely so acting (Londonderry Case, 1 O. M. & H., page 118).

One F was found to have canvassed for the respondent; he *led voters to the poll, and identified them at the booth*. F was held to be an agent of the respondent (Amritsar City Case, I. E. P. Vol. 2, page 10).

One H, a near relation of the respondent, worked for him on the polling day. He was held to be an agent. (Kangra Cum Gurdaspore Case, I. E. P. Vol. 2, page 103).

R took an active interest in canvassing for the respondent. Respondent did not repudiate his service, R was regarded as an agent of the respondent (Bareilly City Case, I. E. P. Vol. 2, page 17 at 22).

S was seen canvassing with the respondent. A manifesto purporting to have been issued by S in favour of the respondent was found by the Commissioners in a book of the respondent. A large number of identification slips were found bearing the signature of S, who was the polling agent of the respondent. S was held to be an agent of the respondent (Lucknow Cum Cawnpore Case, I. E. P. Vol. 3, page 2).

T was canvassing for the respondent though he had never expressly appointed to do so. He had also canvassed for the respondent at a previous election to his knowledge. He was also appointed a polling agent of the respondent. T was held to be an agent of the respondent (Farrukhabad District Case, I. E. P. Vol. 3, page 23).

But where three persons were proved to have worked at the election, but the Commissioners were not satisfied that they have worked with the respondent's knowledge and consent, or that respondent ever adopted their acts as agents, it was held that they could not be held to be agents within the meaning of the term agent in election law (Bareilly District Case, I. E. P. Vol. 3, page 59).

Time for Proof of Agency.

It is not necessary that evidence should be proved before evidence of a corrupt practice is led, but under the English law, evidence of a corrupt practice should not be allowed unless the petitioner has reasonable expectation of proving agency. (Barrow of Guildford Case, 1 O' M. & H., page 13 at 14).

Agency for a Particular Purpose.

A person who is employed to canvass only a particular voter or a particular class of voters, cannot bind the candidate by acts done outside the scope of his authority, as his agency

is limited only for that particular purpose. (The Rodmin Case, 1 O.' M. & H., page 120). Thus where an employer was requested to canvass his workmen, it was held that "it could not be an authority to canvass beyond the scope of the workmen in his employ" (The West Bury Case, 1 O.' M. & H., page 47 at 48).

A card messenger (Westminster Case, 1 O.' M. & H. 3) the candidate's land agent not authorised to work at election, (Tomworth Case, 1 O.' M. & H. 82), or a mere messenger of a volunteer committee (Stabbury Case, 1 O.' M. & H. 72), a mere clerk or messenger (The Windsor Case, 1 O.' M. & H. 31), cannot be called agents within the meaning of election law.

Agents' agents.

"One person cannot allow another to delegate a third person to do all the dirty work, and himself sit in a room and do nothing and yet be not responsible." A candidate is therefore responsible for the acts of agents appointed by his accredited agents, as the former becomes a sort of subordinate agent (Per Gram J. in the Poole P. P. 1874 No. 374 at 439). Thus where the wife of an agent of the respondent attempted bribe the wife of a voter in order to procure the vote of her husband, the respondent was held liable for the act of the wife of his agent (Cashel Case, 1 O.' M. & H., page 288).

Partners as Agents.

Under the ordinary law of partnership, each partner is the agent of the firm of which he is a partner, for the purpose of the business of the firm. But a partner is not from the mere facts of the partnership with the candidate, his agent at the election, even though the partners may be father and son (Mallow Case, 2 O'. M. & H., page 221).

Other Candidate's Agents.

If two or more candidates form a coalition, so that the agents of one work also for the other, such agents become the agents of both the candidates for the purposes of election (The North Norfolk Case, 1 O. M. & H., 240).

A candidate is not responsible for the acts of other candidates' agents done before the coalition with the latter of which he is ignorant. But if he had information of the commission of the corrupt act, he would be taken to have adopted the act (Malcoln V. Parry, L. R. 10 Cal. 168).

Agency of Committees.

The members of a committee in whose hands a candidate places the management of his election, become individually and collectively his agents (Pidler V. Moore Cliff, 327 acc. Huddersfield, 2 P. R. & D. 128 quoted in Parker's Election Agent and Returning Officer, page 587).

A committee has been defined by Mansity J. as "number of persons sometimes many, sometimes comparatively few, to whom the management of the election is in whole or in part committed or entrusted" (1880 P. P. No. 227 P. 8). "The question whether a member of a committee is agent is a question of degree, depending on the size and nature of the committee. Being merely one of a committee of 600 or 700 persons is not sufficient to constitute agency, being one of limited number, comparatively few, entrusted by the candidate with the work of the election, in whom he puts faith and trust, and between whom there exists some privity, does constitute agency (Westminster Case, 1 O. M. & H. 92). But a member of a self-constituted voters committee is not an agent (Staleybridge Case, 1 O. M. & H. 67, Parker's Election Agent and Returning Officer, pages 586-7).

Volunteer.

A mere volunteer is not an agent (Staleybridge Case, 1 O. M. & H. 70).

Political Association and Clubs.

A candidate may adopt a political association or club as his agent and in such case, he will be responsible for the acts of its members (Blackburn Case, 1 O. M. & H. 200). Even where a candidate does not expressly adopt the association as his agent, but utilises it for the purposes of his election and acts in concert with it, the association will be treated as his agent. (Tamton Case, 1 O. M. & H. 182).

Who may be appointed agents.

Any one who is capable of entering into a contract can be appointed an agent under Municipal Election rules. No special qualifications are prescribed for an agent.

Repudiation of Agency.

A candidate is not responsible for the acts of persons canvassing for him if he repudiates their acts, provided that *the repudiation is genuine and not merely colourable*. (Londonderry Case, 1 O. M. & H. 278).

Giving of a Vote.

The section speaks only of giving of a vote. In Parliamentary elections, and in Council elections in India, the words used are "electoral right," which mean the "right of a person to stand or not to stand as, or to withdraw from being a candidate, or to vote or refrain from voting at an election" (Rule 30, Part VII of U. P. Electoral Rules).

Clause (1).—This clause provides for what is called "undue influence" in English law. Undue influence is defined in English law as follows :—

“ Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual damage, or harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector ; or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.” (Roger’s Parliamentary Elections and Election Petitions, Vol. 2, page 328).

“ All influences are not necessarily corrupt. There are some influences which are called due influences, and other influences which are called undue influences ” (Parker’s Election Agent and Returning Officer, page 562). It is only undue influence that the law means to stop and punish. “ The law cannot strike at the existence of influence. The law can no more take away from a man, who has property, or who can give employment, the insensible but powerful influence he has over those whom he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone law can deal. Influence cannot be said to be abused because it exists and operates. (Lichfield Case, 1 O’ M. & H., page 25). A candidate is surely entitled to the legitimate influence of his position and status (Muttra District Case, I E. P. Vol. 2, page 118 ; Farrukhabad District Case, I. E. P. Vol. 3, page 22).

Coercion and threat of injury may be divided according to Roger in three heads: (See Roger's Parliamentary Elections and Election Petitions, Vol. 2, page 330 and after).

(1) The use of open force of violence, or the threat thereof. Where it was proved that the agent of the sitting member incited the mob to beat and molest the people on the day of election, so as to terrify a number of voters and prevent them from coming to the booth, the election was avoided (Stafford Case, 2 O' M. & H., page 228).

(2) The infliction of temporal injury, damage, harm, or loss or the threat thereof.

" This provision is directed against the more indirect but equally "undue" influence brought to bear by customers upon tradesmen, landlords upon tenants, or employers upon employed."

" The provision extends to any injury, damage, etc., inflicted either to induce such person to vote, or on account of, such person having voted " (Roger, Vol. 2, page 332). Thus in Sheikhpura Case (I.E.P. Vol. 1, page 74) the threat to voters of having their cattle stolen given by the respondent and his agents, who were heads of notorious cattle stealers, was held sufficient within the meaning of election law, to avoid an election. Again, in Bareilly Case (I. E. P. Vol. page 16), the learned Commissioners remarked that direct evidence of the exercise of undue influence would not be forthcoming, and held that canvassing by the Chairman of the Municipal Board constitutes an abuse of his position as such, and may amount to undue influence.

(3) The infliction of any spiritual injury, damage, harm, or loss, or threat thereof.

In this case also it is the abuse of influence by the clergy or the spiritual heads that is prohibited, and not their right to counsel and advise, regarding the desirability of a particular person being returned (Longford Case, 2 O' M. & H. page 16 ; Galway Case, 2 O' M. & H. page 57). But where a pastoral had been issued by the Catholic Bishop to the clergy throughout the constituencies, and was read by them from the altar a few days before the election, and " the pastoral denounced the political party to which the petitioners belonged, condemned their principles as unlawful and unholy, and threatened with spiritual injury and loss all persons who should vote for them " spiritual undue influence was held proved and the election was avoided (Roger, Vol. 2, page 338 ; North Meath Case, 4 O' M. & H., page 130, 185). " So where representations were made to voters that the respondent was put up by Mr. Gandhi, and that if they did not vote for him they would incur Gandhi's displeasure and commit sin, " it was held that this amounted to undue influence, as Mr. Gandhi is regarded as a Mahatma. But a mere appeal to the religious prejudices of the electorate does not amount to spiritual undue influence, unless there is something to suggest that the persons not doing what they are asked to do, would be the subject of Divine displeasure or spiritual censure (Kheri and Sitapore Case, I. E. P. Vol. 2, page 108 ; Golaghat Case, I. E. P. Vol. 2, page 83 ; Lahore Case, I. E. P. Vol. 1, page 43).

Fraud and International Misrepresentation.

Fraudulent devices.—Any device by which voters are prevented from a free exercise of franchise by deceit would come under this head. Fraud is indefinable and equity has always refused to define fraud. Where it " was proved that an agent of the respondent had stated publicly on several occasions just before the election that

he had discovered a plan by which he could ascertain how each voter had voted, and that article had appeared in a local newspaper stating that he had demonstrated this, and that 10,000 copies of the newspaper containing this article had been distributed by the agent, at the expense of the respondent.....", it was held that no election could be allowed to stand which was tainted by such device (Roger, Vol. 2, pages 348-9).

There may be other kinds of false statements, which may affect the election. In the election law relating to legislative councils publication of false statements is made corrupt practice (Schedule 5, part 1, para 4), but the false statements to be corrupt practices are to be confined to "the personal character and conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election."

It was held that laudatory statements in favour of a candidate did not come within the purview of the rule, even though entirely false (Farrukhabad District Case, I. E. P. Vol. 3, page 22; Ferozepore Case, I. E. P. Vol. 2, page 80). Nor did statements, however false and prejudicial to the candidate's chance at the election, come within the mischief of the rule, which were not statements relating to the personal conduct and character of such candidates. Thus it was held that the statement that a candidate would become a minister, if elected, or that he voted in a certain manner as a member of the council did not come within the rule (Bulandshaher District West Case, I. E. P. Vol. 2, page 55; Hanthawady East General Rural Case, I. E. P. Vol. 2, page 94; Saran South Case, I. E. P. Vol. 2, page 173; Farrukhabad District Case, I. E. P. Vol. 3, page 22 at 38; Bareilly District Case, I. E. P. Vol. 3, page 59 at 66; Sultanpore District Case, I. E. P. Vol. 3,

page 71 at 76 ; South Balore N. M. R. Case, I. E. P. Vol. 3, page 93 at 96 ; South Balore N.M.R., I.E.P. Vol. 3, page 93 at 97 ; Agra City Case, I. E. P. Vol. 3, page 145 at 150 ; East Bengal Non-Mohamdan Constituency Case, I.E.P. Vol. 3, page 223 at 227; Nagpore East Non-Mohamdan Constituency Case, I. E. P. Vol. 3, page 235 at 238). It would appear from the words of the section that no such distinction is made in the 'Municipalities' Act between false statements that are prejudicial to a candidate or false laudatory statements that are beneficial to him, or between false statements in relation to personal conduct and character of the candidate and false statements in relation to public or political conduct. All that the rule requires is that there must have been an intentional misrepresentation and it is submitted that all kinds of false statements by which a voter is wrongly influenced to vote one way or the other, would come within the purview of clause (1).

It might be added that intimidation after the election is over would only be material as throwing light on some transaction before the election (Southampton Case, 1 O' M. & H., page 223).

Clause (2)—Bribery.—By this section the following persons are deemed to be guilty of bribery:—

Every person who, directly or indirectly, by himself or by another person

offers or gives	any money or valuable consideration or any place, or employment, or holds out any promise of individual advantage or profit	to any person (A promise of individual advantage to any person includes a promise for the benefit of the person himself, or of any one in whom he is interested, but does not include a promise to vote for or against any particular principle or measure.)	with a view to inducing any voter to give or refrain from giving a vote in favour of any candidate.
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Bribery differs from undue influence in one particular. In bribery the person bribed sells his freedom for some consideration, in undue influence the person concerned loses his freedom of choice on account of some external pressure which is undue. (Farrukhabad District Case, I. E. P. Vol.-3, page 22). Lord Glenbervie's definition at common law is as follows : " Wherever a person is bound by law to act without any view to his private emolument, and another by a corrupt contract engages such person on condition of the payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, both parties are by such contract guilty of bribery (Roger, Parliamentary Elections and Election Petitions, Vol. 2, page 266).

Mere offer of a bribe is enough to constitute a corrupt practice. It is not necessary to prove that the person attempted to be bribed, succumbed to the offer, or that the person affected should have the requisite qualifications to accept or succumb to the corrupt offer (Bombay City South Case, I. E. P. Vol. 4, page 40 ; Farrukhabad District Case, I. E. P. Vol. 3, page 22). Thus an offer "to vacate a seat on a Town Council in favour of a voter " if he would vote for the respondent was held to be bribery (2 O' M. & H., page 25).

Bribery and Charity distinguished.—Whether a certain act amounts to charity or bribery is at times a difficult question to decide. " It is very difficult to ascertain where charity ends and bribery begins. Charitable gifts may be only subtle forms of bribery, a pretext adopted to veil the corrupt practice of gaining or securing votes of the recipients. But a charitable gift, however injudicious it may be, is harmless in the eye of the law, whatever its effect may be, and is certainly not bribery." (Farrukhabad District Case, I. E. P. Vol. 3, page 22). The line of demarcation between bribery and charity is very thin. It is a mixed question of law and fact and in

each case the governing motive or intention should be found out (Bombay City South Case, 4 I. E. P., page 40). The criterion is the intention of the donor (Aligarh District West Case, I. E. P. Vol. 3, page 4 at 6). The whole of the surrounding circumstances must be taken into account to ascertain the intention of the person who made the gift. (Farrukhabad District Case, I. E. P. Vol. 3, page 22; Borough of Durham Case, 2 O' M. & H., page 133; also Kingstom Case, 6 O' M. & H., page 389). " We must take the whole of the evidence into consideration and consider whether the governing principle in the mind of the man who gave away such gifts was, that he was doing something with a view to corrupt the voters, or whether he was doing something which was a mere act of kindness and charity " (The Salisbury Case, 4 O' M. & H., page 28). Loans advanced with the corrupt intention would be held to be bribes (Parker's Election Agent and Returning Officer, page 519).

Direct evidence of bribery would not generally be available, and bribery has generally to be inferred from circumstances (Agra City Case, I. E. P. Vol. 3, page 5 at pages 9, 13 and 17).

The general principle of law that an accomplice is unworthy of credit, unless corroborated, applies with great force to election cases (Gurgaon Cum Hissar Case, I. E. P. Vol. 2, page 86).

Treating—The definition of bribery given in this section does not mention treating in so many words. But treating is a form of bribery in election law, and it is submitted would be covered by the words "valuable consideration" in the section. But treating being a kind of bribery cannot be established without a corrupt intention of corrupting the electors (Gurgaon Cum Hissar Case, I. E. P. Vol. 2, page 86). But a man

will be held to intend the natural consequences of his acts, and in cases where a large number of voters were fed on the polling day by a man intimately connected with the respondent, it was held that the feeding was done with a view to obtain votes, and treating was held to have been established (Hissar District Case, I.E.P. Vol. 1, page 35 at 36, 130; West Patna Case, I. E. P. Vol. 3, page 80 at 92; Farrukhabad District Case, I. E. P. Vol. 3, page 22).

It seems that a bribe offered or given to a candidate to stand or refrain from being a candidate would not come within the purview of this section, as the section is obviously confined only to giving or refraining from giving a vote. In this respect the definition is narrower than the definition of bribery in Council Election Rules, which covers the case of an offer or gift to a person in order to induce that person "to stand or not to stand as or to withdraw from being a candidate" (U. P. Electoral Rules, Schedule 5, part 1, para 1).

Clause (3)—This sub-section provides for the corrupt practice of personation. As shown before, to constitute a corrupt practice a corrupt intention is essential, and unless there is corruption and a bad mind, personation is no offence. *Mens rea* is a necessary ingredient of the corrupt practice of personation (The Rohtak Case, I. E. P. Vol. 1, page 57; Punjab Legislative Council Case, I. E. P. Vol. 1, page 85; Bareilly City Case, I. E. P. Vol. 2, page 27 at 28; Sultanpore District Case, I. E. P. Vol. 3, page 71 at 74; 4 O. M. & H., page 46; 6 O. M. & H., page 90).

For personation to avoid an election, it is necessary that it must be shown that it was procured or abetted by the respondent, or by any person who may be held to be his agent within the meaning of the election law. Unless this is shown, mere personation will not avoid the election, though the

votes of the personators will be cast aside (Ferozepore Case, I. E. P. Vol. 2, page 80 at 81; also Kangra Cum Gurdaspore, I. E. P. Vol. 2, page 103 at 104; Muzaffarnagar Case, I. E. P. Vol. 2, page 120 at 121; Farrukhabad City Case, I. E. P. Vol. 3, page 22 at 28, 31, 35; Bombay Legislative Council Case, I. E. P. Vol. 3, page 180 at 188).

It is the duty of agents to identify voters only from personal knowledge. By identifying voters at the election, the agents enable them to obtain voting papers and if the persons identified to be the true voters are not the true ones, the corrupt practice of personation will be held to have been procured or abetted by the agent, and the election would be avoided (Hissar District Case, I. E. P. Vol. 1, page 35 at 37; Agra City Case, I. E. P. Vol. 3, page 145 at 148).

Procuring of personation by an agent is enough to constitute a corrupt practice, even though the candidate may have been unaware of it (Amritsar City Case, I. E. P. Vol. 2, page 10; Bengal Legislative Council Case, I. E. P. Vol. 3, page 175 at 178).

Clause (4)—Abetment of any of the acts constituting a corrupt practice is itself a corrupt practice, and from this point of view the guilt or innocence of the personator is immaterial, and the corrupt practice will be held to be established when abetment by the candidate or his agent is shown, even though the person personating may have been innocent (Punjab Legislative Council Case, I. E. P. Vol. 1, page 85).

Nature of Election Tribunal and Jurisdiction of Ordinary Courts.

Civil courts have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either

expressly or impliedly barred. A suit in which the right to property or to an office is contested is a suit of civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rights or ceremonies (See 9 C. P. C.). A right to vote has been held to be a civil right *Gurcharan Das V. Harsarup*, 9 A. L. J. 383 ; 34 All. 391). It has been held in that a civil suit lies for a declaration that the plaintiff is a qualified voter, or for an injunction against the chairman of a municipality restraining him from refusing to insert the plaintiff's name in the electoral roll (*Moka Atani Haq V. Chairman of Maniktola Municipality*, 24 C. W. N. 769) or for a declaration that the plaintiff has been duly elected (*Sadhapat V. Abdul Gafoor*, 24 Cal. 167 at 11) or for a declaration that the election of the defendant is void (*Doraisami Nadar V. Joseph L. Mother*, 92 T. C. 129), or for a declaration that the votes obtained by the majority at a corporation meeting are invalid votes (*Nariman V. Municipal Corporation of Bombay*, 47 Bom. 809). •

The right to vote being a civil right, if the name of a voter is maliciously omitted from the electoral roll, he can sue the Board for damages which may be penal if the commission is malicious. (*Ashrafi Lal V. Municipal Board of Agra*, 20 A. L. J. 1 ; 44 All. 202). A suit for declaration that the plaintiff was a qualified voter and that his name was wrongly removed from the electoral roll was entertained. (*L. Permeshwari Das V. Municipal Board of Bareilly*, A. I. R. 1932 All. page 58 (2) .

Similarly, an election for damages would lie for wrongfully depriving a voter of his right to vote or be a candidate. But if the Act is a judicial one, no action would lie unless it is malicious or dishonest (*Sarvothama Rao & others V. The Chairman Municipal Council Saidapat and another*, A. I. R. 1923 Mad. 475). But proof of malice is not necessary where

the act is not a judicial one. Malice need not be proved in a suit for damages against one appointed to receive the nomination papers for wrongful refusal to receive them.

The jurisdiction of ordinary civil courts may be taken away expressly or by necessary implication by Special Acts providing for the decision of special matters by a special tribunal. (*Bhaishanker V. Municipality of Bombay*, 31 Bom. 604). The general power given to a local legislature under the Government of India Act to make laws for the peace and good government of the territories for the time being constituting the province includes a power to direct that disputes of a particular kind should be decided in a particular way, and before a tribunal specially created for the purpose. Where therefore such a special tribunal is appointed, the jurisdiction of the ordinary civil courts will be barred. In a case under the Municipalities Act it was held that the whole scheme of sections 19—27 of the Municipalities Act is that the election of any person as a member of the Board can be challenged only by a petition presented in accordance with the Act. On the principle laid down by the High Court no suit will lie for challenging the election of successful candidate. In fact, no civil suit would lie to dispute any of the matters for the decision of which provision is made in the Municipalities Act. Where a special tribunal out of the ordinary course is appointed by an Act to determine questions as to rights which are the creation of the Act, then, except in so far as it is expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. (*Abdul Rahman*, 23 A. L. J. 385 F. B. ; *Bhaishanker V. Nanbai*, I. L. R. 26 All. 594). No suit lies to contest the validity of a Municipal election (*Mohammad Juamul Haq V. Mohammad Ahsan*, 12 A. L. J. 459 F. B. ; A. I. R. 1923 Nag. 193 F. B. ; A. I. R. Oudh 423, 12 ; *Surat*

Municipality V. Chunni Lal, 30 Bom. 49; A. I. R. 1934 Mad. 174; A. I. R. 1934 Nag. 193 A. F. B.)

A right to a civil suit to challenge an election can be taken away by legislative enactment, or by rule having the force of law. The Local Government is not competent to bar a suit by means of an executive order and a civil suit will lie to question the validity of an election, where such suit is not barred by statute (Raghunandan Pershad V. Sheo Pershad, 11 A. L. J. 348, 35 All. 308).

The Election Court as a special tribunal is not amendable to the jurisdiction of the High Court, and unless an appeal or revision is expressly provided by the Act or Rules none lies (Nandram V. Chotey Lal, 11 A. L. J. 945 F. B.).

The special tribunal sitting as an election court is neither subject to the superintendence of the High Court, nor under its appellate jurisdiction. It is different to say that provision is made by the statute for reference of any question of law to the High Court. A power of reference is a power vested in the court and is exercised while the case is still pending. The fact that the election tribunal, while referring a question of law to High Court, is bound by the opinion of the High Court, is but a natural corollary of the power of reference. But this does not make the election court subordinate to the High Court. An election court is neither a civil court within the meaning of Civil Procedure Code nor a criminal court within the meaning of Criminal Procedure Code (Abdul Rahman V. Abdul Rahman, 23 A. L. J. 385; Ramnath V. Emperor, 22 A. L. J. 497; for the meaning of 'having jurisdiction' see also Kulty V. Vydiararath Kunahali Haji, 59 M. L. J. 194). Nor can the High Court issue a writ of *artiorai* where the election Commissioner acts within its jurisdiction. The case is however different where a court or a similar authority,

gives to itself a jurisdiction, which it has not got, and its action is ultra vires when a writ of *artiorai* can be issued (Shanumaga Mudaliar V. Subraya Mudaliar, 104 I. C. 540), or where it improperly refuses to exercise jurisdiction vested in it. (In re Salafally Mamooji, 34 Bom. 659 ; In re Mutty Lal Ghosh, 19 Cal. 192).

Injunction to restrain an election.

An injunction should not ordinarily be granted to stop or control an election, or directing the manner in which the election should be held, as an election is a political matter and interference from courts may result in the destruction of Government. But it has been held in England that in exceptional cases an injunction may be issued (*Aslat V. Corporation of Southampton*, 16 Ch. D. 143 ; *Richardson V. Methby School Board*, 3 Ch. 510). But it has been held that it is only in extreme cases that an injunction should be issued (*Balaji Rao Nudin*, In re, A. I. R. 1932 Mad. 849; 140 I. C. 441). So far as these Provinces are concerned, the question has been set at rest by Act VI of 1934 which runs as follows :—

U. P. Act IV of 1934

An Act further to amend the United Provinces Municipalities Act, 1916 (11 of 1916).

Whereas it is expedient to curtail the jurisdiction of
 Preamble. civil courts in certain matters relating
 to the composition of and the exercise of
 powers by Municipal Boards ;

And whereas the previous sanction of the Governor General under section 80-A (3) (f) of the Government of India Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the United Provinces Municipalities (Amendment) Act, 1934.
Short title.

2. The following shall be added as section 326-A after section 326 of the United Provinces Municipalities Act, 1916 :

326-A. No civil court shall in the course of any suit grant any temporary injunction or make any interim order

(a) restraining any person from exercising the powers or performing the functions or duties of a member, chairman, vice-chairman, officer or servant of a board or of a committee of a board on the ground that such person has not been duly elected, nominated or appointed as such member, chairman, vice-chairman, officer or servant ; or

(b) restraining any person or persons or any board or committee or sub-committee of a board from holding any election or from holding any election in any particular manner.

PART VIII—MISCELLANEOUS.

Section 29.—The following matters shall be regulated and
Conduct of elections and kindred matters. governed by rule, namely,—

(a) with reference to section 14 the minimum amounts, salaries or sums qualifying a person to be an elector ;

(b) the qualifications of candidates for election ;

(c) the preparation and revision of electoral rolls and candidate lists ;

(d) the nomination of candidates ;

- (e) the dates, time and manner of holding elections general or casual ;
- (f) the prohibition of corrupt or improper practices committed in connection with elections and the punishment of persons guilty of the same ;
- (g) any other matter relating to elections or election petitions in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of the Local Government, necessary.

NOTE.—Rules under (a) and (b) have been made separately for each Board. For model rules under (a) and (b) see pages 399 to 400 of Municipal Manual (see infra). For rules under (c) see pages 191 to 212 of the Municipal Manual (Appendix III of this book).

29A. In the year 1936 and thereafter in every fourth
General Election. year there shall be a general election of
members of Municipal Boards.

Provided that in the Naini Tal and Mussoorie municipalities the next general election shall be held in 1933 and thereafter in every fourth year.

NOTE.—The system of triennial elections introduced by resolution No. 1244/XI-372 E, dated June 19, has been changed to quadrennial by Act V of 1932.

Model rules relating to qualifications of electors and candidates for election.

1. The following persons shall, if not subject to a disqualification specified in sub-section (3) of section 14 of the Act, be entitled to be enrolled as electors, namely:—

- (a) every person, who, on the 1st day of September, preceding the election in question, is assessed directly and on his own account to municipal taxes, other than octroi or toll or any similar tax,

the aggregate value whereof at their annual rate is not less than Rs. and on the aforesaid date is not in arrears in the payment of any such tax, and

(b) every person who, having for a period of not less than twelve months next preceding the aforesaid date resided in the municipality, is on the aforesaid date

(i) a graduate of any University,

(ii) a payer of income-tax, or

(iii) an owner of a house or building in the municipality of a minimum annual value of Rs. , or

(iv) an occupier of a house or building in the municipality of a minimum annual value of Rs. , or

(v) in receipt of minimum annual income of Rs. , or

(vi) an owner in his own right of land in respect of which land revenue amounting to a minimum sum of Rs. per annum is payable, or

(vii) an owner in his own right of land free of revenue, if the land revenue nominally assessed on such land, in order to determine the amount of rates payable in respect of the same, either alone or together with land revenue payable in respect of other land by such owner, amount to a minimum sum of Rs. , or

(viii) a fixed rate tenant, ex-proprietary or occupancy tenant of land in respect of which rent amounting to a minimum sum of Rs. per annum is payable.

2. Every person enrolled on the electoral roll, shall, if not subject to a disqualification specified in sub-section (2) of section 16 of the Act, be entitled to be entered on the candidates' list, who, on the 1st day of September preceding the election in question—

- (a) is an honorary magistrate, honorary munsif, or honorary assistant collector having jurisdiction in the municipality, or
- (b) is assessed directly and on his own account to municipal taxes other than octroi or toll or any similar tax, the aggregate value whereof at their annual rate is not less than Rs. and on the aforesaid date is not in arrears in payment of any such tax, or
- (c) is the owner of the premises situated within the municipality whereof the annual value is not less than Rs. a year, or is on that date and has been during the whole of the then last preceding 12 months the occupier of premises so situated whereof the annual value is not less than Rs. , or
- (d) being a resident of the municipality pays income tax on
is in respect of
an income of not less than Rs. a year, or
- (e) being a resident of the municipality owns land in respect of which land revenue amounting to not less than Rs. a year is payable, or
- (f) being a resident of the municipality owns land free of land revenue, if the land revenue nominally

assessed on such land in order to determine the amount of rate payable in respect of the same, either alone or together with land revenue payable in respect of other land by such owner, amount to not less than Rs. a year, or

(g) being a resident of the municipality is a graduate of University of years' standing or is the holder of a title conferred by Government.

Rule 49.—(1) The District Magistrate shall retain for a year the packets and return forwarded to him by the returning officer under rule 48, and shall then, unless there appear to him to be reason of retaining them for a further period, cause them to be destroyed.

(2) While in the custody of the District Magistrate the packets of ballot papers (whether counted rejected or tendered) and of the counterfoils thereof shall not be opened, and their contents shall not be inspected or produced except under the order of the Election Court having jurisdiction in respect of the election concerned to be granted only by it on its being satisfied by affidavit or otherwise that the inspection or production of the ballot papers or counterfoils is necessary for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers and any such order may be made subject to such conditions as to persons, time, place, and mode of opening, inspection or production as the court may think expedient.

(3) All other documents in such custody shall be open to public inspection at such time and under such conditions and on payment of such fees and subject to such regulations as may be prescribed in this behalf by the District Magistrate.

The rule regarding the secrecy of ballot papers is applicable only when there is no election petition. (Dacca City Case, I. E. P. Vol. 2, page 72). The petitioner in a claim for scrutiny was allowed to inspect the ballot papers when he had alleged that certain votes in favour of his rival candidate were wrongly accepted, and filed an affidavit in support of this allegation. (Punjab North Case, I. E. P. Vol. 2, page 134).

Rule 51.—No person shall obstruct, or in any way interfere with, the examination and counting of votes by the returning officer.

Rule 52.—No person who is entrusted with any duties in connection with a municipal election shall divulge, or wilfully allow to be divulged, any information as to the candidate for whom any vote is given in any particular ballot paper.

In England "every returning officer, clerk, or agent, authorised to attend at a polling station must before the opening of the poll make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace or of the returning officer" (Halsbury's Laws of England, Vol. 12, page 318).

Rule 53.—No person shall deface, injure, disturb, or remove any copy, notice or other document fixed up under these rules at the municipal office or elsewhere.

Rule 54.—A servant of the board shall not be canvassing or otherwise interfere or in any way use his influence in an election but may vote in an election if qualified to do so, in which case he shall, so far as possible, avoid giving any indication of the candidate for whom his vote is to be cast.

This rule prohibits municipal servants from canvassing or exerting his influence in any way in the election. It does not

say as to what would be the effect of municipal servants so acting. Would that avoid an election under section 19 (1) (b), and would such action of municipal servants come within the purview of "any other reason" within the meaning of that sub-section. In Bareilly case (I. E. P. Vol. 2, page 26), certain municipal servants were proved to have exercised their influence at the election, and the learned Commissioner expressed the view that neutrality should be imposed on all executive servants of municipal boards. In Farrukhabad case (I. E. P. Vol. 3, at page 49), it was held that the mere working at election of district board servants would not amount to a corrupt practice, only because it is contrary to government instructions. In another case (Mathura District N. M. R., I. E. P., Vol. 2, at page 118) it was laid down that a District Magistrate is entitled to encourage a candidate to stand as candidate for the council, so long as he does not use the influence of his official position to secure his return. In face of these authorities, it is doubtful if the mere working of municipal servants at an election would make votes secured through their agency unlawful votes (Chota Nagpore Division Case, I. E. P. Vol. 2, page 67 at 71 ; Behar and Orissa Legislative Council Case, I. E. P. Vol. 1, page 54).

Rule 55.—(1) In case of more than one vacancy being filled by a poll held at the same election the member elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of the office, and the member elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and the member elected by the largest number of votes shall be deemed to be elected in the place of him who would regularly have last gone out of office, and so forth.

(2) Any question other than one for which provision is made in clause (1), arising in connection with the allotment of casual vacancies to persons elected as members at the same election, shall be determined by the board by resolution.

Rule 57.—The District Magistrate shall preserve a complete copy of the electoral roll of each constituency, the list of claims and objections and all papers and files relating thereto. Such papers shall be open to inspection on such conditions and certified copies may be given on payment of such fees as have been prescribed by Government under the rules for the election of members to the United Provinces Legislative Council. The District Magistrate shall keep all such papers until a fresh electoral roll has been prepared.

Rule 58.—The District Magistrate shall keep the nomination papers of candidates, withdrawals of candidature and all other papers relating to nomination, for a period of three years and shall then destroy them. These papers shall not be open to inspection by nor shall copies be given to any person other than a person entitled to be present on the day when the nominations were declared.

Rule 59.—Notwithstanding anything in these rules, in case of an irregularity in the conduct of an election under these rules or in the preparation of the electoral roll, the Local Government may make such order, consistent with the United Provinces Municipalities Act, 1916, as may appear to it to be just and proper.

This rule is new. By this rule the Local Government have assumed very wide powers, powers which are as indefinite as they are wide. Under this rule the Local Government will be able to pass any order in respect of any irregularity in the elections and the preparation of any electoral rolls, subject only to the provisions of the Municipalities' Act. The Local

Government is also to be the sole judge of the propriety or otherwise of any order that it may choose to pass. All the rules made so far remain, therefore, only subject to the possibility of the Local Government deciding that a particular act, although in consonance with the rules is in the opinion of the Local Government unjust.

It is respectfully submitted that the legality of such a rule is open to question. Section 29 (g) only authorises the Local Government to make rules in respect of "any other matter relating to elections or election petitions in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of Local Government, necessary." It does not authorise the Local Government to make a rule by which it can override the provisions of all existing rules made by itself, merely by an executive order ; and declare anything in pursuance of existing rules as unjust, and make any order contrary to such rules.

Rule 60.— In exercise of the powers conferred by section 299, sub-section (1), the Local Government hereby direct that every person who—

- (1) makes or alters any roll, list or other document, in contravention of these rules; or
- (2) wilfully makes a false answer to a question put to him under rule 43 of these rules; or
- (3) disobeys any order given by the presiding officer under rule 40 or obstructs or in any way interferes with the examination and counting of votes by a returning officer; or
- (4) being entrusted with any duties in connection with a municipal election, without due authority divulges, or wilfully allows to be divulged, any information

as to the candidate for whom any vote is given in any particular ballot paper; or

(5) defaces, injures, disturbs or removes any copy, notice or other document fixed up under these rules at the municipal office or elsewhere; or

(6) being required by these rules to do any act or take any proceeding, neglects or refuses to do or take it; or

(7) being a servant of the board commits a breach of rule 45; or

(8) attests the thumb-impression of an elector if he is not able to identify the elector

shall be punishable with fine which may extend to Rs. 500.

***Rule 61.**—These rules do not apply to the Municipality of Mussoorie.

NOTE.—Special rules have been framed for the municipality of Mussoorie.

Method of nomination by a nominating body.

(1) When a chamber of commerce, railway company, or other association or institution, whether incorporated or not, is constituted a nominating body under section 9 (2) of the Act its powers of nomination shall be exercised through the person or persons in whom is vested, for the time being, the current administration of the ordinary local affairs of the association or institution.

Notification
No. 2792/XI-6H.,
dated August 16, 1916.

(2) When two or more such institutions or associations are together constituted a nominating body each of these shall select one person in the manner prescribed above and of the persons so selected the person selected by the majority or, in default of any one being so selected, the person further

selected by lot shall be deemed nominated by the nominating body.

(3) A member nominated by a nominating body shall not attend a meeting of the board or assume any other function of a member until the expiration of three days from such date as his name shall have been reported both to the chairman of the board and to the District Magistrate.

Election or nomination of Judicial officers as members, etc., of Boards.

If any judge of a court of small causes, Subordinate Judge or Munsif be elected or nominated a member, Secretary or Vice-Chairman of a Municipal Board, he shall before accepting the office to which he has been elected or nominated apply through the District Judge to the High Court for permission to accept such office.

High Court Circular No. 1, dated February 3, 1888 (Rule 494 of the High Court's Rules for Civil Courts, 1894).

Maintenance of registers of members of the Board by the District Magistrate and the Commissioner.

The District Magistrate and the Commissioner shall each maintain in his office a permanent register, kept corrected up to date, showing the name of each member of each board in the district or division, and the date on which he will retire. All reports of elections shall be checked with entries in these registers.

G. O. No. 2308/XI-4H., dated August 22, 1916.

Notifications under the order of the Commissioner or District Magistrate.

1. Every election of a member or chairman of a board, every nomination of member by a nominating body, and every vacancy in the office of an elected member or chairman

G. O. No. 2308/XI-4H., dated August 22, 1916.

by reason of the death or expiration of the period of office of such member or chairman shall be notified directly under the orders of the District Magistrate without further reference to the Government.

2. (1) Each Commissioner shall, without further reference to the Government, notify all vacancies caused—

G. O. No. 2531/XI-4H.,
dated November 11, 1927.

- (a) by resignations accepted by him under sections 39 and 47 of the Act ;
- (b) by an order of removal passed by him under sub-section (1) of section 40 of the Act, one month after such order has been passed, or if an appeal has been lodged against such order after the decision of the appeal ;
- (c) by a declaration issued by him under clause (a), sub-section (2) of section 25; or
- (d) by the operation of section 13 of the Indian Elections Offences and Inquiries Act, 1920 (Act XXXIX of 1920).

(2) Each Commissioner shall in the same manner notify the election of members declared by him to have been duly elected under clause (b) of sub-section (2) of section 25.

- (3) The notifications prescribed under the two preceding paragraphs shall be in the forms below*.

Notification
No. 4270/XI-4-H., dated
November 27, 1917.

For facility of reference they shall bear numbers to be added in the office of the District Magistrate or Commissioner.

4. The notification shall be forwarded direct by the Commissioner or the District Magistrate to the Superintendent, Printing and Stationery, United Provinces, Allahabad, for publication in the Gazette.

List of Municipalities and constitution of boards.

The following statement contains a list of the municipalities and shows the number of members, as at present fixed, for the several boards. These members do not include the chairmen of those boards of which the chairmen were not members of the boards at the time of their election or nomination as chairmen :—

1	2	3	4	5					
Serial number.	Division.	District.	Name of Board.	Number of members.					Remarks.
				Elected Members.					
				(a)	(b)	(c)	(d)	(e)	
			1.—Cities.						
1	Meerut ...	Meerut ...	Meerut ...	8	7	...	3	18	*This includes 1 member elected by special electorate.
2		Dehra ...	Mussoorie ...	...	...	...	3	*14	
3	Agra ...	Agra ...	Agra ...	12	8	...	5	25	
4	Rohelkhand ...	Bareilly ...	Bareilly ...	10	11	...	5	26	
5		Moradabad ...	Moradabad ...	6	9	...	3	18	

6	Allahabad	...	Cawnpore	...	Cawnpore	...	17	11	†2	7	37	
7			Allahabad	...	Allahabad	...	19	12	...	7	38	
8	Benares	...	Benares	...	Benares	..	19	12	...	7	38	
9	Kumaun	...	Naini Tal	...	Naini Tal	...	...	...	...	†5	13	†This includes 8 members elected by special electorate.
10	Lucknow	...	Lucknow	...	Lucknow	...	16	11	§2	7	36	§These two members are elected by European electors.
11	Fyzabad	...	Fyzabad	..	Fyzabad	...	11	7	...	4	22	

2. *Non-city municipalities.*

1	Meerut	...	Dehra	...	Dehra	...	7	4	*5	4	22	*These five members are elected by European electors.
2			Saharanpur	...	Saharanpur	...	7	10	...	4	21	
3			Hardwar Union...		Hardwar	...	...	...	...	4	†16	†This includes 12 elected members.
4			Deoband	...	Deoband	...	3	5	...	2	10	
5					Roorkee	...	6	4	...	3	16	
6			Muzaffarnagar	...	Muzaffarnagar	...	8	5	...	3	16	
7					Kairana	...	4	5	...	2	11	
8			Meerut	...	Ghaziabad	...	6	4	...	2	12	
9					Hapur	...	7	5	..	3	15	

†These two members are elected by Marwari electors.

1	2	3	4	5					Remarks.
Serial number.	Division.	District.	Name of Board.	Number of members.					
				Elected Members.					
				(a)	(b)	(c)	(d)	(e)	
10	Agra	Bulandshahr	Baraut ...	4	2	...	1	7	
11			Bulandshahr ...	6	5	...	2	13	
12			Khurja ...	6	4	...	2	12	
13			Sikandrabad ...	6	4	...	2	12	
14		Aligarh	Koil (Aligarh) ...	8	6	...	3	17	
15			Hatras ...	10	2	...	3	15	
16			Atrauli ...	6	4	...	2	12	
17			Sikandra Rao ...	5	6	...	2	13	
18			Muttra	Muttra ...	10	4	...	3	
19			Brindaban ...	...	...	...	*2	11	
20	Agra		Firozabad ...	6	4	...	2	12	

*This includes 9 elected members.

21		Mainpuri	...	Mainpuri	...	6	2	...	2	10	
22		Etah	...	Etah	...	5	3	...	2	10	
23				Soron	...	5	1	...	1	7	
24				Kasganj	...	5	3	@1	2	11	@One member elected by the rail- way employees in Civil Line.
25				Jalesar	...	6	4	...	2	12	
26	Rohekhand	...	Bijnor	Bijnor	...	4	5	...	2	11	
				Chandpur	...	4	6	...	2	12	
	Rohekhand— (concluded).		2. Non-city municipalities—(concluded).								
28				Dhampur	...	6	5	...	2	13	
29				Nagina	...	4	6	...	2	12	
30				Najibabad	...	4	6	...	2	12	
31			Budaun	Budaun	...	4	6	...	2	12	
32				Ujhan	...	4	2	...	1	7	
33				Sahaswan	...	4	6	...	2	12	
34			Moradabad	Chandausi	...	6	4	...	2	12	
35				Amroha	...	4	7	...	2	13	
36				Sambhal	...	4	7	...	2	13	

1	2	3	4	5					Remarks.	
Serial number.	Division.	District.	Name of Board.	Number of members						
				Elected Mem- bers.						
				(a)	(b)	(c)	(d)	(e)		
37	Allahabad	Shahjahanpur	Shahjahanpur	5	7	...	3	15		
38			Tilhar	4	5	...	2	11		
39			Pilibhit	Pilibhit	5	4	...	2		11
40			Bisalpur	5	3	...	2	10		
41		Etawah	Etawah	8	5	...	3	16		
42		Fatehpur	Fatehpur	5	4	...	2	11		
43		Farrukhabad	Fatehgarh cum Farrukhabad.	9	5	...	3	17		
44		Kanauj	5	3	...	2	10			
45		Jhansi	Banda	Banda	9	5	...	3		23
46		Jhansi	Jhansi	11	5	...	4	20		
47			Lalitpur	8	2	...	2	12		

48				Mau	...	7	1	...	2	10	
49			Jalaun	...	Orai	...	4	2	...	1	7
50					Kalpi	...	4	2	...	1	7
51					Kunch	...	5	2	...	1	8
52	Benares	...	Mirzapur	...	Mirzapur	...	10	3	...	3	16
53			Jaunpur	...	Jaunpur	...	8	5	...	3	16
54			Ghazipur	...	Ghazipur	...	9	6	...	3	18
55			Ballia	...	Ballia	...	8	2	...	2	12
56	Gorakhpore	...	Gorakhpore	...	Gorakhpore	...	10	6	...	4	20
57			Azamgarh	...	Azamgarh	...	6	4	...	2	12
58	Kumaun	...	Almora	...	Almora	...	8	1	...	2	11
59			Naini Tal	...	Kashipore	...	6	4	...	2	12
60	Lucknow	...	Unao	...	Unao	...	6	4	...	2	12
61			Rae Bareli	...	Rae Bareli	...	6	4	...	2	12
62			Sitapore	...	Sitapore	...	6	4	...	2	12
					Khairabad	...	4	6	...	2	12

1	2	3	4	5							
Serial number.	Division.	District.	Name of Board.	Number of members.					Remarks.		
				Elected Mem- bers.							
				(a)	(b)	(c)	(d)	(e)			
63	Fyzabad	Hardoi	...	Hardoi	...	6	4	...	2	12	
64			Shahabad	...	5	4	...	2	11		
65			Sandila	...	4	5	...	2	11		
66		Kheri	...	Lakhimpur	...	5	3	...	2	10	
67		Fyzabad	...	Tanda	...	4	6	...	2	12	
68		Gonda	...	Gonda	...	6	4	...	2	12	
69				Balrampur	...	6	4	...	2	12	
70		Bahraich	...	Bahraich	...	6	7	...	3	16	
71		Sultanpur	...	Sultanpur	...	7	4	...	2	13	
72		Partabgarh	...	(Bela Partapgarh)	...	6	4	...	2	12	
73			Nawabgunj								
74		Barabanki	...	(Barabanki)	...	6	5	...	2	13	

APPENDIX I

Election of Chairman.

SECTION 43.—(1) All members and persons qualified to be members of the board shall be eligible for election to the office of chairman of the board; provided that no whole-time salaried Government servant and member or servant of a district board shall be so eligible.

Act V of 1932.

Election or nomination of Chairman.

Explanation 1.—A Government treasurer or Government pleader is not a whole-time salaried servant of Government.

Explanation 2.—A member of the District Board Education Committee co-opted under section 63 A (2) of the District Boards Act is not a member of the District Board.

(2) When a board is completed after a general election it shall elect its own chairman in the manner provided in section 44 : provided that if any board fails to do so the Local Government shall nominate a chairman for that board. A board shall be deemed to be complete if all the elected seats have been filled up after a general election.

(3) The Local Government may by notification in the Gazette declare that the provisions of sub-section (2) shall not apply in the case of a board specified in the notification, and shall in such case nominate such person as it thinks fit to be chairman of such board; provided that no such notification shall be operative for more than one year in respect of any board the chairman of which on April 1, 1929, was not a Government servant.

(4) If there is a question whether the chairman of a board was duly qualified for election or has been duly elected or nominated under this section the decision of the Local Government shall be final.

NOTE 1.—Under Act V of 1932, section 43 has been recast to provide for incomplete boards and for the nomination of temporary chairman to act until a board is complete and in a position to elect its own chairman.

NOTE 2.—See note on section 44A (infra).

NOTE 3.—A chairman may be nominated by name or virtue of office under section 15 of the United Provinces General Clauses Act (1 of 1904).

SECTION 44.—(1) For the purpose of electing a chairman under sub-section (2) of section 43, a meeting of the board of which no previous notice shall be required to be given shall be held at the office of the board at 2 p.m., on a date which shall be subsequent to the election of members of the board and shall be fixed by the Local Government by notification in the Gazette.

Act V of 1932.

Procedure for election of chairman.

(2) A stipendiary civil judicial officer previously appointed by the Government in this behalf shall act as chairman of a meeting held under the provisions of this section : provided that the chairman of a meeting held under the provisions of this section shall have no right to vote thereat.

(3) The following procedure shall be observed at a meeting held under the provisions of this section, namely,—

(a) if only one duly qualified candidate is proposed and seconded he shall be deemed to be elected.

(b) if two but not more than two duly qualified candidates are proposed and seconded, the candidate who obtains the greater number of votes shall be deemed to be elected.

(c) if more than two duly qualified candidates are proposed and seconded, the names of the two candidates who obtain the greatest number of votes shall again be put to the vote and the candidate who then obtains the greater number of votes shall be deemed to be elected.

(d) every member who desires to vote shall write the name of the candidate for whom he wishes to vote upon a blank voting paper and shall also sign his own name thereon, and the voting papers shall form part of the minutes of the proceedings.

(e) in case of equality of votes the chairman shall decide the question by drawing lots.

(4) If at 4 p.m. on the date of a meeting held under the provisions of this section a chairman has not been elected the meeting shall stand adjourned.

(5) If a meeting is adjourned under the provisions of sub-section (4) the adjourned meeting shall be held at 2 p.m. at the office of the board on the seventh day after the adjournment and the procedure shall be the same as at the previous meeting.

(6) If at 4 p.m., on the date of an adjourned meeting held under the provisions of sub-section (5) a chairman has not been elected, the chairman of the meeting shall send the minutes of the meeting and of the adjourned meeting to the District Magistrate who shall send them to the Local Government.

SECTION 44A.—(1) If a casual vacancy in the office of chairman occurs owing to the death, resignation or removal of the chairman, a meeting of the board for the purpose of electing a chairman shall be held on such day as the Local Government may, by notification in the Gazette, appoint after the occurrence of the vacancy.

Election or nomination of chairman on casual vacancy.

(2) To a meeting held under sub-section (1) the provisions of section 44 shall apply as far as may be.

(3) If the board fails to elect a chairman under the provisions of this section the Local Government shall nominate a chairman.

NOTE.—See note on section 43 (supra).

(4) When there is a question whether a chairman of a board has been duly elected or nominated under the provisions of this section the decision of the Local Government on the question shall be final.

NOTE.—Under Act V of 1932 sections 43 and 44 have been recast and a new section 44A added to remove doubts and avoid disputes by laying down in complete and definite terms the procedure for the election of chairman.

SECTION 45.—(1) An outgoing chairman, if otherwise qualified, shall be again eligible for election or nomination as chairman.

Eligibility of chairman for re-election or renomination.

(2) Provided that a person shall not be elected, for more than two terms of office in succession, as chairman of a city without the previous sanction of the Local Government, and as chairman of any other municipality without the previous sanction of the Commissioner.

The jurisdiction of ordinary courts over election matters and the power of special tribunals created under special enactment has been discussed before, while discussing the nature of Election Tribunals and jurisdiction of ordinary courts (See part VII supra). Under these sections it is not the decision of a court to which finality is attached, but to the order of the Local Government.

APPENDIX II

Some sections of Municipalities Act.

CHAPTER III

SECTION 3.—(1) The Local Government may by notification—

Declaration and definition of municipalities and cities.

- (a) declare any local area to be a municipality ;
- (b) declare any municipality having a population of less than 100,000 inhabitants to be a city ;
- (c) define the limits of any municipality ;
- (d) include or exclude any area in or from any municipality ; and
- (e) cancel any notification under any of the preceding clauses.

(2) The power to issue a notification under sub-section (1) shall be subject to the condition of the notification being issued after the previous publication required by section 4 and where the notification is in respect of a local area which comprises or contains the whole or a portion of cantonment with the previous sanction of the Governor General in Council.

NOTE 1.—See sub-section (4), (9) and (16) of section 2.

Act XXXVII of 1920.

NOTE 2.—It is important to notice that the local areas to be included in, or excluded from the municipalities must be separately defined, a general definition of the municipal boundaries as they will stand after the inclusion or exclusion has been effected, is not sufficient for the purposes of the Act. The revised boundaries of the municipality are, however, usually notified later on for general information. See also the instructions at page 188 of the Municipal Manual.

NOTE 3.—Under the instructions at page 188 of this Manual all revisions of boundaries must be reported to the director of Public Health.

NOTE 4.—As regards the disposal of the municipal fund and the liabilities when area ceases to be a municipality or to be included in a municipality, see sections 121-123.

SECTION 4.—(1) Not less than two months before the issue of a notification under section 3, the Local Government shall publish in the Gazette and cause to be posted up, in the court house of the District Magistrate and

Procedure preliminary to notification.

in one or more conspicuous places within or adjacent to the local area concerned a draft both in English and in the vernacular of the proposed notification along with a notice stating that the draft will be taken into consideration on the expiry of two months from the date of publication in the Gazette.

(2) The Local Government shall, before issuing the notification, consider any objection or suggestion in writing which it received from any person, in respect of the draft, within the said period of two months.

SECTION 5.—When by reason of a notification under section 3 any local area is included in a municipality, such area shall thereby become subject to all notifications, rules, regulations, byelaws, orders, directions issued or made under this or any other enactment and in force throughout the municipality at the time immediately preceding the inclusion of the area.

Effect of including area in municipality.

NOTE.—The provisions of section 8 of the Municipalities Act, 1900, have been amended so as to make it clear that rules, regulations, and byelaws made under Acts (e.g., Hackney Carriage Act, Vaccination Act) shall also be extended to the included area.

SECTION 6.—In every municipality there shall be a municipal board and every such board shall be a body corporate by the name of municipal board of the place by reference to which the municipality is known, having perpetual succession and a common seal, and, subject to any restriction or qualification imposed by this or any other enactment, vested with the capacity of suing and being sued in its corporated name, of acquiring holding and transferring property, moveable or immoveable, and of the entering into contracts.

Incorporation and general functions of municipal boards.

NOTE 1.—A corporation must sue and be sued in its corporate name. Suits by and against corporations are governed by Order XXIX of the Code of Civil Procedure 1908, the plaint in a suit by a corporation may be verified by any secretary or other principal officer of the corporation who is able to depose as to the facts of the case.

NOTE 2.—With regard to criminal prosecutions instituted by the board, see section 314.

NOTE 3.—As to the use of the common seal, see section 124 (3) and also the instructions on page 385 of the Municipal Manual.

NOTE 4.—As to contracts, see sections 96 and 97.

SECTION 9. (1) Except as otherwise provided by the next section, each Elected members. board shall ordinarily consist of—

- (a) such member of elected members as the Local Government prescribes by notification in this behalf; and
- (b) where a person who is not a member of the board is elected or Chairman. nominated as chairman, the person so elected or nominated; and
- (c) in municipalities where provision is made under section 11 for separate representations in religious grounds, *a woman Additional members. nominated under sub-section (2) and such other persons, if any, not exceeding in number, excluding the woman member one-fourth of the prescribed number of elected members, as are nominated in the manner provided by sub-section (2); and*
- (d) in other municipalities, *a woman nominated under sub-section (3) and such other persons, if any, not exceeding in number, excluding the woman member, one-third of the prescribed number of elected members, as are nominated in the manner provided by sub-section (3).*

(2) Not more than *three* of the members who can be nominated under clause (c) of sub-section (1) may be nominated by the Local Government. The remainder *shall be nominated* by such nominating bodies as the Local Government by rule constitute in this behalf.

Provided *firstly* that no class for which separate representation is provided under section 11 shall be a nominating body;

Secondly that of the *three* members who can be nominated by the Local Government under clause (c) of sub-section (1), one shall be selected from among the depressed classes, one shall be a representative of any special interest of the municipal area which has remained unrepresented on the board after the general election *and the third shall be a woman;*

Thirdly that none of the three members shall be a Government servant or a candidate who was defeated at the preceding general election;

Fourthly, that the proportion of Muslim and Non-Muslim members, including both elected and nominated members shall not be so altered by the nomination of a woman as to convert a majority of one community into an equality with the other community.

(3) The members who can be nominated under clause (d) of sub-section (1) may be nominated by the Local Government, or in such manner as the Local Government prescribes by rule:

Provided that none of the members so nominated shall be a Government servant nor a candidate who was defeated at the preceding general election:

Provided further that of the members who can be nominated under this sub-section one shall be selected from among the depressed classes, one shall be a representative of any special interest of the municipal area which has remained unrepresented on the board after the general election and the third shall be a woman.

NOTE 1.—The words printed in italics in this section were introduced by Act XI of 1932, which shall remain in force only up to the elections of 1936.

NOTE 2.—Members may be nominated by name or by virtue of office under section 15 of the United Provinces General Clauses Act (1 of 1904).

SECTION 13.—Where a vacancy occurs on a board by reason of the death, resignation, removal or avoidance of the election of an elected member and the term of office of the member would, in the ordinary course of events, have determined within six months of the occurrence of the vacancy, the board may direct that the vacancy be left unfilled until the next ordinary election.

NOTE 1.—The section was introduced in order to avoid unnecessary elections for the purpose of filling short vacancies. For the period within which a casual vacancy among elected members must be filled where no direction has been given by a board under this section, see rule 18 (2) at page 197 of the Municipal Manual (Appendix III). The term of office of a member elected to fill a casual vacancy is determined by section 38 (1).

NOTE 2.—The phrase "ordinary election" is used as a system of quadrennial elections has been introduced (see section 29 A).

ELECTION.

SECTION 14.—(1) A person shall not be deemed an elector for any purpose of this Act or of any rule under this Act, unless he is enrolled as an elector.

Qualification of electors.

NOTE.—Compare section 19 (2) (a).

(2) The following persons shall, if not subject to a disqualification specified in sub-section (3), be entitled to be enrolled as electors, namely—

- (a) every person who in any year is on such date as is fixed by rule in this behalf, assessed directly and on his own account to municipal taxes, other than octroi or toll or any similar tax, the aggregate value whereof at their annual rate is not less than such amount as is fixed by rule in this behalf, and
- (b) every person who, having for a period of not less than twelve months next preceding the aforesaid date resided in the municipality ~~is on the aforesaid date—~~
 - (i) a graduate of any University, or
 - (ii) a payer of income-tax, or
 - (iii) an owner of a house or building in the municipality of a minimum annual value to be fixed by rule in this behalf, or
 - (iv) an occupier of a house or building in the municipality of a minimum annual value to be fixed by rule in this behalf, or
 - (v) in receipt of a minimum annual income to be fixed by rule in this behalf, or
 - (vi) an owner in his own right of land in respect of which land revenue amounting to a minimum sum per annum to be fixed by rule in this behalf is payable, or
 - (vii) an owner in his own right of land free of revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with land revenue payable in respect of other land by such owner, amounts to a minimum sum to be fixed by rule in this behalf, or
 - (viii) a fixed rate tenant, ex-proprietary or occupancy tenant of land in respect of which rent amounting to a minimum sum per annum to be fixed by rule in this behalf is payable, or in the hill patts of the Kumaun division a Khaikar :

Act II of 1919.

Act II of 1919.

Provided that no qualification specified in sub-clause (ii) to (viii) of clause (b) shall apply to any municipality, unless the qualification is made applicable by rule thereto :

Provided further that no qualification in sub-clauses (iii), (iv), (vi), (vii) or (viii) shall be higher than the corresponding qualification prescribed for the electors on the United Provinces Legislative Council Electoral Roll :

Provided lastly that, notwithstanding anything contained in this section, no person shall be entitled to be enrolled in any municipality as an elector for the purposes of the first election held after the commencement of the United Provinces Municipalities (Amendment) Act, 1922, unless he either was entitled to be enrolled as an elector in the municipality immediately before the commencement of the United Provinces Municipalities (Amendment) Act, 1922, or is enrolled in the United Provinces Legislative Council Electoral Rolls.

NOTE 1.—The date fixed for the purpose of (a) and (b) above is the 1st September, see rule 1 at page 191 of the Manual. (Appendix III)

NOTE 2.—Under clause (b) (i) a graduate is given a statutory qualification as an elector. The other qualifications mentioned in this sub-section are not statutory and do not apply to any municipality unless made applicable thereto by a rule. This list of qualifications is, however, exhaustive, i.e. while a rule be made prescribing any of these qualifications for any municipality no rule may be made prescribing any other qualification for any municipality.

(3) A person notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled if he, on the aforesaid date—

- (a) has not attained the age of twenty-one years, or
- (b) is not a British subject, or
- (c) has been adjudged by a competent court to be of unsound mind, or
- (d) is an undischarged insolvent, or
- (e) has been sentenced to imprisonment for a term exceeding one year or to transportation for an offence which is declared by the Local Government to imply such moral turpitude as to unfit him to be an elector or ordered to find security for good behaviour in consequence of proceedings taken under section 109 or 110 of the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or
- (f) is in arrears in the payment of any sum to which section 166 applies:

Provided that a disqualification under clause (e) shall not last for more than five years from the date of release of the disqualified person from imprisonment or of the expiry of such sentence or order ; and it may be removed at any time by an order of the Local Government.

U. P. Act No. XII
of 1929.

SECTION 15.—(1) The elected members of a board shall be persons
Electoral rolls. elected by the electors of that municipality ;

(2) Provided that when a municipality is divided into wards for electoral purposes—

- (a) a separate roll or separate rolls shall be prepared for each ward,
and
- (b) no person shall be entitled to enrolment on more than one ward
roll, and
- (c) a member representing a ward shall be elected by electors on the
roll or rolls of the ward.

(3) Provided also that where any class of the community in any municipality is declared by rule to be entitled to special representation among the elected members of the board,

- (a) a separate electoral roll or separate rolls shall be prepared for
such class, and
- (b) no person belonging to such class shall be entitled to be enrolled
on a roll other than a roll prepared for his class, and
- (c) a member representing such class shall be elected by electors on
the roll or rolls of the class.

SECTION 16.—(1) Subject to the exceptions stated in sub-section (2)
Candidate list. every person enrolled as an elector in the municipal
electoral roll shall be qualified for election.

(2) A person, notwithstanding that he is otherwise qualified, shall not be entitled to stand as a candidate for election if he—

- (a) has been dismissed from Government service and is debarred from
re-employment therein, or
- (b) is debarred from practising as a legal practitioner by order of any
competent authority, or

(c) holds any place of profit in the gift or disposal of the municipal board, or

(d) is disqualified under section 27 or 41, or

(e) is a stipendiary magistrate or police officer or,

(f) is unable to read and write English or at least one of the vernaculars of the province :

Provided that in cases (a) and (b) the disqualification may be removed by an order of the Local Government in this behalf.

SECTION 17.—For the purposes of sections 14, 15 and 16—

Definition of certain terms in sections 14, 15 and 16.	(a) "person" means an individual human being, and
	(b) a person shall be deemed to pay a tax directly, if he pays the tax himself or through a legally appointed agent.

SECTION 18.—The provision of sections 14, 15, 16 and 17 shall be subject

Provision by rule for enrolment of managers, trustees, etc.	to any rule conferring on the manager or representatives of an undivided family or of any company or firm or other association or body of individuals, or on any trustee of any land, a right to vote or to be elected a member of a board.
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NOTE.—See rule 2 at page 191 of the Municipal Manual. (Appendix III)

ELECTION PETITIONS

Power to question municipal election by petition.	SECTION 19.—(1) The election of any person as a member of a board may be questioned on the ground—
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(a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in section 28 ;

(b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes.

(2) The election of any person as a member of a board shall not be questioned—

(a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in, the electoral roll or rolls ;

- (b) on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election.

SECTION 20.—(1) The petition shall be presented within fifteen days after the day on which the election proceedings were held and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.

Form and presentation of petition.

- (2) The petition may be presented by any candidate in whose favour votes have been recorded and who claims in the petition to be declared elected in the room of the person whose election is questioned by ten or more electors of the municipality.

NOTE.—It is to be noted that this sub-section requires that an unsuccessful candidate presenting an election petition must in the petition claim to be elected and that he may not in such petition merely call in question the election of a successful candidate.

- (3) The person whose election is questioned and, where the petition claims that any other candidate shall be declared elected in the room of such person, every unsuccessful candidate who has polled more votes than such candidate shall be made a respondent to the petition.

SECTION 21.—Every respondent may give evidence to prove that any person in respect of whom a claim is made, that such person be declared elected in his room or in priority to him, should not be declared so elected, in the same manner as if he had presented a petition against the election of such person.

Recriminatory proceedings.

SECTION 22.—(1) An election petition shall be heard by the Commissioner of the division within which the municipality concerned is situated, unless some other person or tribunal has been appointed by rule in this behalf, and at a place in the district within which such municipality is situated.

Tribunal.

(2) An election petition, and any application relating to the hearing of an election petition, may be presented to such Commissioner, or to such other person or tribunal or to the Collector of the district within which the municipality concerned is situated.

NOTE.—To prevent the inconvenience caused by an election petition having to be presented to a court which is outside the district in which the municipality is situated provision is made in sub-section (2) that such petition and any connected application may be presented to the Collector of the district, sub-section (1) also introduces a new provision that the place for hearing an election petition must be within the district in which the municipality is situated.

SECTION 23.—(1) Except so far as may be otherwise provided by this Act or by rule, the procedure provided in the Civil Procedure Code in regard to suits, shall, so far as it is not inconsistent with this Act or any rule and so far as it can be made applicable, be followed in the hearing of election petitions :

(2) Provided that—

- (a) two or more persons whose election is called in question may be made respondents to the same petition, any two or more election petitions may be heard together ; but, so far as is consistent with such joint trial or hearing, the petition shall be deemed to be a separate petition against each respondent ;
- (b) the court shall not be required to record or have recorded the evidence in full, but shall make a memorandum of the evidence sufficient in its opinion for the purpose of deciding the case ;
- (c) the court may, at any stage of the proceedings, require the petitioner to give security or further security for the payment of all costs incurred or likely to be incurred by any respondent ;
- (d) the court, for the purpose of deciding any issue, shall only be bound to require the production of, or to receive, so much evidence, oral or documentary, as it considers necessary ;
- (e) during the hearing of the case the court may refer a question of law to the High Court under order XLVI of the first schedule of the Code of Civil Procedure, 1908, but there shall be no appeal either on a question of law or fact, and no application in revision against or in respect of the decision of the court ;
- (f) the court may within one month, but not subsequently, review its decision on any point on the application of any person considering himself aggrieved thereby.

SECTION 24.—(1) Unless it is otherwise provided by rule made in this behalf the election court shall have the same powers and privileges as a judge of civil court, and may, for the purpose of serving any notice or issuing any process or doing any other such thing, employ, with the consent of the District Magistrate, any peon or other officer or clerk attached to the court of the District Magistrate.

Act II of 1919.
Powers of election court.

(2) An order for costs, or any order for realization of a security bond for costs, passed by the election court, may be sent by that court for execution to the Collector of the district within which the municipality concerned is situated, and an order so sent shall be executed by the Collector in the same manner as if it were an order passed by the Collector in proceedings under the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, as the case may be.

SECTION 25.—(1) If the court, after making such enquiry as it deems necessary, finds in respect of any person whose election is called in question by a petition, that his election was valid, it shall dismiss the petition as against such person and may award costs at its discretion.

Finding of election court.

(2) If the court finds that the election of any person was invalid, it shall either—

(a) declare a casual vacancy to have been created or

(b) declare another candidate to have been duly elected whichever course appears, in the particular circumstances of the case, the more appropriate and in either case may award costs at its discretion.

(3) In the event of the court declaring a casual vacancy to have been created, it shall direct the board to take proceedings for filling the vacancy.

Note.—See section 13.

SECTION 26.—(1) Notwithstanding anything contained in the preceding section if the court in the course of hearing an election petition is of the opinion that the evidence discloses that corrupt practices at the election proceedings in question have prevailed to such an extent as to render it

Avoidance of election proceedings

advisable to set aside the whole proceedings, it shall pass a conditional order to this effect and give notice thereof to every candidate declared elected who has not already been made a party in the case calling upon him to show cause why such conditional order should not be made final.

(2) Thereupon every such candidate may appear and show cause, and may have recalled, for the purpose of putting questions to him, any witness who has appeared in the case.

(3) The court shall thereafter either cancel the conditional order or make it absolute, in which case it shall direct the board to take measures for holding fresh election proceedings.

Explanation.— In this clause the expressions “ the election proceedings in question ” and “ the whole proceedings ” shall mean all proceedings (inclusive of nomination and declaration of election) taken in respect of a single poll, whether the poll be for the purpose of selecting one or more persons to represent a ward or otherwise.

SECTION 27.—The court may declare any candidate found to have committed any corrupt practice under the preceding section to be incapable, for any period not exceeding five years, of being elected as a member of the board or of being appointed or retained in any office or place in the gift or disposal of the board.

NOTE.—See section 16 (2) (d).

SECTION 28.—A person shall be deemed to have committed a corrupt practice, who, directly or indirectly, by himself or by any other person—

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate;
- (ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money, or valuable consideration or any place, or employment, or holds out any promise of individual advantage or profit to any person;
- (iii) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote ;

- (iv) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i), (ii) and (iii).

Explanation.—A “promise of individual advantage or profit to a person” includes a promise for the benefit of the person himself, or of any one in whom he is interested, but does not include a promise to vote for or against any particular municipal measure.

Conduct of elections and kindred matters. SECTION 29.—The following matters shall be regulated and governed by rule, namely,—

- (a) with reference to section 14 the minimum amounts, salaries or sums qualifying a person to be an elector;
- (b) the qualifications of candidates for election;
- (c) the preparation and revision of electoral rolls and candidate lists;
- (d) the nomination of candidates;
- (e) the dates, time and manner of holding elections, general or casual;
- (f) the prohibition of corrupt or improper practices committed in connection with the elections and the punishment of persons guilty of the same;
- (g) any other matter relating to elections or election petitions in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of the Local Government, necessary.

NOTE.—Rules under (a) and (b) have been made separately for each board. For model rules under (a) and (b) see pages 399 to 400 of the Municipal Manual (Appendix). For rules under (c) see pages 191 to 212 of the Municipal Manual. (Appendix III).

Act V of 1932.

General election.

29A. In the year 1936 and thereafter in every fourth year there shall be a general election of members of municipal boards.

Provided that in the Naini Tal and Mussoorie municipalities the next general election shall be held in 1933 and thereafter in every fourth year.

NOTE.—The system of triennial elections introduced by resolution No. 1224/XI-372E, dated June 19, 1916, has been changed to quadrennial elections by Act V of 1932.

Section 29A was added by the Municipalities Amendment Act V of 1932. The term of Municipal Boards was extended to four years. Act V of 1932 as originally drafted, sought to extend the term of the board to five years, but this did not find favour with the Legislative Council. The word 1936, however, was inadvertently retained in the Act. By Act of 1935, the mistake was corrected and the year 1935 has been substituted for the year 1936.

APPENDIX III

Municipal Election Rules.

QUALIFYING DATE FOR ELECTORS.

Notification No. 1747/
XI-976-E, dated June 28,
1928, as subsequently
amended.

1. For the purpose of sub-sections (2) and (3) of section 14 of the Act the date fixed is September 1 for all municipalities except the municipalities of Mussoorie and Naini Tal.

Representation of joint Hindu families and, in case of Cawnpore, of registered companies

2. (1) When property is held or payments are made jointly by the members of a Hindu joint family, and in the case of Cawnpore by a company registered under the Companies Act, the family or company shall be adopted as the unit for deciding whether a qualification exists as set forth in section 14 of the Act, other than a qualification set forth in sub-clause (1) or sub-clause (iv) of clause (b) of section 14 (2) of the Act; and if the qualification does exist the person qualified shall, in the case of a Hindu joint family, be the member nominated in that behalf by the majority of the family, or if no member is thus nominated the manager of the family, or in the case of a company the person duly authorised by the company in this behalf by a power-of-attorney.

(2) Where, in the case of Mussoorie Municipality a company registered under the Indian Companies Act for the time being in force, or a firm registered under the Indian Partnership Act, 1932, or a society governing an educational institution, situate within the municipality and incorporated in any foreign country under the law for the time being in force, or registered under the law for the time being in force in British India for the registration of societies, is possessed of the qualification set forth in section 14 (2) (a) or section 14 (2) (b) (iii) or (iv), the person qualified under the aforesaid section shall be the person duly authorised by the said company, firm or society in this behalf by a power-of-attorney.

(3) The nomination of a representative under this rule shall be made by notice in writing to the returning officer in the same way as a claim or objection under these rules.

(4) A person may be qualified in his personal capacity or in his capacity of representative of a joint family, company, firm or society but not in both capacities.

Registration of electors and candidates for elections.

With reference to section 29, clause (c).

3. (1) On or before the first day of September (or in the case of the municipalities of Mussoorie and Naini Tal the tenth day of July) next preceding the ordinary election the District Magistrate shall appoint a person, hereinafter called the returning officer, to perform all or any of the duties of the returning officer under these rules. The returning officer shall be appointed by name or by office and public notice of the appointment shall be made at the municipal office.

(2) The returning officer so appointed or the officer appointed in his place under rule 11 (2) shall retain his powers for the purpose of conducting elections to fill casual vacancies on the board until a fresh returning officer is appointed for the next general election.

4. (1) On or before each first day of September (or in the case of the Municipalities of Mussoorie and Naini Tal, each tenth day of July) preceding an ordinary election of the members of the board the returning officer shall cause to be prepared in the form shown in schedule I an electoral roll or electoral rolls containing the names of persons entitled to be enrolled as electors.

(2) The electoral roll or rolls shall be alphabetically arranged and the names therein shall be serially numbered.

5. (1) (i) A person claiming to be enrolled under section 14 (2) (b) (i) as a graduate of the university may apply in writing to the returning officer for the entry of his name, and shall furnish proof of his qualification if so required.

(ii) In every municipality the executive officer or secretary shall compile from the assessment registers (if any) maintained in the municipal office a list of persons (if any) entitled to be enrolled by reason of their assessment to municipal taxes of a certain amount, and shall note against the name of any defaulter the arrears due from him at the time of the preparation of the list.

(iii) A person claiming to be enrolled under section 14 (2) (b) (ii) may apply in writing to the returning officer for the entry of his name, and shall attach to his application a certificate from an income-tax officer.

NOTE.—Persons assessed to income-tax can obtain certificates of payment from an income-tax officer free of charge.

(iv) For the purpose of determining any claim to a qualification under section 14 (2) (b) (iv) to (viii) the entries in the land revenue records of the Fasli year preceding the elections shall be conclusive evidence of the facts stated therein.

(v) In municipalities where all residents who own or who occupy a house or building of a certain annual value are entitled to be enrolled, the list of persons so entitled shall, if there is a tax assessed on the annual value of buildings, be compiled under the direction of the executive officer or secretary from the assessment registers of such tax. Where there is no such tax a list approved by the board of the houses and buildings of which the valuation is not less than the prescribed minimum shall be maintained in the municipal office and shall be corrected by the board from time to time in view of such information as may come to its notice either in the form of application for sanction to the erection of buildings or otherwise. On the thirty-first day of July preceding an ordinary election the board shall publish this list at the municipal office for information and objections. The board shall prepare for the information of the returning officer a list of the objections received, and shall show on this list in which cases the list has been corrected in accordance with the objections and in which cases the objections have been rejected.

(2) Where any list has been prepared from a register maintained in the municipal office each entry shall contain a reference to the item in the register on which it is based and the registers shall be furnished to the returning officer who shall cause them to be compared with the list delivered to him under the succeeding rule.

6. On or before such date as the District Magistrate may appoint the lists referred to in rule 5 shall be furnished to the returning officer, who shall cause to be compiled therefrom the electoral roll or rolls in accordance with the provisions of the Act and of the next following rule. Reasons shall be recorded in cases where any electoral roll differs from the lists.

7. (1) A person shall not be enrolled more than once in any electoral roll, notwithstanding that he may possess more than one of the qualifications prescribed by or under the Act.

(2) A person shall not be enrolled on an electoral roll of a ward unless he either resides or is assessed to a property tax therein, or where there is no property tax, is the owner of a house or building of which the valuation is not less than the prescribed minimum.

(3) A person residing within the municipality who is entitled to enrolment in more than one ward shall be enrolled on the electoral roll of the ward within which he resides, unless he applies in writing to the returning officer on or before the fifteenth day of September for the entry of his name in any of the other wards in which he is entitled to be enrolled, in which case his name shall be entered in that ward.

(4) A person not residing within the municipality who is entitled to enrolment by reason of assessment, in more than one ward, to a qualifying property tax shall be enrolled on the roll of the ward within which his assessment is highest, unless he applies, in writing to the returning officer on or before the fifteenth day of September for the entry of his name in any of the other wards in which he is entitled to be enrolled, in which case his name shall be entered in that ward.

8. It shall not be necessary to prepare new lists and electoral rolls before every ordinary election, but the lists and electoral rolls for the time being in force may, where that is more convenient, be revised and adopted with such alterations as may, in particular cases, be necessary.

9. (1) The returning officer shall cause copies of the electoral roll or rolls in Urdu and Nagri prepared under the preceding rules to be fixed up at the municipal office and in such other places as he may deem necessary and to be kept so fixed up during the last seven days of September and the first three days of October (or in the case of the municipalities of Mussoorie and Naini Tal from the tenth to the twenty-fifth day of July); if the municipality is divided into wards, in addition to the copies fixed up as above, a copy of the electoral roll for each ward shall also be fixed up in the manner above described in some conspicuous place or places in the ward concerned; in municipalities to be specified by the Government there shall also in like manner be fixed up copies in English of the electoral roll or rolls either of

the whole municipality or of certain wards thereof as may in each case be specified by the Government.

To each electoral roll shall be appended :—

- (i) a list showing all names added to the previous roll ;
- (ii) a list showing all names struck off from the previous roll.

(2) Proclamation shall also be made by notices posted throughout the municipality and by beat of drum in the wards (if any) that the electoral roll or rolls have been prepared and that copies of them can be inspected and extracts may be taken of any part of them either at the municipal office or in other specified places.

(3) The cost of preparing such number of copies of the roll as the District Magistrate may direct to be prepared shall be borne by the board.

10. (1) Any person whose name is not entered in the electoral roll or rolls and who claims to have it inserted therein, or any person whose name is on the roll and who objects to the inclusion of the name of any person in the electoral roll may, on or before the third day of October (or in the case of the municipalities of Mussoorie and Naini Tal the twenty-fifth day of July), give notice in writing of his claim or objection to the returning officer (the notice to contain a statement of the qualifications on which the claim is based or of the reasons for which the objection is made). The returning officer shall cause the claims or objections to be published by fixing up a list of the claimants and of the persons objected to in the ward in respect of which the claims or objections are made, or if there be no wards, in conspicuous places throughout the municipality, and at the municipal office, and by keeping the list so fixed up from the tenth to the fifteenth day of October (or in the case of the municipalities of Mussoorie and Naini Tal from the twenty-seventh to the thirty-first day of July).

(2) Each person making a claim must do so on a separate petition, which shall be presented in duplicate either by the claimant in person or by an agent duly authorised by a power-of-attorney.

A separate petition, in duplicate, must be presented by an objector in respect of each person to the inclusion of whose name in the electoral roll he takes objection.

NOTE.—Under the provisions of the Indian Stamp Act the power-of-attorney has to be stamped with a one rupee stamp and a separate stamped instrument is required of each claimant, even though several claimants, appoint the same person as their agent.

11. (1) The claims and objections shall be heard and the orders made thereon shall be pronounced in open sitting at such place and time on some or one of the last fifteen days of October (or in the case of the municipalities of Mussoorie and Naini Tal between the first and the seventh day of August) as the returning officer may appoint in this behalf by the revising committee consisting of the returning officer and two members of the board appointed by a resolution of the board. The returning officer shall notify the date on which and the time and place at which the claims and objections will be heard three clear days before the holding of the sitting by notice given to each person lodging a claim or preferring an objection or to whom objection has been made and published in the places prescribed by rule 9 for the publication of the electoral roll.

(2) If the returning officer refuses to act or becomes incapable of acting, the District Magistrate shall appoint another person in his place. If one or both of the members of the board appointed to the committee refuses to act or becomes incapable of acting, the chairman of municipal board may, if he deems necessary, fill up the vacancy or vacancies.

12. If at any time before the close of the last day fixed for the disposal of claims and objections the returning officer sees reason to believe that there are any omissions from an electoral roll other than those in respect of which claims have been made, or that there are any entries in an electoral roll, other than those in respect of which objections have been made, which should be removed or corrected, he may, after causing such notice as he considers reasonable to be given to the persons affected, and after making such inquiry as he deems necessary, order that such omissions or entries be supplied or removed or corrected.

13. The proceedings of the revising committee in respect of each claim or objection of which notice has been given and of the returning officer in respect of each omission or irregular entry of which he has taken cognizance shall be reduced to writing and shall within seven days after the last sitting of the revising committee be submitted to the District Magistrate, whose orders thereon shall be final. A brief memorandum of the evidence produced in support of the claims and objections shall also be attached to the proceedings of the revising committee and of the returning officer.

14. (1) Subject to any orders of the District Magistrate on the proceedings of the revising committee or returning officer and to any correction in any electoral roll enjoined by the District Magistrate of his own motion or on application being made to him at any time within fifteen days after the last sitting of the revising committee but always before the tenth day of November

(a) the orders made by the revising committee or by the returning officer shall be final ;

(b) the electoral roll shall be amended in accordance with those orders ;
and

(c) the electoral roll so amended shall not be altered so long as it continues in operation :

Provided that the District Magistrate may, while an electoral roll is in operation, order the removal therefrom of the name of any person who is dead or who has become disqualified under section 14 (3) of the Act, or the correction of any clerical mistake.

He may also direct the entry in the electoral roll of the name of the heir of a deceased person whose name he has ordered to be removed from the roll, provided that such heir is otherwise qualified to be an elector.

(2) Every correction enjoined by the District Magistrate shall be made in the electoral roll under the signature of the returning officer and shall be notified to the persons affected.

15. The electoral rolls shall be completed by the seventh day of November (or in the case of the municipalities of Mussoorie and Naini Tal by the fourteenth day of August), and shall come into operation on the tenth day of November (or in the case of the municipalities of Mussoorie and Naini Tal on the twenty-fifth day of August) and subject to correction as provided by rule 14, shall continue in operation until the tenth day of November (or the twenty-fifth day of August in the case of the municipalities of Mussoorie and Naini Tal) preceding the next ordinary election for the ward, class or municipality.

16. The electoral roll or rolls made and revised under rules 1 to 15 shall, on or before the day on which that roll or those rolls come into operation, be fixed up at the municipal office, and be kept fixed up there so long as

the roll or rolls continue in operation. Copies shall also be made available for purchase by residents of the municipality at a reasonable price to be fixed by the chairman of the board.

17. If the electoral roll is not completed in due time, the electoral roll in operation before the time appointed for the completion shall continue in operation until the new electoral roll is completed.

Time and Place of Election.

With reference to section 29, clause (e).

18. (1) The time of the ordinary election shall be such day between the first and the tenth of December (or in the case of the municipalities of Mussoorie and Naini Tal between the twenty-fifth and the thirtieth day of September) as the board at a meeting in October or November (or in the case of the municipalities of Mussoorie and Naini Tal at a meeting in August) may in consultation with the District Magistrate determine. The board shall immediately forward a copy of their resolution to the returning officer.

(2) Where a vacancy occurs on a board by reason of

- (a) the death, resignation, removal or avoidance of the election of an elected member, or
- (b) any increase in the number of elected members on a board effected under section 9 or 10 of the Act, or
- (c) any termination of office of an elected member effected under section 38 (4) of the Act,

the vacancy, shall, unless in case (a) a board has under section 13 of the Act directed that it be left unfilled until the next ordinary election, be filled by means of another election to be held on a date to be fixed by resolution of the board. The date so fixed shall be a date within one month of the occurrence of the vacancy, or in the case of vacancy which occurs between the thirtieth day of September and first day of April in Mussoorie or Naini Tal, before the first May next following :

Provided that if from any cause the election be not held on the date fixed, the board shall fix another date for the election.

19. The hours during which, and the place where, if there be a poll, the votes of the electors will be taken, shall be determined by the board at the said meeting.

20. Fifteen days at least before the day for the election the executive officer or secretary shall prepare and sign a notice thereof, and of—

(a) the number of persons to be elected to represent each ward or class ;

(b) the time and date of the nomination of candidates, and

(c) the hours during which, and the place where, if there be a poll, the votes of the electors of each ward or class will be taken ;

and shall publish the notice in the same manner as is prescribed by rule 9 for the publication of the electoral roll.

Nomination of Candidates.

With reference to Section 29 (d).

21. Every candidate for election as a member of the board shall be nominated in writing.

22. The writing (hereinafter called the nomination paper) shall be subscribed by a proposer and seconder, each of whom shall affix his signature thereto if he is literate or his thumb-impression if he is not.

23. An elector who desires to be nominated as a candidate shall, on or before November 15,—

(a) deliver or cause to be delivered to the returning officer a written application for a nomination paper, and shall in the application indicate in which constituency, and if there are wards in which ward, he seeks election ; and

(b) shall deliver or cause to be deposited with the returning officer the sum of Rs. 50 in cash or in Government promissory notes of equal value at the market rate of the date.

24. No person shall be nominated whose name is not entered in the electoral roll.

25. The nomination paper shall be in the form shown in schedule II.

26. The returning officer shall fix a date for the nomination of candidates which shall be not less than twelve days before the time fixed for a poll, if any. On that date the proposer and seconder of an elector who has applied for a nomination paper before the returning officer at such time and place as the latter may appoint. The proposer shall bring with him either the candidate in person or a written declaration signed by the candidate stating that he assents to be nominated.

27. (1) The returning officer shall, in the presence of the proposers and seconders and of such candidates as attend, proceed to pass order on the applications received under rule 23. If after such summary inquiry and after taking such evidence as he may think necessary as to the identity of the proposer and seconder, and as to the identity of candidate if he attends, or as to the authenticity of his declaration if he does not attend, the returning officer is satisfied that the name of the candidate is entered in the electoral roll, that he assents to be nominated and that his proposer and seconder are entered in the roll of the ward and class in which the candidate is to be nominated, and if the deposit prescribed under rule 23 has been made, he shall fill up the entries in the nomination paper and shall obtain thereto the signatures or thumb-impressions of the proposer and seconder and also of the candidate if he attends. He shall thereupon declare the elector to be duly nominated as a candidate for the constituency.

(2) If the returning officer is not satisfied as to the identity of the proposer or of the seconder or of the candidate or as to the authenticity of the candidate's declaration, or if the candidate is absent and no declaration on his part is presented or if the name of the candidate is not entered in the electoral roll or if the proposer or the seconder is not entered in the electoral roll of the ward and class in which the candidate is to be nominated or if no deposit has been or is made under rule 23 the returning officer shall refuse to prepare the nomination paper and shall briefly record his reasons on the application received under rule 23. He shall then return the deposit, if any, to the person by whom it was made.

Provided that, if the elector or his proposer and seconder so demands, the returning officer shall before finally refusing to prepare the nomination paper adjourn the proceedings to the next day or to the next day but one to enable the elector or his proposer and seconder to rebut the objection raised

against the nomination. On the date so fixed, the returning officer shall finally record his decision.

(3) The returning officer shall attach the written declaration (if any) of assent to nomination to the nomination paper, if a nomination paper is prepared, or to the application for a nomination paper if no nomination paper is prepared.

28. (1) As soon as may be after a nomination paper has been prepared the returning officer shall send notice of the nomination to the person nominated and inscribe such person's name in a list of nomination which shall be fixed at the place prescribed by rule 9 for the publication of the electoral roll.

(2) The list of nomination shall be in the form shown in schedule III.

29. On an application being made to him or on his own motion the District Magistrate may at any time within three days after the order has been passed *revise an order passed by the returning officer under rule 27.*

30. Five days before the day for the election the returning officer shall prepare, for each ward or class if any, and otherwise for the whole municipality, a schedule, alphabetically arranged, of the candidates, for election whose nomination is valid and who have not withdrawn from their candidature. The schedule shall be in the form prescribed by rule 28, except that there shall be a heading describing the ward or class, if any.

31. The schedule shall be posted at the place prescribed by rule 9 for the publication of the electoral roll.

32. If a candidate who has been nominated dies before the date appointed for taking of a poll the deposit made under rule 23 shall be returned to the person by whom it was made *or to his legal representative.*

33. (1) A candidate may withdraw his candidature by notice in writing delivered to the returning officer. If the withdrawal is made within seven days from the date of nomination the deposit made under rule 23 shall be returned to the person by whom it was made. If the withdrawal is made after the expiry of seven days from the date of nomination, the deposit paid shall be forfeited to the board.

(2) A candidate who has withdrawn his candidature shall not be allowed to cancel his withdrawal or to be re-nominated as a candidate for the same election.

34. If a candidate is not elected and the number of votes polled by him does not exceed that fraction of the total number of votes polled which is obtained by dividing the fraction of $\frac{1}{8}$ th by the number of seats for which the election is being held, the deposit shall be forfeited to the board. For the purpose of this rule the number of ballot papers shall be deemed to be the number of ballot papers other than spoiled ballot papers and tendered ballot papers.

35. A deposit which has not been returned to the candidate or forfeited under the preceding rules shall be returned to the person by whom it was made as soon as may be after the publication of the result of the election in the Gazette.

36. (1) If the number of candidates who are entered in the schedule and who have not withdrawn their candidature before time fixed for the poll exceeds the number of the vacancies a poll shall be taken on the day for the election in the manner hereinafter provided.

(2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be elected.

(3) If the number of such candidates is less than the number of vacancies all such candidates shall be declared to be elected and the board shall call for fresh nominations for the remaining vacancies to be made upon a fixed date and may also, if necessary, fix a fresh date for the poll, if any, in accordance so far as possible with rules 18 and 19.

(4) If during the poll a candidate withdraws his candidature and the number of candidates who have not withdrawn their candidature is not greater than the number of vacancies, the poll shall be stopped and the candidates who have not withdrawn their candidature shall be declared to be elected.

Of the manner of taking votes.

With reference to section 29, clause (e)

37. The board shall provide one or more suitable buildings or booths (hereinafter termed the polling station) for each area in which a poll will take place.

38. The District Magistrate shall appoint as many polling officers and polling clerks as may be required for the recording of votes under these

rules and shall from among the polling officers appoint one officer as presiding officer to preside over the election at each polling station.

If before or at the time of the election any polling officer refuses to act or becomes incapable of acting as such, the District Magistrate shall appoint another fit person to act in his stead.

39. Every polling officer shall be supplied with a copy of the electoral roll, and with a copy of the schedule of valid nominations of candidates for elections referred to in rule 30.

40. Each presiding officer shall keep order at his station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the persons nominated to assist the presiding officer, the clerks, the candidates, and the constables on duty and such other persons as the presiding officer may from time to time admit for the purpose of identifying electors; provided that a candidate may appoint by written authority an agent or agents to appear in his stead at each polling station.

41. Votes must be given in person at the polling station and no votes will be received by proxy.

42. Votes shall be given by ballot, and the ballot of each voter shall consist of a paper (hereinafter called ballot paper) in the form shown in schedule IV. The list of candidates in this form shall be printed in the same order as in the schedule prescribed by rule 30.

43. (1) At any time before a ballot paper is delivered to an elector the polling officer or his assistant or any clerk appointed to check the voter by reference to the electoral roll may of his own accord, and shall, if so required by a candidate or his agent, put to the elector either or both of the following questions .—

(a) Does the following entry refer to you ? (Reading the whole of the entry from the roll).

(b) Have you already voted at the present election in this or any other ward ?

(2) The elector shall duly answer the questions and shall not be supplied with a ballot paper if he refuses to answer one of the questions nor if he

answers the first question in the negative, and the second question in the affirmative.

(3) The name of every person presenting himself to vote and his number on the electoral roll shall be entered in a list maintained in the form shown in schedule V and the voter shall thereafter, if he is literate, sign his name in the column provided for that purpose in the said list, or if he is illiterate affix his thumb-impression thereto. Any thumb-impression so made shall be attested by any candidate or his agent who may be able to recognize the voter or by any other person who may be admitted by the presiding officer for the purpose of identifying electors. The list shall be maintained in separate sheets, which shall be consecutively numbered; but it is not essential that only one such sheet shall be in use at the same time.

(4) The voter shall then present the list mentioned in the preceding clause to the polling officer, who after satisfying himself that the list has been duly signed or impressed and attested shall state the number of votes which may be given, and the conditions, if any, attaching thereto and shall give to the voter the outerfoil of a ballot paper bearing on each side an official mark at the same time noting on the corresponding counterfoil the number of the voter in the electoral roll and making a mark against the entry of the voter's name in the electoral roll to denote that the elector has received a ballot paper; this entry shall not indicate which ballot paper he has received.

44. (1) The voter, on receiving the ballot paper shall unless he elects to proceed under sub-rule (3), forthwith proceed to the place set apart for the purpose and there mark a cross against the name of every candidate for whom he intends to vote; he shall then fold the ballot paper so as to conceal his vote and shall put his ballot paper so folded up into a box (hereinafter called the ballot box).

(2) If the elector before placing the ballot paper in the ballot box inadvertently marks the paper or otherwise deals with it, so that it cannot be used as a valid ballot paper, he may return it to the polling officer, who, if he is satisfied that the ballot paper was inadvertently spoilt, may give the elector another ballot paper and shall mark the spoilt ballot paper and its counterfoil as cancelled.

(3) If the voter is illiterate or by reason of infirmity is unable to vote in the manner prescribed under sub-rule (1) or desires that the polling officer

appoint to assist him in the counting of votes, and the candidates and one agent of each candidate authorized by him in writing in this behalf. No person shall be appointed to assist in counting the votes who has been employed by or on behalf of any candidate for any purpose connected with the election.

(e) On the day, and at the time appointed the returning officer shall—

- (1) open the ballot boxes of each constituency one after the other, take out the voting papers, and separate those which he deems to be valid from those which he rejects under rule 45.
- (2) endorse on the rejected voting papers the grounds of rejection,
- (3) count or cause to be counted the valid votes given to each candidate.

If the counting of votes be not completed by 6 p.m. on the date appointed, the returning officer may adjourn the proceedings until the following day at 10 a.m. and in such case shall place all the documents relating to the election under his own seal and the seals of the candidates or their agents if any are present and desire to affix their seals, and shall otherwise take proper precaution for the security of the documents. The returning officer may in like manner adjourn the proceedings from day to day until the counting of the votes has been completed.

(f) The returning officer shall not open the sealed packets of the tendered voting papers or the marked copies of the electoral roll or the counterfoils of the voting paper. He shall verify the statement submitted by the presiding officers under clause (b) by comparing it with the numbers of counted votes and rejected voting papers, the unused or spoilt voting papers, in his possession and the tendered votes list. He shall then re-close and re-seal each packet which has been opened by him and shall record on each packet a description of its contents, the name of the constituency and the date of the election to which it refers.

(g) The returning officer shall then prepare and certify a return setting forth—

- (1) the result of the verification under the preceding rule,
- (2) the names of the candidates for whom valid votes were given,

- (3) the number of valid votes given for each candidate,
- (4) the name of the candidate elected,
- (5) the number of votes rejected, and
- (6) the number of tendered votes given,

and shall permit any candidate or his representative to take a copy or abstract from the return.

48. Upon completion of the counting the returning officer shall seal up in separate packets the counterfoils of ballot papers, the tendered ballot papers, the ballot papers which he has admitted as valid and those which he has rejected as invalid, the list prescribed by rule 43, "the tendered votes list" prescribed by rule 46 and record on each packet a description of its contents and the date of the election to which it relates. He shall forward the return prepared under clause (g) of rule 47 and all the packets relating to the election to the District Magistrate.

49. (1) The District Magistrate shall retain for a year the packets and return forwarded to him by the returning officer under rule 48, and shall then, unless there appear to him to be reason for retaining them for a further period, cause them to be destroyed.

(2) While in the custody of the District Magistrate the packets of ballot papers (whether counted, rejected or tendered) and of the counterfoils thereof shall not be opened, and their contents shall not be inspected or produced except under the order of the Election Court having jurisdiction in respect of the election concerned to be granted only by it on its being satisfied by affidavit or otherwise that the inspection or production of the ballot papers or counterfoils is necessary for the purpose of a petition questioning an election or return, or for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers and any such order may be made subject to such condition as to persons, time, place, and mode of opening, inspection or production as the Court may think expedient.

(3) All other documents in such custody shall be open to public inspection at such time and under such conditions and on payment of such fees subject to such regulations as may be prescribed in this behalf by the District Magistrate.

50. Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected the determination of the person to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the District Magistrate and in such manner as he may determine.

51. No person shall obstruct, or in any way interfere with, the examination and counting of votes by the returning officer.

52. No person who is entrusted with any duties in connection with a municipal election shall divulge, or wilfully allow to be divulged, any information as to the candidate for whom any vote is given in any particular ballot paper.

53. No person shall deface, injure, disturb or remove any copy, notice or other document fixed up under these rules at the municipal office or elsewhere.

54. A servant of the board shall not by canvassing or otherwise interfere or in any way use his influence in an election but may vote in an election if qualified to do so, in which case he shall, so far as possible, avoid giving any indication of the candidate for whom his vote is to be cast.

55. (1) In case of more than one vacancy being filled by a poll held at the same election the member elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the member elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and the member elected by the largest number of votes shall be deemed to be elected in the place of him who would regularly have last gone out of office, and so forth.

(2) Any question other than one for which provision is made in clause (1), arising in connection with the allotment of casual vacancies to persons elected as members at the same election, shall be determined by the board by resolution.

56. If no election petition is presented within the time prescribed under section 20 of the Municipalities Act of 1916, the Commissioner may of his own motion set aside the election of any person as a member of a municipal board who is proved to have been disqualified under section 16(2) of the Act.

Provided that the Commissioner before making any order under this rule shall afford such person an opportunity of making any statement which he may desire to make.

Provided further that any person whose election has been set aside by an order of the Commissioner under this rule shall have the right of appealing to the Local Government within one month from the date of the order.

57. The District Magistrate shall preserve a complete copy of the electoral roll of each constituency, the lists of claims and objections and all papers and files relating thereto. Such papers shall be open to inspection on such conditions and certified copies may be given on payment of such fees as have been prescribed by Government under the rules for the election of members to the United Provinces Legislative Council. The District Magistrate shall keep all such papers until a fresh electoral roll has been prepared.

58. The District Magistrate shall keep the nomination papers of candidates, withdrawals of candidature and all other papers relating to nomination, for a period of three years and shall then destroy them. These papers shall not be open to inspection by nor shall copies be given to any person other than a person entitled to be present on the day when the nominations were declared.

59. Notwithstanding anything in these rules, in case of an irregularity in the conduct of an election under these rules or in the preparation of the electoral roll, the Local Government may make such order, consistent with the United Provinces Municipalities Act, 1916, as may appear to it to be just and proper.

Under section 299, sub-section (1).

60. In exercise of the powers conferred by section 299, sub-section (1), the Local Government hereby direct every person who—

- (1) makes or alters any roll, list or other document in contravention of these rules; or
- (2) wilfully makes a false answer to a question put to him under rule 43 of these rules; or

- (3) disobeys any order given by the presiding officer under rule 40 or obstructs or in any way interferes with the examination and counting of votes by a returning officer ; or
- (4) being entrusted with any duties in connection with a municipal election, without due authority divulges, or wilfully allows to be divulged, any information as to the candidate for whom any vote is given in any particular ballot paper ; or
- (5) defaces, injures, disturbs or removes any copy, notice or other document fixed up under the rules at the municipal office or elsewhere ; or
- (6) being required by these rules to do any act or take any proceeding, neglects, or refuses to do or take it ; or
- (7) being a servant of the board commits a breach of rule 54 ; or
- (8) attests the thumb-impression of an elector if he is not able to identify the elector,

shall be punishable with fine which may extend to Rs. 500.

SCHEDULE I (of Municipal Manual)

Electoral roll of the.....ward/class for the.....Municipality.

Serial Number.	Name of Elector.	Name of Father.	Caste or Religion.	Occupation.	Address.		Nature of qualification.
					Mohalla or Bazar.	Number of House or Building.	
							(a) (b) (i) (b) (ii) (b) (iii) etc.

SCHEDULE II (of Municipal Manual)
FORM OF NOMINATION PAPER.

Municipality of.....

Election of $\frac{\text{a member}}{\text{members}}$ (for the ward.....class.....) to be held on the.....day of.....19 ..

We the undersigned, being electors enrolled in the electoral roll (for the.....ward.....class) hereby nominate:....., son of....., occupation....., residing in....., whose name is entered in the electoral roll at number.....in ward.....class, as a candidate at the above election.

Serial number.	Description	Name.	Father's name.	Occupation.	Address.	Number of electoral roll.	Ward	Class	Signature or thumb-impression.
1	2	3	4	5	6	7	8	9	10
1	Proposer								
2	Secunder								

.....Signature or thumb-impression of candidate (if present) in token of having assented to nomination.

.....Signature of nomination officer.

Dated.....

SCHEDULE III (of Municipal Manual)

FORM FOR LIST OF NOMINATIONS.

Municipality of.....List of persons nominated for.....election as
members of the.....municipal board,.....19 .

Name.	Number of the candidate on the electoral roll.	Description.	Abode.	Occupation.	<u>Ward</u> <u>Class</u> , if any, for which nominated.
1	2	3	4	5	6

The results of the election of members of boards shall be reported to the Commissioner and the District Magistrate in the form annexed :

District.	Municipality.	Name of ward if the municipality is divided.	Name of class if provision is made for special representation of classes.	Name of nominating body if any. Names of out going members.	Names of newly elected members.	Remarks.

Method of nomination by a nominating body.

(1) When a chamber of commerce, railway company, or other association or institution, whether incorporated or not, is constituted a nominating body under section 9 (2) of the Act its power of nomination shall be exercised through the person or persons in whom is vested for the time being, the current administration of the ordinary local affairs of the association or institution.

Notification No. 2792/
XI-6H., dated August 16,
1916.

(2) When two or more such institutions or associations are together constituted a nominating body each of these shall select one person in the manner prescribed above and of the persons so selected the person selected by the majority or, in default of any one being so selected, the person further selected by lots shall be deemed nominated by the nominating body.

(3) A member nominated by a nominating body shall not attend a meeting of the board or assume any other function of a member until the expiration of three days from such date as his name shall have been reported both to the chairman of the board and to the District Magistrate.

**Election or nomination of Judicial officers as members,
etc., of boards.**

If any judge of a court of small causes, subordinate judge or Munsif be elected or nominated a member, or vice-chairman of a municipal board, he shall before accepting the office to which he has been elected or nominated apply through the District Judge to the High Court for permission to accept such office.

High Court circular No.
1, dated February 3,
1883 (rule 494 of the
High Court Rules for
Civil Courts, 1894).

**Maintenance of registers of members of the board by the
District Magistrate and the Commissioner.**

The District Magistrate and the Commissioner shall each maintain in his office a permanent register, kept corrected up to date, showing the name of each member of each board in the district or division, and the date on which he will retire. All reports of elections shall be checked with the entries in these registers.

G. O. No. 2308/XI-4H.,
dated August 22,
1916.

Notifications under the order of the Commissioner or District Magistrate.

1. Every election of a member or chairman of a board, every nomination of member by a nominating body, and every vacancy in the office of an elected member or chairman by reason of the death or expiration of the period of office of such member or chairman shall be notified directly under the orders of the District Magistrate without further reference to the Government.

2. (1) Each Commissioner shall, without further reference to the Government, notify all vacancies caused—

(a) by resignations accepted by him under sections 39 and 47 of the Act ;

(b) by an order of removal passed by him under sub-section (1) of section 40 of the Act, one month after such order has been passed, or if an appeal has been lodged against such order after the decision of the appeal ;

(c) by a declaration issued by him under clause (a), sub-section (2) of section 25 ; or

(d) by the operation of section 13 of the Indian Elections Offences and Inquiries Act, 1920 (Act XXXIX of 1920)."

(2) Each Commissioner shall in the same manner notify the election of members declared by him to have been duly elected under clause (b) of sub-section (2) of section 25.

3. The notifications prescribed under the two preceding paragraphs shall be in the forms below*. For facility of reference they shall bear numbers to be added in the office of the District Magistrate or Commissioner.

4. The notification shall be forwarded direct by the Commissioner or the District Magistrate to the Superintendent, Printing and Stationery, United Provinces, Allahabad, for publication in the Gazette.

*Not printed. The forms are registered and available at the Government Central Press.

APPENDIX IV.
Model Petitions and Forms.
Candidate's Petition.

In the Court of the Commissioner,.....Division

Municipal Election Petition No.....of.....

A, son of..... caste....., resident
of..... ... Petitioner.

versus

B (and all other candidates who polled more
votes than the petitioner), son of.....,
caste....., resident or residents of (join
all persons who polled more votes than
the petitioner) ... Respondent or Respondents.

(Section 20 of the Municipalities' Act 2 of 1916.)

The humble petition of A, son of....., a candidate for election to
Municipal Board of.....ward or class,

Most respectfully sheweth:—

1. That your humble petitioner was a candidate for election to ward
or class..... of Municipality of....., and the respondent (or respon-
dents) was (or were) candidate (candidates) at the said election.

2. That the poll was held on.....when.....votes were cast in favour of
the petitioner and.....votes in favour of the respondent (or each of the res-
pondents, when there are more than one).

3. That your petitioner states that the election of the respondent (or
respondents) was bad for the following grounds:—

(Here state briefly the charges or corrupt practices or irregularities or
any other causes that vitiated the election; the charges should be specific,
not mere vague allegations and repetitions of names of corrupt practices
(I.E.P. Vol. 2, page 123).

Voters' petition when no claim for the seat is made.

In the Court of the Commissioner,.....Division.

A, and at least 9 others (see the previous form) ... Petitioners,

versus

B, and any other candidate whose election is
called in question Respondent (or Res-
pondents)."

Section 20 of Municipalities' Act 2 of 1916.

The humble petition of.....registered electors of.....
municipality, ...

(give numbers in the electoral roll with class, etc.)

Most respectfully sheweth :—

1. That your petitioners are registered voters of municipality, and their names are registered at numbers given against their names above.
2. That the election for membership for the above municipality (state ward or class also) was held on.....when the respondent (or respondents) was (or were) candidates in whose favour votes were cast, as follows :—
3. That the election of the respondent (or respondents) was void and liable to be set aside on the following grounds :—

(Here state the grounds)

Wherefore your petitioners pray that the election of the respondent (or respondents) be declared void and the seat declared vacant.

(Signed)

Summary of circumstances.

(Signed)

FORM OF RECRIMINATORY CHARGES UNDER SECTION 21.

Title as in a petition.

I (here give the name and description of the respondent intending to prove recriminatory charges), the above-named respondent, hereby give notice that I intend to give evidence to prove that the election of the

above-named Mr.....petitioner (or respondent, if the claim is by ten or more registered voters of the municipality) would be void, on the following grounds :—

(Here state briefly the grounds on which the election of the person by whom or on whose behalf the claim for the seat is made, is sought to be shown to have been liable to be declared void with a summary of circumstances as above.)

Wherefore, I have this day filed this list of objection together with a summary of circumstances justifying the declaration that the election of Mr.....would have been void, if he had been declared elected.

(Signed)

FORM OF APPOINTMENT OF AN AGENT.

Election to (ward or class) of.....Municipal Board.
Election of.....

I,.....being the candidate for (ward or class, etc.) of.....municipality do hereby appoint Mr..... as my agent for (Here state the purpose, e.g., polling or counting etc.)

Signed (Candidate)

Date.....

SOME RULES OF PRUDENCE FOR A CANDIDATE.

1. Choose your agents carefully. Select persons who are well acquainted with rules and regulations, if possible furnish them with copies of rules.

2. Issue printed instructions to your agents.

3. When preparing an election manifesto, always bear in mind the effect that it will have when read before an election court some months later. Always bear in mind that every act of yours is likely to be watched by your opponents, and any ill-conceived act is likely to be made the ground of attack in an election petition.

4. Do as much work as possible personally, specially the work of canvassing. Watch the work of agents carefully, and do not hesitate to at

- (b) impose, in the whole or a part of such area, any tax which might be imposed therein under the provisions of this or any other Act, if the said area were a municipality ;
- (c) fix the number of persons who shall form a committee for the purposes of the assessment and recovery of a tax imposed under clause (b), and in order to arrange for the due expenditure of the proceeds of such tax, and for preparation and maintenance of proper accounts, and generally for enforcing the provisions of any sections or rules, regulations or bye-law applied or adopted under clause (a).

NOTE 1.—The provisions of section 194(1) of Act I of 1900 have been amended in this sub-section in order to make it clear that a tax may be imposed in a portion only of a notified area, that the taxes that may be imposed are only the taxes that may be imposed in a municipality, that the Local Government may make rules for other purposes than the assessment and recovery of taxes, that a committee is for other purposes than those mentioned in clauses (b) and (c) of section 194(1) of the Act of 1900, and that the provisions of Acts other than the Municipalities Act may be extended to a notified area.

NOTE 2.—The powers of the Local Government under clauses (a) and (b) have been delegated to Commissioners. See pages 145 and 146 of the Notified Area Manual.

(2) A committee appointed under clause (c) of sub-section (1) shall consist of three or more members to be appointed by the Commissioner or elected in the manner prescribed by this Act or by rules, or partly so appointed and partly so elected as the Local Government may by general or special order prescribe.

NOTE.—An amendment has been made in order to empower Commissioners to appoint members of a committee and to make provisions for the election of members, if necessary.

(3) The proceeds of a tax levied in a notified area under this section may be expended in any manner in which the municipal fund of such notified area might be expended, if the notified area were a municipality.

(4) For the purposes of any enactment which may be extended to a notified area, the committee appointed for such area under clause (c) of sub-section (1) shall be deemed to be a board under this Act and the area to be a municipality.

A notified area like a town area is a creature of statute, and an area of land becomes a notified area only by a declaration to that effect by the Government.

G. O. No. 2348/XI-11-N.,
dated December 2, 1921.
Conduct of elections and
kindred matters.

SECTION 29. (Notified) The following matters
shall be regulated and governed by rule, namely—

- (a) The qualification of electors ;
- (b) the qualification of candidates for election ;
- (c) the preparation and revision of electoral rolls and candidate lists ;
- (d) the nomination of candidates ;
- (e) the dates, time and manner of holding elections, general or casual ;
- (f) the prohibition of corrupt or improper practices committed in connexion with elections and the punishment of persons guilty of the same ;
- (g) any other matter relating to elections or election petitions in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of Local Government, necessary.

It would appear from this section that all the matters regarding which provision is made in the Municipalities Act are governed by rules made by the Government under the rule making power conferred by this section.

Rules regulating elections in notified areas.

In these rules—

Notification No. 13/XI-11-N., dated the 5th January, 1922, as amended by notification No. 2024/XI-11-N., dated the 19th September, 1922.

- (a) "Committee" means "Notified area committee,"
- (b) "inhabitant" used with reference to a local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein.
- (c) "president" means "president of notified area committee," and
- (d) "member" means "member of a notified area committee,"
- (e) "person" means "an individual human being."

Qualification of electors and rules as to their registration in the electoral roll.

1. (1) Subject to the provisions of rules 2 and 31, every person of the male sex, who is an inhabitant of the notified area, and who is assessed to any one or more than one of the taxes, in force therein, other than octroi or toll or any similar tax, or who, in the case of the Chunar settlement notified area, is in receipt of an annual income of not less than Rs. 250, or who in the case of Bhawali notified area is a permanent occupier of a house or any part of the same and directly pays therefor a minimum annual rent of Rs. 36, shall be entitled to be enrolled as an elector.

Notification No. 2167/
XI-56-n., dated the 20th
August, 1926.

NOTE—The words "permanent occupier" denote in the Bhawali notified area a person who has been resident therein for a minimum period of one year next preceding the date of publication of the electoral roll.

(2) When any undivided Hindu family possesses any such qualifications as would enable a private person to be enrolled as an elector, the manager of the family may be so enrolled, provided that the same person shall not be enrolled both in a personal and in a representative capacity.

Notification No. 3172/
XI-114-1924, dated the
2nd October, 1925.

2. A person notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he, on January 1, preceding an ordinary election—

- (a) has not attained the age of twenty-one years,
- (b) is not a British subject, or
- (c) has been adjudged by a competent court to be of unsound mind, or
- (d) is an undischarged insolvent, or
- (e) has been sentenced under the Indian Penal Code to imprisonment for a term exceeding six months or to transportation, or convicted by a criminal court of an offence which is declared by the Local Government to imply such moral turpitude as to unfit him to be an elector, or ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned.

Provided that the District Magistrate may, in his discretion by written order, relieve any person qualified under rule 1 from any disqualification created by this rule other than the disqualification created by sub-clause (a).

(f) is in arrears in payment of a tax in force in the notified area, other than octroi or toll or any similar tax.

An owner is defined in section 2 (13) of the Municipalities Act as applied to notified areas as follows:—

“Owner” includes a person for the time being receiving or entitled to receive the rent, or a part of the rent, of any land or building, whether on his own account or as trustee, or as agent for a person or for a religious or charitable purpose, or as receiver appointed by or under the order of a court, or who would so receive the same if the land or building were let to a tenant.

NOTE 1.—The definition in the Municipalities Act of 1900 has been amended on the lines of the definition contained in section 2 (c) of the United Provinces Water Works Act (1 of 1891), to make it clear that the “owner” includes any person who is entitled to receive the rent of property whether he is actually receiving it or not, and further that in cases where the property is owned by more than one person, and one of these persons is responsible for all the liabilities of the “owner”. The words “or society” have also been omitted from the old definition as unnecessary, as society being included in the definition of “person” in the United Provinces General Clauses Act.

NOTE 2.—See section 313 and note thereunder.

This rule contains the qualifications and the statutory disqualifications of electors, as well as the method of registration.

Electoral Roll.

RULE 3.—Before the 15th day of January in every third year the committee shall cause to be prepared a list (called the electoral roll) of persons qualified as electors ; and they shall cause a copy of the roll in Urdu and Nagri to be posted up at the office of the committee and in such other places as they may direct, until the end of January. At the same time they shall cause to be proclaimed by beat of drum that the electoral roll has been prepared, and that copies of it can be inspected either at the office of the committee or in other specified places.

RULE 4.—Every person whose name is not entered in the roll published in accordance with the provisions of the preceding rule and who claims

to have it inserted therein, or any person whose name is on the roll and who objects to the inclusion of the name of any person in the roll shall, before the 31st day of January, give notice of his claim or objection in writing, to the sub-divisional officer.

RULE 5.—The claims and objections received under the preceding rule shall be considered by the sub-divisional officer on or before the 15th day of February and his decision thereon shall be final. A list showing the claims and objections and the decision of the sub-divisional officer in each case shall be posted before the 1st March at the office of the committee or at such other places as the sub-divisional officer may direct.

RULE 6.—The electoral roll shall, if necessary, be corrected in accordance with the decision in rule 5. It shall remain in operation until another roll has been prepared in accordance with the preceding rules ; and only those persons whose names are included in the electoral roll for the time being in force shall be entitled to vote at an election.

RULE 7.—Every person whose name is included in the electoral roll shall be entitled to one vote for each vacancy, on the committee to fill which a member is being elected : Provided that no elector shall be entitled to give more than one vote for any one candidate.

The following rule has been made for the Bindki, Rasra, Mau, Ramnagar, Haldwani and Movana notified areas :—

RULE

7. Every person whose name is included in the electoral roll shall be entitled to one vote only whether the number of persons to be elected is one or more than one.

Time and Place of Election of Members of the Committee

RULE 8.—An election of the members of the committee shall be held in every third year. A member elected in a triennial election shall be entitled to retain his seat on the committee until the following triennial election. The date of the triennial election shall be such day between the first and twentieth of March as the committee may determine.

RULE 9.—Fifteen days at least before the date fixed for the election the *president shall sign a notice setting forth—*

- (a) the number of persons to be elected ;
- (b) the day up to which nomination of candidates may be made ; and
- (c) the hours during which, and the place where, if there be a poll, the votes of the electors will be taken ; and shall cause a copy of the notice in Urdu and Nagri to be posted up at the office of the committee or at such other place as the committee may direct.

Qualification and Nomination of Candidate.

RULE 10.—(1) No person shall be a candidate for election unless (a) his name is registered as an elector in the electoral roll, (b) he is directly assessed to a notified area tax in a sum not less than Rs. 10 a year or, in the case of the Chunar settlement notified area, is in receipt of an annual income of not less than Rs. 500, (c) he has been nominated as a candidate by a nomination paper which shall be signed by himself and two other electors and he has deposited with the committee the sum of Rs. 50, in cash or in Government promissory notes of equal value at the market rate of the date.

(2) A person, notwithstanding that he is otherwise qualified, shall not be entitled to stand as a candidate for election if he—

- (a) has been dismissed from Government service and is debarred from re-employment therein, or
- (b) is debarred from practising as a legal practitioner by order of any competent authority, or
- (c) holds any place of profit in the gift or disposal of the committee, or
- (d) is disqualified under rule 31, or
- (e) is a person removed under section 40 of the Municipalities Act, 1916, or
- (f) is a stipendiary magistrate or police officer :

Provided that in cases (a), (b), and (e) the disqualification may be removed by an order of the Commissioner in this behalf.

RULE 20.—When an equality of votes is found to exist between any persons and the addition of a vote would entitle any of those persons to be declared to be elected, the returning officer may give such additional vote in writing, but shall not in any other case be entitled to vote at the election.

RULE 21.—The result of the election shall then be reported by the returning officer to the District Magistrate. Such report shall, when the returning officer is not the president, be made through the president. Notice of his election shall also be sent or declared to each person elected.

RULE 22.—The packets referred to in rule 19 (c) above shall be forwarded to the District Magistrate, and shall not be destroyed until the period fixed for the hearing of election petitions has expired or until the election petition, if any, has been decided.

Casual Vacancies.

RULE 23.—When the place of an elected member of a committee becomes vacant by his resignation, removal or death, or when the District Magistrate directs the committee under rules 30 (iii) (b) and 30 (iii) to take proceedings for filling a vacancy created by the avoidance of an election of a member of the committee, a casual vacancy is created and the place shall be filled by means of another election. A member elected under this rule shall be entitled to retain his seat until the following triennial election prescribed by rule 8.

Election Petitions.

RULE 24.—(1) An election petition may be presented by any candidate in whose favour votes have been recorded.

(2) An election petition may either call in question the election of any person as a member of the committee, or it may ask for a declaration that any particular candidate shall be deemed to have been elected, or may do both such things.

RULE 25.—The election of any person as member of a committee may be questioned on either or both of the following grounds:—

(a) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes ;

(b) that such person committed any corrupt practice, as defined in rule 26 below, for the purpose of election.

RULE 26.—A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person—

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate;
- (ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offer or give any money, or valuable consideration or any place or employment or holds out any promise of individual advantage or profit to any person ;
- (iii) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote ;
- (iv) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i), (ii) or (iii) of this rule.

Explanation.—A “ promise of individual advantage or profit to a person ” includes a promise for the benefit of the person himself, or of any one in whom he is interested, but does not include a promise to support or oppose any particular local measure.

RULE 27.—An election petition shall be presented to the District Magistrate of the district in which the notified area concerned is situated, *within fifteen days after the day on which the election was held* ; it shall specify the ground or grounds on which the election is questioned, and shall contain a summary of the circumstances alleged to justify the election being questioned on such ground or grounds.

RULE 28.—The District Magistrate shall fix the time and place of hearing and shall cause notice thereof to be served on the petitioner and on any person whose election is called in question. Notice that the case will be heard on the date and at the time appointed shall also be posted up at the office of the committee or at such other place as the District Magistrate may direct, not less than seven days before the day for the *hearing of the petition*.

RULE 29.—The petition shall be heard by the District Magistrate and the procedure provided in the Civil Procedure Code in regard to suits shall, so far as it is not inconsistent with these rules and as far as it can be made applicable, be followed in the hearing of election petitions ;

Provided that—

- (a) the court shall not be required to record or have recorded the evidence in full, but shall make a memorandum of the evidence sufficient in its opinion for the purpose of deciding the case ;
- (b) the court shall only be required to make such inquiry and to take such evidence as it may consider necessary for the purpose of deciding the issues ;
- (c) there shall be no appeal either on a question of law or fact, and no application in revision against or in respect of the decision of the court ;
- (d) the court may, within one month, but not subsequently, review its decision on any point either suo motu or on the application of any person considering himself aggrieved thereby ;
- (e) no election petition shall be entertained unless it is accompanied by a deposit of Rs. 25 by way of security for costs of the other side.

RULE 30.—(i) If the District Magistrate finds, in respect of any person whose election is called in question by a petition, that his election was valid, he shall dismiss the petition as against such person.

(ii) If the District Magistrate finds that any person whose election is impugned was not validly elected, he shall either—

- (a) declare duly elected in his stead the unsuccessful candidate in whose favour is recorded the highest number of votes next after all successful candidates ; or
- (b) declare a casual vacancy to have been created, whichever course appears to him the more appropriate. In the event of a casual vacancy being declared, the District Magistrate shall direct the committee to take proceedings under rule 23 for filling the vacancy.

(iii) If there is not any candidate who can be declared elected, the District Magistrate shall direct the committee to take proceedings under rule 23 for filling the vacancy.

RULE 31.—The District Magistrate may declare any candidate found to have committed any corrupt practice under rule 26 to be disqualified for a period not exceeding five years for being elected as a member of the committee or for being appointed to or retained in any office or place in the gift or disposal of the committee.

VOTING PAPER.
NOTIFIED AREA.

Serial number.	Name of candidate to whom the vote is given.
1	
2	
3	
4	
5	

Number of elector on electoral roll

Signature of elector.

Dated.....

Notified areas are, like Town Areas, miniature Municipal Boards and may be regarded as midway between town areas and Municipal Board. The comments under the various parts of the Book relating to municipal elections and election petitions may be consulted with advantage in such matters relating to notified areas.

List of notified areas, for each notified area the number of members who shall form a committee for the purposes of section 338 (1) of the Act.

In suppression of Notification No. 1188/XI-11-N., dated June 23, 1921, and subsequent notification on the subject, and in exercise of the powers conferred by clause (c) of sub-section (1) and sub-section (2) of section 338 of the United Provinces Municipalities Act, 1916, the Local Government are pleased to fix for each notified area specified in the schedule below the number shown against it in column 6 of the schedule as the number of persons who shall form a committee for the purposes mentioned in the said clause (c) with effect from April 1, 1929. Of the number of members so fixed, the number shown in column 4 of the schedule shall be elected.

2. In addition to these members, the District Magistrate may, if he thinks it desirable, appoint an additional member to represent any important community which is not already represented on the committee :

SCHEDULE.

Name of district.	Serial number of notified area.	Name of notified area.	Number of members.		
			Elected.	Nominated.	Total.
Dehradun ...	1	Rekhikesh ...	3	2	5
Muzaffarnagar ...	2	Kandbla ...	7	3	10
Meerut ...	3	Pilkhua ...	4	2	6
	4	Mewana ...	4	2	6
	5	Baghpat ...	4	2	6
Bulandshaher ...	6	Dibai ...	6	2	8
	7	Anupshaher ...	4	1	5
Agra ...	8	Fatehpur Sikri ...	4	2	6
Muttra ...	9	Kosi ...	4	2	6
Mainpuri ..	10	Shikohabad ..	4	2	6
	11	Mainpuri Civil Station ...	...	4	4

Etah	...	12	Mahrera	...	4	2	6
		13	Ganjdundwara	...	4	2	6
Bareilly	...	14	Aonla	...	5	2	7
Budaun	...	15	Bilsi	...	4	2	6
Moradabad	...	16	Hasanpur	...	5,	2	7
Fatehpur	...	17	Bindki	...	4	2	6
Farrukhabad	...	18	Kaimganj	...	4	2	6
Etawah	...	19	Auraiya	...	4	2	6
Hamirpur	...	20	Mahoba	...	4	2	6
		21	Rath	...	4	2	6
Banda	...	22	Karwi	...	4	2	6
Jhansi	...	23	Jhansi	...	6	7	13
Jalaun	...	24	Jalaun	...	6	2	8
Mirzapur	...	25	Chunar	...	4	2	6
		26	Chunar settlement	...	4	2	6
		27	Ahraura	...	4	2	5

Notification
No. 707-VII, and
707-IX/XI-103 N,
dated the 8th
March, 1933.

Hardoi	...	40	Sandi	...	4	2	6
		41	Pilani	...	4	2 (ex- officio)	6
		42	Bilgram	...	4	2	6
Kheri	...	43	Muhamdi	...	4	2	6
Gonda	...	44	Nawabganj	...	4	2	6
		45	Uraul	...	4	2	6
		46	Colonelganj cum-sik	...	4	2	6
Bahraich	...	47	Bhinga	...	4	2	6
		48	Nanpara	...	4	2	6
Barabanki	...	49	Rudauli	...	4	2	6

Notification No. 1752/XI-103 N,
dated the 16th June, 1933.

*NOTE — With effect from April 1, 1935, the Committee of the Charbagh notified area in the Lucknow district shall consist of eleven members of whom the president and six other members shall be nominated and four elected.

Name of district.	Serial number of notified area.	Name of notified area.	Number of members.				
			Elected.	Nominated	Total		
Jaunpore	...	28	Shahganj	...	4	2	6
		29	Badshahpur	...	4	2	6
Ballia	...	30	Rasra	..	4	2	6
Gorakhpur	...	31	Gorakhpur	...	4	2	6
		32	Deoria	...	4	2	6
		33	Gaura Barhaj	...	4	2	6
Azamgarh	...	34	Mau	...	5	2	7
Naini Tal	...	35	Haldwani	...	5	2 (1 no- minated)	7
		36	Ramnager	...	4	1	5
		37	Bhowali	...	4	2 (1 ex- officio)	6
Lucknow	...	38	Charbagh	...			9
Sitapur	...	39	Misrikh-cum-Nimsar	...	6	2 (1ex-officio)	8

APPENDIX VI.

Town Area Elections and Election Petitions.

CHAPTER II.

TOWN AREAS, PANCHAYAT, AND SERVANTS

Town Areas.

Declaration and definition
of town areas.

SECTION 3.—(1) The Local Government may,
by notification in the gazette,

- (a) declare any town, village, suburb, bazar or inhabited place to be a town area, for the purposes of this Act, and may unite, for the purpose of declaring the area constituted by such union to be a town area, the whole or a portion of any town, village, suburb, bazar or inhabited place with the whole or a portion of any other town, village, suburb, bazar or inhabited place ;
- (b) define the limits of any town area for the like purposes;
- (c) include or exclude any area in or from any town area so declared or defined, and
- (d) at any time cancel any notification under this section:

Provided that an agricultural village shall not be declared or included within the limits of a town area.

(2) The decision of the Local Government that any inhabited area is not an agricultural village within the meaning of the proviso to subsection (1) of this section shall be final and conclusive, and the publication in the Gazette of a notification declaring such area to be town area or within the limits of a town area shall be conclusive proof of such decision.

An area of land becomes a town area by a declaration by the Local Government to that effect, and the word town area is defined by section 2 (8) of the Town Area Act to mean "any local area which the Local Government has declared or defined under section 3 to be a town area".

Town, Village—The words town and village are not defined in the Act. The word village has been held to be equivalent to the vernacular "Deh"

or "Mauza" and means a definite local area, with houses upon it with the lands belonging to it. (Dalganjan Singh V. Kalka Singh and others 22 All. F. B. 1 at 27; 19 A. W. N. 11 F. B.; Gokal Singh and another V. Manulal and another 7 All. 272; 9 A. W. N. 263). That a local area with a large population may be entitled to be called a town. In Mozley and Whitby's Law Dictionary a town is defined as any collection of houses larger than a village.

Suburb—means the region on the confines of any city or large town, including buildings, street, or territory, hence, the confines, the outer part.

Or inhabited place—The section is not happily worded. Perhaps these words mean that it is only the Abadi portion of a village that can be included in a Town Area.

The discussion is however not likely to be of any practical importance, as the decision of the Local Government on all these points is declared to be final.

SECTION 4.—The District Magistrate may, by written order and subject to such conditions and restrictions as he may think fit to impose, delegate all or any of the powers conferred on him by this Act or by rules framed under this Act other than his power under sec. 39A to the officer incharge of the sub-division in which the town area is situated or to any other stipendiary officer of the revenue staff of the district above the rank of Tahsildar :

U. P. Act VII of 1933.
Delegation of certain powers of the District Magistrate to some other officer of the Revenue staff.

Provided that the District Magistrate may at any time revise an order passed by such officer under the powers so delegated.

The power to review all orders of the Sub-Divisional Officer has been conferred by Act VII of 1933, and provides a further safeguard against error.

Constitution of town panchayat.

SECTION 5.—(1) A panchayat shall be established for each town area.

(2) The panchayat shall ordinarily consist of—

(a) the chairman ;

(b) such number of elected members, not less than five nor more than seven, as the Local Government may prescribe, and

- (c) in town areas where the Local Government so prescribes an additional member from either the Christian or the Parsi or the Sikh community to be appointed by the District Magistrate from persons who are not Government servants."

(3) ° Only persons whose names are enrolled as electors of the town areas shall, subject to the provisions of section 7, be eligible for election as members of the panchayat in the prescribed manner, provided that—
U. P. Act VII of 1933.

- (a) not less than one member shall be elected from the minority community, if there be such candidate ;
- (b) where the Local Government has prescribed five elected members, and the minority community comprises at least 25 per cent. of the total population of the town area not less than two members shall be elected from the minority community, if there be such candidates ;
- (c) where the Local Government has prescribed six elected members, and the minority community comprises more than 24 per cent. but less than 48 per cent. of the total population of the town area not less than two members shall be elected from the minority community, if there be such candidates ; and where the minority community comprises at least 48 per cent. not less than three members shall be elected from the minority community ; if the requisite number of candidates belonging to a minority community do not stand for election then only as many candidates as there may be shall be elected ;
- (d) where the Local Government has prescribed seven elected members, and the minority community comprises more than 24 per cent. but less than 40 per cent. of the total population of the town area not less than two members shall be elected from the minority community if there be such candidates ; and where the minority community comprises at least 40 per cent. of the total population not less than three members shall be elected from the minority community, and if there be not so many candidates, then as many as there be.

Sub-clause (3) confines the right to seek election to only those persons who are enrolled as electors. (See part II of the book under the heading *Extent of Franchise supra*).

SECTION 6.—(1) The term of office of a member of a panchayat shall be four years subject to the provisions of sections 7 and 7A, and shall commence from the date of election or nomination or when the election or nomination has been made before the vacancy has occurred, from the date on which the vacancy occurs :

Provided that the term of office of a member elected or appointed to fill a casual vacancy shall be the residue of the term of the outgoing member.

Provided also that for the purpose of making any change in the composition of a panchayat, or holding an election, or for any similar purpose the Local Government may curtail or extend the term of office of the members or of any member of a panchayat.

(2) If a member wishes to resign he shall forward his resignation in writing to the district magistrate. He shall be deemed to have vacated his office from the date of receipt by the panchayat of information that his resignation has been accepted by the district magistrate.

(3) An outgoing member shall, if otherwise qualified, be eligible for re-election or re-appointment.

SECTION 7.—(1) A person, notwithstanding that he is qualified under the rules shall not be enrolled as an elector or be nominated or be elected as chairman or as a member of the panchayat, or continue to be an elector or a member or chairman if he is, or becomes, subject to the following disqualifications:—

(a) that he has not attained the age of 21 years ; or

(b) that he is not a British subject ; or

(c) that he has been adjudged by a competent court to be of unsound mind ; or

(d) that he is an undischarged insolvent ; or

(e) that he has been ordered to find security for good behaviour in consequence of proceedings taken under section 109 or section 110 of the Code of Criminal Procedure such order not having been subsequently reversed and a period of five years from the date of the order has not elapsed ; or

U. P. Act VII of 1933.

- (f) that he has failed to pay any dues to the town area within the month in which they have fallen due.

Provided that a disqualification under clause (e) may be removed by an order of the Local Government in this behalf.

(2) A person shall not be nominated or be elected as a chairman or member of the panchayat or continue to be chairman or member if he is, or becomes, subject to the following disqualifications:—

- (a) that he has been convicted by a competent court (such conviction still being in force and effect) for an offence which in the opinion of the Local Government implies moral turpitude or has been dismissed from Government service for conduct which in the opinion of Local Government implies moral turpitude ; or
- (b) that he is debarred from practising as a legal practitioner by order of any competent authority ; or
- (c) that he holds any place of profit in the gift or disposal of the panchayat ; or
- (d) that he is unable to read and write English or at least one of the vernaculars of the province ; or
- (e) that he is a Government servant :

Provided that in cases (a) and (b) the disqualification may be removed by an order of the Local Government in this behalf.

SECTION 7A.—(1) The Commissioner may, after affording an opportunity to make an explanation, remove the chairman or any member of a panchayat who in his opinion has so abused his position as chairman or member as to be unfit to act as such or who is persistently remiss in the discharge of his duties as such chairman or member.

Removal of a member of a panchayat.

Provided that the removal of the chairman shall be subject to the sanction of the Local Government.

(2) A member or chairman removed under this section shall not be eligible for further election or nomination as a member or chairman for a period of four years from the date of his removal.

SECTION 7B.—Every member of a panchayat shall be liable for the loss, waste or misapplication of any money or other property belonging to a panchayat if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of the panchayat and a suit for compensation may be instituted against him by the panchayat with the previous sanction of the District Magistrate or by the Local Government in the name of Secretary of State in Council.

Liability of a member of a panchayat for the loss, waste or misapplication of money or property belonging to a panchayat.

Section 7 provides the statutory disqualifications which disentitle a person to be a member of a panchayat, even if otherwise qualified (See notes under section 14 (3) of Municipalities Act, *supra*).

Many points regarding which provision is made in the Municipalities Act, are dealt with by rules made by the Local Government under the rule making power conferred by section 39 (1) (c) of the Town Areas Act which runs as follows :—

39. (1) The Local Government may make rules applicable to all or any town areas for carrying out the purposes of this Act.

Power of Local Government to make rules.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1) of this section, such rules may relate to all or any of the following matters or be for all or any of the following purposes :

(e) as to the qualifications of electors and of candidates for election to the panchayat, as to the nomination of such candidates, as to the time of election and mode of recording votes, as to the method of settling disputes or questions arising from elections, and generally for regulating all elections under this Act.

By Notification No. 2027/XI-34F dated September 4, 1929, No. 2149/1-34F dated July 25, 1930, the following Town Area Election Rules have been made by the Government.

TOWN AREA ELECTION RULES.

Qualifications of electors and rules as to their registration in the electoral roll.

Qualification of Voters.

RULE 1.—Every person who has been assessed to a tax imposed in the town area under section 14 of the Act and who is not subject to disqualification under section 7 of the Act or under rule 31 of these rules shall be entitled to be enrolled as an elector of the town area.

Notification No. 2627/
XI-31 F., dated September 4, 1929, No. 2142/1-
34 F., dated July 25, 1930.

Under this rule assessment to town area tax is the sole qualification for being enrolled as a voter of a Town Area.

Section 7 as shown before provides the statutory disqualifications.

Rule 31 deals with disqualification arising out of being reported guilty of corrupt practices.

Preparation of Electoral Roll.

RULE 2.—Before the 10th day of September, 1929 and thereafter in every fourth year the district magistrate shall cause to be prepared a roll of persons qualified as electors of the town area; and he shall cause a copy or copies of the roll in Urdu and Nagri to be posted within the town area at such places as he may think fit for the information of the electors, and he shall cause to be proclaimed that the roll has been prepared and posted.

The task of preparation of electoral roll is entrusted to District Magistrate.

Returning Officer.

RULE 3.—Before September 10 in the year of the general election the district magistrate shall appoint a returning officer for the purpose of the general election in the town area.

Claims and Objections.

RULE 4.—Every person whose name is not on the roll and who claims to have it entered therein, or any person whose name is on the roll and who objects to the inclusion of any name in the roll may give notice of his

claim or objection to the returning officer. Such notice shall be in writing and shall be made to the returning officer before September 25.

Hearing of Claims and Objections.

RULE 5.—The returning officer shall, before October 6, consider and pass orders on each claim or objection and his orders shall be final. Before October 12 he shall cause to be posted within the town area a list of the claims and objections and of his orders thereon and he shall cause the roll to be corrected in accordance with his orders.

As would appear from this rule, the returning officer is armed with extensive powers. He can enable any one to become a voter and thus a candidate. He can also keep out any one from seeking election. He is not under the control of any one.

It seems that the Returning Officer can make amendments in the list only as the result of his orders on claims and objections, he is not armed with any powers to correct the electoral roll suo motto.

Finality of the Roll.

RULE 6.—The roll shall remain in operation until another roll has been prepared in accordance with the preceding rules; provided that the district magistrate may at any time remove from the roll the name of a person who has died or has become subject to a disqualification under section 7 (1) (c), (d) (e) or (f) of the Act or has been disqualified under rule 31, in which case such name shall not be entered so long as such disqualification subsists.

Even the district magistrate has not been given any revisional powers and his power of correction is limited to cases enumerated in rule 6.

RULE 7.—Only a person whose name is included in the roll for the time being shall be entitled to vote at an election. Every such person shall be entitled to one vote in the case of the election of the chairman, and in the case of election of members of panchayat to one vote only, whether the number of members to be elected is one or more than one.

Time and Place of Election.

RULE 8.—The general election shall be held in 1929 and thereafter in every fourth year on such date between October 20 and 31 as the district magistrate may determine.

RULE 9.—Fourteen days at least before the date fixed for the election the returning officer shall sign a notice showing—

- (a) whether a chairman is to be elected for the panchayat ;
- (b) the number of members of the panchayat to be elected ;
- (c) the date and hour up to which he will receive nomination papers ; and
- (d) the hours during which and the place where, if there be a poll, the votes of the electors will be taken ;

and shall cause such number of copies of the notice in Urdu and Nagri, as may be necessary to be posted within the town area.

Qualification and Nomination of Candidates.

RULE 10.—No person shall be a candidate for election as chairman or member of the panchayat unless (a) his name is included as an elector in the roll for the time being, (b) he is not subject to any of the disqualifications stated in section 7 (2) of the Act, and (c) he has been nominated as a candidate in a nomination paper which has been signed by himself and two other electors of the town area.

RULE 11.—The returning officer shall examine the nomination papers received by him by the date fixed by him under rule 9 and before the date fixed for the election shall publish in the manner prescribed in rule 9 (a) a list of such candidates for the chairmanship and (b) a list of such candidates for the membership as he shall consider to have been duly nominated in accordance with rule 10. The entries in this list shall not be called in question in any proceeding.

RULE 11A.—If at any time the polling officer has reason to believe that to proceed with the election on the date fixed is likely to lead to breach of the peace or riot or affray, he may for reasons to be recorded in writing postpone the election and forward within 24 hours a copy of his order to the District Magistrate who may confirm or revise it as he may think fit. The District Magistrate shall, if he confirms the order of the polling officer, fix a new date for the election which shall in no case be more than 15 days later than the date originally fixed ; provided that should he consider that to proceed with the election within this period is likely to lead to a breach of the peace or riot or an affray, he may, for reasons to be recorded in

writing, postpone the election, and forward a copy of his order to the Commissioner whose orders shall be final.

RULE 12.—(1) If there is more than one candidate for the chairmanship entered in list (a) and there is still more than one candidate at the time fixed for the poll, a poll shall be taken on the day fixed for the election in the manner provided.

(2) If there is only one candidate for the chairmanship at the time fixed for the poll, the candidate shall be deemed to be elected.

(3) If the number of candidates who are entered in list (b) and who have not withdrawn their candidature before the time fixed for the poll exceeds that of the vacancies, a poll shall be taken on the day fixed for the election in the manner provided.

(4) If the number of such candidates is equal to the number of vacancies, all such candidates shall be deemed to be elected.

(5) If the number of such candidates is less than the number of vacancies, the candidates, if any, shall all be deemed to be elected, and the returning officer shall again take action in accordance with these rules, so far as may be, for calling for nominations and conducting an election to fill the vacancies or the remaining vacancies, as the case may be.

(6) If any vacancy remains unfilled after action has been taken in accordance with the preceding clauses of this rule, the district magistrate shall appoint a person to fill it.

RULE 13.—The returning officer shall either himself be the presiding officer or shall appoint a person to be the presiding officer at the election. The presiding officer shall keep order at the polling station, shall regulate the number of electors to be admitted at a time and shall exclude from the polling station any persons as may be necessary for the fair conduct of the election.

RULE 14.—An elector shall give his vote in person at the polling station. No vote by proxy will be received or shall be valid.

RULE 15.—Votes shall be given by a declaration in writing, except as provided in rule 17. There shall be two voting papers, one blue paper for the election of the chairman, and one uncoloured paper for the election of members.

RULE 16.—The presiding officer shall give the voter a voting paper in blue for his vote for the chairman and uncoloured voting paper for his vote for a member of the committee. The voter shall then, at a place set apart for the purpose, write on the blue paper the name of the candidate for whom he votes as chairman and on the uncoloured paper the name of the candidate for whom he votes as member. He shall fold the voting paper so as to conceal his vote and shall put it so folded in the ballot box in the presence of the presiding officer.

RULE 17.—If the voter is unable to write the presiding officer shall write down the vote for chairman on the blue paper and for member on the uncoloured paper as the voter may verbally direct him.

He shall then place the voting papers in the ballot box in the presence of the voter.

RULE 18.—A voting paper shall be invalid if it does not record the name of the candidate, or if it records the names of more than one candidate.

RULE 19.—At the hour at which under rule 9 it has been proclaimed that the election shall end, the presiding officer shall in public—

- (a) open the ballot box and separate the ballot papers which he admits as valid from those which he deems invalid, endorsing on the latter the word "Rejected", and
- (b) count the valid votes given to each candidate and, subject to the provisions of section 5 of the Act, declare the election of the candidates to whom most valid votes have been given; and
- (c) seal up in separate packets the valid and invalid voting papers.

RULE 20.—When any candidates have received an equal number of votes, and the addition of one vote would entitle one of the candidates to be declared to be elected the presiding officer may give such additional vote in writing, but shall not in any other case be entitled to vote at the election.

RULE 21.—The presiding officer shall then report the result of the election to the district magistrate, and shall forward to the district magistrate, the packets referred to in rule 19 (c). The packets shall not be destroyed until the period for hearing election petitions has expired.

Rule 10 speaks of a nomination paper, but no form is prescribed. Rule 11A which has been added recently is a misfit at the place where it has been added, as it relates to the time of the poll.

Rule 11 talks of examination of nomination papers by the returning officer, but it is not clear if any one can object to the nomination of any candidate. There is again no provision for any review, appeal, or revision against the order of the Returning Officer. This is another autocratic power conferred on the returning officer by which he can keep out any one whom he has a mind to keep out without any remedy being left for the latter under the rules.

No form of ballot paper is prescribed. Rule 16 requires every voter to vote by writing the name of the candidate for whom he votes. As would appear from the notes about the validity of ballot papers, under municipal elections a ballot paper bearing the name of the voter would be rejected on the ground that the voter can be identified by his voting.

District Magistrate's Power of Superintendence.

RULE 22.—In the event of any doubt arising or irregularity occurring in the preparation of the roll, the nomination of candidates or the conduct of the election the District Magistrate may pass such orders as may be necessary for carrying out the purpose of these rules, so far as may be possible and his orders shall be final; provided that he shall not revise an order made by the returning officer under rule 5 or rule 11.

Order under rule 5 and 11 not being open to revision by the district magistrate, the power given under this rule, loses most of its practical importance. The powers given are as vague as they are wide.

Casual Vacancy.

RULE 23.—A casual vacancy occurs in a panchayat in the following circumstances :—

- (a) when the chairman or a member has resigned, died, been removed, or become disqualified under section 7 (1) (f) of the Act,
- (b) when a member is elected as chairman on a casual vacancy in that office occurring, and

- (c) when the district magistrate has declared a casual vacancy to have been created under rule 30.

On the occurrence of such a vacancy an election shall be held to fill it and the nomination of candidates and the conduct of the election shall be made in accordance with these rules so far as may be possible.

Election Petitions.

RULE 24.—(1) An election petition may be presented by any candidate whose name has been entered in a list under rule 11.

(2) An election petition may either call in question the election of any person as chairman or member of the panchayat or it may ask for a declaration that a particular candidate has been elected, or may do both such things.

This rule gives the right of a petition only to a person who was held to be duly nominated. A candidate whose nomination paper has been wrongly rejected, has not only no right of revision as shown above, but he cannot even file an election petition. Nor can petition be filed by one or more voters.

Grounds of a Petition.

RULE 25.—The election of any person as chairman or member of the panchayat may be questioned on either or both of the following grounds:—

- (a) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes ;
- (b) that such person committed any corrupt practice, as defined in rule 26 below, for the purpose of election.

This rule is analogous to section 19 of Municipalities Act.

Corrupt Practice.

RULE 26.—A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person—

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate ;

- (ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person ;
- (iii) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote ;
- (iv) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clause (i), (ii), or (iii) of this rule.

Explanation.—A “ promise of individual advantage or profit to a person ” includes a promise for the benefit of the person himself or of any one in whom he is interested, but does not include a promise to support or oppose any particular local measure.

Tribunal, and Frame of Petition

RULE 27.—An election petition shall be presented to the Magistrate of the District in which the town area concerned is situated, within 15 days after the day on which the election was held ; it shall specify the ground or grounds on which the election is questioned, and shall contain a summary of the circumstances alleged to justify the election being questioned on such ground or grounds.

Hearing of a Petition.

RULE 28.—The District Magistrate shall fix the time and place of hearing and shall cause notice thereof to be served on the petitioner and on any person whose election is called in question. A notice that the case will be heard on the date and at the time appointed shall also be posted at the office of the town panchayat, if any, or at such other place as the District Magistrate may direct, not less than seven days before the day for the hearing of the petition.

RULE 29.—The procedure provided in the Civil Procedure Code in regard to suits shall, so far as it is not inconsistent with these rules and as far as it can be made applicable, be followed in the hearing of the election petitions.

APPENDIX VII.

Act No. XXXIX of 1920.

(Passed by the Indian Legislative Council.)

(Received the assent of the Governor-General on the 14th September 1920.)

An act to provide for the punishment of malpractices in connexion with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act.

Whereas it is expedient to provide for the punishment of malpractices in connexion with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act ; It is hereby enacted as follows :

Preliminary.

1. (1) This Act may be called the Indian Elections Offences and Inquiries Act, 1920 ; and

(2) It extends to the whole of British India.

PART I.

Amendment of The Indian Penal Code and Code of Criminal Procedure

1. (1) In section 21 of the Indian Penal Code, after the tenth entry, the following shall be inserted, namely, ' Eleventh :—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election ' ; and after Explanation 2, the following shall be added, namely :

' Explanation 3.—The word " election " denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.'

(2) After Chapter IX of the same Code the following Chapter shall be inserted, namely :

CHAPTER IX A.
OF OFFENCES RELATING TO ELECTIONS.

171A.—For the purposes of this Chapter—

- (a) ' candidate ' means a person who has been nominated as a candidate at any election, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat ; provided that he is subsequently nominated as a candidate at such election ;
- (b) ' electoral right ' means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

171B.—(1) Whoever—

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right : or
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171C.—(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

- (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
- (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of a public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171D.—Whoever at any election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures, or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171E.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Provided that bribery by treating shall be punished with fine only.

Explanation.—‘ Treating ’ means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171F.—Whoever with intent to affect the result of an election makes or publishes any statement purporting to a statement of fact which is false, and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171H.—Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171I.—Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connexion with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

3.—(1) In section 196 of the Code of Criminal Procedure, 1898, after the words ‘ Chapter VI ’ the words ‘ or IX A ’ shall be inserted.

(2) In Schedule II to the same Code after the entries relating to Chapter IX of the Indian Penal Code the following shall be added, namely :

CHAPTER IX A.—OFFENCES RELATING TO ELECTIONS.

171E	Bribery	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Imprisonment of either description for one year, or fine or both, or if treating only, fine only.	Presidency Magistrate or Magistrate of the First Class
171F	Undue influence and personation at an election.	Do.	Do.	Do.	Do.	Imprisonment of either description for one year, or fine, or both.	Do.
171G	False statement in connexion with an election.	Do.	Do.	Do.	Do.	Fine	Do.
171H	Illegal payments in connexion with elections.	Do.	Do.	Do.	Do.	Fine of 500 rupees	Do.
171I	Failure to keep election accounts.	Do.	Do.	Do.	Do.	Fine of 500 rupees	Do.

INDEX

A

- Abode, See Residence, 6.
- Abetment, 113, 120.
- Additional Particulars, 104.
- Agriculture, 16.
- Agency, 65.**
 - Definition of, 123.
 - How created, 123, 124.
 - Personal Intimacy with candidate, 124.
 - Bringing voters, 123.
- Agent's Agents, 126.
 - Messengers, when agents, 126.
 - when not, 126.
 - Canvassers, when agents, 124.
 - when not, 125.
 - Volunteers, 124, 128.
- Authority to canvass, 125, 126.**
 - Committee men, 127.
 - Political Associations, 128.
 - Candidate's relatives, 124.
 - Other candidate's Agents, 127.
 - Responsibility of candidate.
 - Limited Agency, 125.
 - Joint Agency, coalition, 127.
 - Traitorous Agents.
 - Repudiation of Agency, 128.
 - Termination of Agency.
 - Partners not Agents, 126.

Alien, who is ineligible for election *cannot vote*.
Amendment, 103, 104, 105.
Appeal, 99.
Associations, 151.
Authenticity of candidate's declaration, 55.
Avoidance of election, 116.

B

Ballot, 66.
Ballot, Box, 66.
Ballot Paper, 66, 69, 72, 85, 202.
Ballot, Mistake in making, 69.
Bankrupt, See Insolvent.
Blind Person, 86.
Bribery, 120, 133.
 Definition of, 120, 133.
 Avoids election, apart from candidate's acts.
Bribery and Charity, 134.
 Offer of, 134.
 Loan, 135.
Breach of rules, punishments, 150.

C

Candidate.
 Definition, 39, 40.
 Identity of, 55.
 Qualification, 37, 38, 39.
 Nomination, 46.
 Counting of votes right to be present at.
 Declaration by, 57.
 Return of, 59.
 Corrupt practices by.
 Withdrawal of, 58.
 Death before poll, 58.
Charity, 134.
Charity and bribery, 134.

Chairman, election of, 161.
Civil Procedure Code, 103.
Civil Court, Jurisdiction of, 137.
Claim, 26, 29, 30, 33, 35, 36.
 Objection, 29, 30, 31, 33, 35, 36, 152.
Collector.
 Clubs, 151
 Coercion, 119, 130.
Company, 8.
Conveying voters to poll.
Corrupt practice, 96, 99, 119, 120, 134.
Corrupt agent
Costs, 115.
Counting Agent, 88.
Counting the votes, 88.

D

Deaf and dumb persons, 66.
Death, 58.
Declaration, 56.
Declaration of identity, 56.
Destruction of voting papers etc., 146.
Deposit, 119.
Disqualification removal, 43.
Disqualification, 118.
District Boards Act, 40, 98.
District Magistrate, 33, 34, 35, 36, 58.
Drunkenness, 86.

E

Election.
 Definition, 39.
 Commencement, 39.
 Day of, 61.
 Freedom of.
Election Rules, 178.

Election Petition, 94, 102.
Election Court, jurisdiction and nature of,
Elector, qualifications of, 6, 7, 167.
 Disqualification, 7, 8.
Electoral Roll, 18, 22, 23, 26, 28, 29, 34, 35, 36, 37, 53, 54.
Election Offences and Inquiries Act, 17.
English Law, 2.
Equality of votes, 93.
Exemption from disqualification, 119.
Executive orders have no force in law, 3.

F

Forms of petition, appointment of agents, 207.
Fraud, 119, 131.
Franchise.
 Right to vote or stand as candidate is part of, 10.
 but not a right to canvass, 10.
 • Registration necessary for the exercise of, 10.
 Right of juristic person, 46.

H

High Court, 109, 112, 113.

I

Identity of candidate, 55.
Identity of voter, 69.
Identity of proposer and seconder, 51, 54.
Identity of misdescription in roll, 51, 54.
Idiot, 86.
Illegal practice, 99.
Illiterate voter, vote how given.
Infirm voter, 86.
Infant.
Interpretation, 3, 4, 5.
Insolvency, 19.
Inspection, 146, 149.
Irregularity, 100, 101.

J

Joint family, 8, 16, 17.
Jurisdiction, 137.
Judicial officers, nominations of, 152.

L

Land, 15.
Local Government, 149.
Lunatic, 86.
List of municipalities, & constitution of Boards, 154.

M

Member, acquiring a share in a contract, 43.
Magistrate.
 Stipendiary, can't stand, 38, 45.
 Honorary, nomination, 45.
Member removal, 41.
Minority, 19.
Municipalities Act, 164.
Mens rea, 99, 100, 121.
Municipal servants, 147.
Misdescription, 52—54, 56.
Misrepresentation, 119.
Model rules, 143.

N

Nomination, 46, 47, 49, 151.
 Place of, 49.
 Pay of, 49.
 Time of, 47.
 Form of, 47, 48, 49.
 Publication of, 50, 57.
 of joint officer, 152.
 objection to, 50.
 adjournment after objection, 50.

Nomination Paper, 53, 54, 200.

Application for, 48, 51.

filling of, 48, 51.

Subscription to misdescription in, 52, 53, 54, 56.

contents of

validity of

deposit, 48.

Rejection, 57.

Notice of nomination, 153.

Notice of disqualification, 153.

Notice of election, 153.

Notice of poll.

Notified Area, elections and election petitions, 213.

O

Occupier.

what is necessary to constitute, 13, 14.

Mere possession is not occupation, 13.

Mere licensee is not, 14.

Official mark, what is absence of a ballot paper,

Order at polling stations, 64.

P

Person, means a natural person, 11.

Petition, 102, 207.

Presumption, 120, 136.

Personation Agent Polling Agent.

Place of profit, 45.

Polling officer, 63.

Presiding officer, 63.

Proposer, 51, 52.

Poll, 61.

Polling Station, 63.

Police Officer can't stand, 38.

Poll clerk, 63.
Proposer & seconder, identity of, 51, 52.
Procedure, 108.

R

Recriminatory proceedings, 106.
Registration, 19, 22.
Residence.
 what is, 11.
 what is not, 12.
 Some sort of permanent, required to confer electoral right, 12.
 constructive residence, 12.
Returning officer, 24, 25, 33, 53, 54.
Revising authority, 31, 58
Revocation of authority.
Riot, 64.
Review, 110.
Revision, 114.
Register of members, 152.

S

Scrutiny, 96.
Security, 59.
Sources of Municipal law, 1, 2.
Statutory disqualification, 98.
Sunday, 62.
Servants not to canvass, 147.

T

Tax, defaulter of, 21.
Tendered vote, 87.
Treating, 135.
Tenant, 14.
Tribunal, 108, 137.
Town Area election and election petition, 230.

U

Undue influence, 117, 129

V

Vacancy, 61, 116.

Vote.

right to, a valuable right, 10.

creation of a statute, 9.

name of taking, 65.

Voter.

wrongful omission from register, suit for damages when lies, 10.

. W

Withdrawal of candidature, 58.

Women.

Petition, 115.

ERRATA

Page 107, Line 11, *read* ' to ' for ' in ' after the word ' allowed '

Page 125, Line 22, *read* ' agency ' for the word ' evidence.'

Page 138, Line 28, *read* ' action ' for the word 'election.'

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