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[Despatch Abstract.]

Bill further to amend the Madras Local Boards Act, 1884

Comg. to the Select Committee on the _____. Letter from the Govt. of India Comg. the sanction of the Governor General in Council to the several clauses of the Bill, subject to certain observations & suggestions

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government (1898) of Madras.

LEGISLATIVE.

Recd. } 1898. *Enclosures*

Regd. } *Spare copies*

G.O., No. 22, 16th April 1898.

APRIL.

Bill further to amend the Madras Local Boards Act, 1884.

Communicating to the Select Committee on the — letter from the Government of India communicating the sanction of the Governor-General in Council to the penal clauses of the Bill subject to certain observations and suggestions.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—the following paper :—

From J. F. HEWETT, Esq., C.I.E., Secretary to the Government of India, Home Department (Local Boards), to the Secretary to the Government of Madras, Local and Municipal Department, dated Calcutta, 25th March 1898, No. 4.

I am directed to acknowledge the receipt of your letter, No. 39 L., dated the 7th January last, with which was forwarded a Bill further to amend Madras Act V of 1884 (The Madras Local Boards Act, 1884), to the penal clauses of which the sanction of the Government of India was asked.

2. In the telegram from this department, No. 3, dated the 5th instant, the Government of India agreed to the Bill being introduced at once in the Local Legislative Council subject to the consideration by the Select Committee of the remarks which they might have to make.

3. I am now to communicate the sanction of the Governor-General in Council to the penal clauses of the Bill, subject to the following observations and suggestions :—

(*a*) *Clause 55.*—This clause, as at present drafted, appears to the Governor-General in Council to be open to objection. In the first place the sub-section which it is proposed to insert as sub-section (3) of section 81 of the Act, enabling the Chairman of a Panchayat or his representative to force open and enter into premises, which are locked up, for the purpose of distraining any property found therein, would give a power which appears to the Governor-General in Council to be liable to abuse. I am to invite attention to the provisions contained in sections 121 and 122 of the Bengal Municipal Act, 1884, as amended by Bengal Act IV of 1894, and to suggest that the Bill should provide (1) for the exemption from distraint and sale of ploughs, plough-cattle, and tools or implements of agriculture or trade (wearing apparel, cooking utensils and beds in use by the occupants might also, it seems to the Government of India, with advantage be exempted), and (2) for the issue in each case of distraint of a warrant in proper form and signed by the proper authority. In the second place the words "on conviction" in the sub-section which it is proposed to insert as sub-section (4) of section 81 of the Act appear to be vague, inasmuch as no

offence to which they refer is mentioned. I am to suggest that for those words should be substituted the following which occur in section 111 of the Madras District Municipalities Act, 1884, as amended by Madras Act III of 1897, viz., "on proof to the satisfaction of the magistrate that he wilfully or negligently omitted to pay the amount due by him or that he wilfully prevented distraint or a sufficient distraint."

(*b*) *Clause 71.*—The Government of India consider that the imprisonment to which a defaulter would be liable under section 98-C (4) should not be rigorous.

(*c*) *Clause 85.*—It appears to the Government of India that the proposed section 117-F would enable the taluk board to confiscate old established private rights without being required by law to give compensation and that it is therefore open to objection. In this connection I am to forward, for the information of the Governor in Council, a copy of the judgments of the High Courts at Calcutta and Allahabad, respectively, in the cases marginally noted, and of the discussion in the Bengal Legislative Council which resulted in the amendment of section 339 of the Bengal Municipal Act, 1884, and I am to request that the provisions in the draft Bill relating to markets may be modified on the lines of the addition made to that section by section 91 of Bengal Act IV of 1894.

Moran and others (Plaintiffs) *versus* Chairman of Motihari Municipality (Defendant).
Ganga Narain Tiwari (Plaintiff) *versus* the Municipal Board of Cawnpore (Defendant).

4. I am also to convey the following further observations for the consideration of the Governor in Council and the Select Committee :—

(i) In connection with section 20 of the Act, which is left untouched by the Bill, I am to invite attention to paragraph 4 of the letter marginally noted, in which it was intimated that, in the opinion of the Government of India, the power of electing their Vice-President was one which might with advantage be left freely to the local boards in all cases without the intervention of the Local Government. I am to observe that in Bengal, the North-Western Provinces and Oudh and the Punjab, the appointment of Vice-Chairman does not require such intervention.

From the Legislative Department, No. 1534, dated the 8th July 1884.

(ii) I am to invite attention to the correspondence ending with the letter from this department, No. 5 (Municipal), dated the 24th January 1894, with reference to the remuneration of Chairmen and Members of Municipal Committees, and to suggest that an amendment should be made in section 26 of the Madras Local Boards Act, 1884, of a similar nature to that effected in section 16 of the Madras District Municipalities Act III of 1897.

(iii) I am to suggest the omission of the provision which it is proposed by clause 74 of the Bill to insert in section 100-B of the Act that fines levied under that section shall be credited to Taluk Funds. I am to observe that fines imposed by a criminal court form part of the public revenues, and the Government of India are therefore opposed to their alienation by law. While they will not object to the retention of section 54 (iv) of the Act, they would prefer that no further extension of the principle embodied in that section should be entered in the Bill. The Governor-General in Council will, however, have no objection to the fines which may be levied under the proposed section being credited to Taluk Funds under executive order which can apparently be passed under section 55 of the Act.

(iv) I am to invite attention to paragraph 3 of the Resolution of the Home Department, No. 7-Public—407–419, dated the 30th March 1893, on the subject of the grant of pension for mixed service under Government and under municipal and other local authorities.

Enclosures.

Before Mr. Justice Pigot and Mr. Justice Rampini.

Moran and others (Plaintiffs) *v.* Chairman of Motihari Municipality (Defendant).*

High Court, Powers of—Enforcement of public duties—License for a provision market—Construction of the word "may"—Bengal Municipal Act, 1884 (Bengal Act III of 1884), s. 339.

The High Court has no power to compel municipalities beyond the local limits of its ordinary original civil jurisdiction to do their duty or to restrain them from doing that which it is not in their province to do.

There are no words which render it obligatory on a municipality to grant a license under section 339 of Bengal Act III of 1884.

The word "may" in section 339 of that Act is not to be construed as "shall".

This was a suit brought by the plaintiffs for an order directing the Municipal Commissioners of Motihari to grant a license to the plaintiffs under section 339 of the Bengal Municipal Act, 1884, and for compensation.

The facts of the case were as follows:—

The plaintiffs, who were the proprietors of an indigo concern in Motihari, carried on their business through a lawfully-constituted attorney and agent under the name and style of "The Motihari Indigo Concern." They were also the proprietors of an ancient market, called Goodri Bazar, centrally situated within the town of Motihari and within easy access of its inhabitants. Upon the extension of Part X of the Bengal Municipal Act, 1884, to the Municipality of Motihari about the end of 1885, a license under section 340, clause 2, of the Act for the sale of perishable articles in Goodri Bazar was granted to the plaintiffs for the remainder of the then current year ending the 31st March 1886. About this time the municipality opened a market called Henry-ka-bazar at a short distance from the town of Motihari. On the 1st April 1886, the plaintiffs applied for a license for their market under that Act: but their application was refused on the ground that the place where the market was held was not a fit place where articles of a perishable nature could be exposed for sale consistently with the sanitation of the town and the convenience and comfort of its inhabitants.

On the 9th June 1886, the plaintiffs applied that an officer should be deputed to point out the defects which required rectification, and the wants which should be supplied to entitle the plaintiffs to a certificate from the Chairman under section 340 of the Act. On the 15th June, Mr. Henry, the then Chairman of the municipality, passed an order, in which he pointed out the defects which ought to be remedied and the alterations which should be carried out before he would grant a certificate. The plaintiffs, having remedied the defects and carried out the alterations pointed out by the Chairman, again applied for and obtained a certificate under section 340. The certificate was dated 25th and 28th September 1886, and was granted by Mr. C. F. Worsley, the Chairman, who thereby certified, "after inspection of the Goodri market land, the new building and drainage arrangements, that the land is fit to be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetable and similar provisions."

On the 30th September 1886, the plaintiffs applied to the Commissioners of the Motihari Municipality for a license under section 339 of the Act, and presented the certificate of the Chairman along with their application. On the 1st November 1886, at a meeting duly convened, the Commissioners refused a license on the grounds and for the reasons set forth in their resolution of that date, which was in these terms:—

"The petition of the Manager of the Motihari Indigo Concern for a license for the Goodri Bazar was put up before the Commissioners. The Chairman had no objection to grant the license applied for, but it was unanimously resolved by the Municipal Commissioners that the

* Appeal from Original Decree No. 159 of 1888, against the decree of Baboo Amrit Lal Chatterji, Subordinate Judge of Saran, dated the 28th of March 1888.

application for license should be rejected on the grounds that, this town being a small one, there is no necessity for granting a license for the use of the land as a market for the sale of provisions mentioned in section 337, when there is a properly-constructed and well-managed market close to it; that there is no sufficient space in the market regarding which application has been made, and the consequence would be that on the *hât* days the place would become overcrowded, and the public roads would be used by the persons who would attend the market on *hât* days and that inconvenience would be caused to the people who pass by; that the Municipal Commissioners and the Municipal servants could not exercise proper and efficient control over the market in question; and that, having regard to the fact that this town has of late years been subject to recurring epidemics of cholera, and to the remarks made by the Sanitary Commissioner on the occasion of his visits to this town on the 22nd February 1884 and 2nd February 1886, respectively, it is particularly desirable that the sale of perishable articles of food should be under the sole supervision of Municipal Commissioners and Municipal servants."

The plaintiffs appealed under section 63 of the Act to the Commissioner of Patna against the resolution of the Commissioners refusing a license for their market: and, by an order passed on the 13th January 1887, the Commissioner declined to interfere, on the grounds that the granting of a license, even after a certificate of fitness for a market had been obtained from the Chairman, was optional with the Municipal Commissioners, that there was nothing in the resolution of the Commissioners which would authorize him to interfere under section 63 of the Municipal Act; and that, therefore, he could not suspend the execution of that resolution.

On the 15th December 1886, the plaintiffs gave the Motihari Municipality notice of cause of action under section 363 of the Act and on the 28th January 1887 filed their plaint. The plaintiffs alleged that the refusal of the Municipal Commissioners to grant them a license was arbitrary and without good and valid reasons. They charged the Commissioners with having *mala fide* exercised the powers conferred on them to the injury and loss of the plaintiffs. They also alleged that the loss they had suffered, and would suffer, from such wrongful refusal of a license, was over Rs. 1,200 a year; and assessed their total loss at Rs. 20,000. The plaintiffs prayed (1) for an order directing the Commissioners to grant a license to the plaintiffs and to pay compensation; (2) that the Court should grant a license in the event of the Commissioners failing to do so. In the alternative the plaintiffs prayed that the Court should award them compensation in the sum of Rs. 20,000 for the illegal and wrongful acts of the Commissioners.

The defendant Chairman denied *mala fides*, and urged that the action of the Commissioners in rejecting the plaintiffs' application for a license was valid, *bona-fide*, legal and fully justified, and that the Commissioners refused the license because the place was not one fit for a bazar. He denied the liability of the Commissioners to pay compensation, and questioned the correctness of the amount of the plaintiffs' income. He further contended that the Civil Courts had no jurisdiction to compel the Commissioners to grant a license; that where the statute did not give compensation, the Civil Courts had no jurisdiction to grant compensation; and that no suit like the present one would lie.

On behalf of the plaintiffs it was contended that when the Chairman of the Municipality had granted a certificate under section 340 under his own hands, the Commissioners were bound under section 339 of the Act to grant a license to the plaintiffs.

The Subordinate Judge held that the Municipal Commissioners had a discretion under section 339 to refuse a license for good and valid reasons, notwithstanding the certificate of fitness granted under section 340 by the Chairman. He was of opinion that under section 55 of the Specific Relief Act, 1877, he could not issue any mandatory order against a body corporate, and that section 45 of the same Act was not applicable to the Mofussil Courts; and accordingly held that he had no jurisdiction to compel the Commissioners to grant a license.

The Subordinate Judge found that Goodri Bazar was an ancient market. He also found that the Commissioners in refusing a license had acted legally and in the proper exercise of their powers; that the reasons assigned for their refusal were sufficient in law and fairly reasonable; and that there was no ground for imputing

mala-fides to them for such refusal. He also found that the plaintiffs had suffered loss of income from their market in consequence of such refusal, and was of opinion that the refusal of the license was an act done in the exercise of powers conferred by the Act within the meaning of section 362, and that under sections 362 and 363 the Court could award compensation. He thought that Rs. 500 a year for two years would be sufficient compensation for the plaintiffs. Accordingly, the Subordinate Judge gave the plaintiffs a decree for Rs. 1,000 with costs on that amount, dismissing the plaintiffs' claim for specific relief.

The plaintiffs appealed to the High Court.

The defendant also filed cross-objections against the decree of the Subordinate Judge.

Mr. *Evans*, Dr. *Troyluckya Nath Mitter*, and Baboo *Prosunno Gopal Roy* for the appellants.

Mr. *Phillips* and Baboo *Annoda Prosad Banerjee* for the respondent.

The judgment of the High Court (Pigot and Rampini, JJ.) was as follows:—

This is an appeal from a decision of the Subordinate Judge of Champarun so far as it dismisses the suit which is brought by the plaintiffs in respect of the refusal by the Municipality of Motihari of a license for the use of certain lands in the occupation of the plaintiffs as a market.

There is no doubt, and it has been so found, that this is an ancient market. There is no doubt that the powers possessed by the municipality under Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the municipality of doing those acts destructive of the plaintiffs' property, and yet no remedy or no right was allowed by the Act to persons in the position of the plaintiffs in case of the Act being so used to the destruction of their property.

The sections which relate to this matter are sections 337 to 340 inclusive, and perhaps one or two of the later sections of Part X. Section 337 gives the Commissioners power to "order that within such limits as they may fix, no land shall be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetables and similar provisions, otherwise than under a license to be granted by the Commissioners." Section 338 confers upon them the power, when they have passed such a prohibitory order as section 337 provides, of granting such a license as is contemplated by section 337.

Section 339 provides that the Commissioners may grant such a license year by year on the certificate of the Chairman. Section 340 provides that the Chairman shall grant such a certificate, unless the land be defective for the purposes of a market in the respects specified in the section; and the second part of this section (340), which is that upon which the appellants rely, enacts that "the owners or lessees of all lands used as markets for the sale of provisions as aforesaid at the time of the extension of this Part to the municipality shall be entitled to receive a license for the current year without the certificate required by s. 339, but in subsequent years the license shall not be renewed without such certificate."

There is no doubt the plaintiffs were the owners or lessees of land used as a market at the time of the extension of this part of the Act to the Municipality of Motihari.

What the municipality did was to start a market of their own and then refuse the plaintiffs a license, thereby shutting up their market; and with reference to that, one of the later sections of this part may be referred to, that is, s. 344, which makes it *an offence, punishable by fine*, to permit land to be used as a market without a license under s. 338. It is contended that the later words of s. 340 may—and assuredly, if they may, they ought to—be read so as to save the property of the plaintiffs from the complete confiscation with which this public body, in exercise of the powers with

which they have been vested, has visited them. If they cannot obtain a remedy in damages for the refusal to grant a license, they are wholly without any remedy at all. The Legislature in its wisdom having deliberately withdrawn from the Courts in this country that power, which is possessed by the Courts of Justice at home, to compel corporations to do their duty, and to restrain them from doing that which it is not in their province to do—a power, which has been reserved to the High Court in its Ordinary Original Jurisdiction with respect to the presidency-town, but which has been withheld in respect of any of the municipalities in the mofussil—the plaintiffs are wholly without remedy unless we can give them damages for the conduct of the municipality: but to do that, we must be satisfied that it was the duty of the municipality under the provisions of the Act to issue the license which they have refused: for breach of such a duty they might perhaps (at least, that is plaintiffs' case) be liable in damages. There are no words in ss. 339 or 340 rendering it obligatory on the municipality to issue a license, unless, in the words in s. 339 "and the Commissioners *may* grant such license year by year" the word "may" is to be read as "shall" or is to be read in some cases as "shall". That is the contention of the appellant; and the cases in which it is contended that "may" ought in that section to be read "shall" are cases in which land was actually being used as a market at the time of the extension of this part of the Act to the municipalities. It is argued that as the owners of lands so used at such a time are declared entitled to receive a license for the current year without the certificate required by s. 339, but for subsequent years it is provided that the license shall not be renewed without such certificate, that that must mean that the license in subsequent years must also be renewed, provided the certificate is granted.

There are two difficulties in the way of adopting this construction. One, that the word "may" in s. 339 must, according to it, in the majority of cases be read as "may," but in exceptional cases as "shall". That is a serious difficulty: and the second difficulty is that the scope of the sentence at the close of s. 340, which it is suggested ought to be read as "provided that in subsequent years a license is to be issued in case a certificate is granted," seems not capable of bearing such a construction and not to contemplate anything of the kind. We think that the effect of it is merely to relieve persons, using land as a market at the time the Act is made applicable, from the necessity in that year of obtaining a certificate; and the words "but in subsequent years the license shall not be renewed without such certificate" are merely words, as we read them, of caution to avoid the very unreasonable supposition that the one year's holding without a certificate involved the right to a license for subsequent years without a certificate. That they contemplate an enactment that such holders shall get a license for all subsequent years, if they please, without a certificate, we much regret we are unable to hold.

That being so, we must affirm the decision of the Court below and dismiss the appeal.

We think that it is most lamentable that Acts should be drawn, as they too often are, without that intelligent consideration of, or that anxious regard for, private rights, which ought to be the study of every Legislature that springs from English authority.

The cross appeal must be allowed. As we have pointed out in our judgment in the plaintiffs' appeal, the municipality was legally entitled to refuse the renewal of the license; the Subordinate Judge, with a very natural wish to do something for the loss sustained by the plaintiffs, gave them damages for that legal refusal. It is impossible that that order of the Subordinate Judge can be sustained. We therefore set it aside.

We are very glad to hear from the learned Counsel for the respondent that a license will be granted to the plaintiffs, and that the preposterous proceeding of which we have been studying the consequences will be so far corrected. Under the circumstances we shall give no costs either in the appeal or cross-appeal.

Appeal dismissed and cross-objections allowed.

HIGH COURT OF JUDICATURE, NORTH-WESTERN PROVINCES.

Civil Side—Appellate Jurisdiction.

Dated Allahabad, the 16th February 1897.

Present:

The Hon'ble Sir John Edge, *Kt.* ... ... *Chief Justice,*

and

The Hon'ble H. F. Blair ... ... *Judge.*

Case No. 404 *of* 1895.

Second appeal from the decision of the Judge of Cawnpore, dated 1st April 1895.

Ganga Narain Tiwari ... ... *Plaintiff-Appellant,*

versus

The Municipal Board of Cawnpore ... *Defendant-Respondent.*

By the Court.

In this case the plaintiff sought an injunction restraining the Municipal Board of Cawnpore from interfering with the exercise of his right to hold and maintain a market for the sale of vegetable, fruit and other articles within the grounds of a temple of which he was manager. The defence to the suit was that, according to certain rules of the municipal board, the plaintiff had no right to establish or continue a market without the permission of the municipal board. It is necessary to see how this suit arose.

The Municipal Board of Cawnpore had established within the municipality a market for the sale by wholesale of vegetables, fruit and such like things. They had let that market to a contractor. The contractor had by his conduct so disgusted the people who had used the market that they had refused any longer to come to that market, and they had betaken themselves to a market in the cantonments of Cawnpore. One can easily understand that it was not pleasing to the Municipal Board of Cawnpore that the market over which they had spent a considerable amount of money should be abandoned, and that the tolls which they expected to derive from the use of their market should go into other pockets. It is not quite clear how they approached the cantonment authorities of Cawnpore, but they were determined, if they could, to obtain the closing of the market in cantonments, in the hope, no doubt, of compelling the public to return to their own municipal market. The correspondence between the cantonment authorities and the municipality, if we had it, would probably be instructive. This much we know that the cantonment authorities, having granted a lease of their market to certain contractors, were apprehensive that they might be sued for damages if they complied with the request of the municipal board, and that they insisted upon having an indemnity bond to secure them against loss by any damages which might be awarded to the persons with whom they were about to break their contract. Whether the cantonment authorities would have been liable in damages or not, and whether or not they had the power to put an end to the lease granted to their contractors, are beside the question here: what we know is that the cantonment authorities thought it reasonable that they should get an indemnity bond and declined to act without it, and that the Municipal Board of Cawnpore authorized the execution of an indemnity bond, and the bond was apparently given, signed by the Chairman. Whether the Municipal Board of Cawnpore intended, if the cantonment authorities were made liable for their breach of contract, to pay the damages out of the public moneys of the Municipal Board of Cawnpore, or whether the members of the board intended to pay these damages out of their private purses, we do not know. It is probable that an auditor would have surcharged the municipal board and have forced the members of the board individually to make good the sums, if any, which had been

paid under that indemnity bond. Municipal boards are not entrusted with public moneys in order that they may employ them in inducing other persons to break their lawful contracts. However, the indemnity bond was given, the cantonment market was closed, and thereupon the customers who had formerly attended the market of the municipal board looked about to see whether they could find another place to sell their goods, and they proceeded to the market which had been lawfully held by the plaintiff within the grounds of the temple for a period of something like twenty-five years.

The municipal board, by closing the cantonment market, had not effected their object, but they were not to be defeated. The indemnity bond was given on the 25th of June 1892. By the 23rd of July 1892 the board awoke to the necessity of closing another market in order to get back their customers, and on this occasion they had no cantonment authorities who would be willing to close a market on receiving an indemnity to deal with; they had to deal with the plaintiff in this suit. On the 23rd of July 1892 they served the plaintiff with the following notice:—"Under order of this date you are directed to discontinue at once within 24 hours the holding of the *bazar* established by you without permission; otherwise proceedings will be taken. In case of non-compliance legal steps will be taken in accordance with the rules of the municipal board, and no excuse will be heard." That threat was not sufficient; the market continued, and on the 25th of July 1892 they served on the plaintiff the following notice:—"Under order of this date you are directed to close at once within twenty-four hours the *bazar sabzi mandi* (market for the sale of vegetables and fruit) which you have newly established without permission within the enclosure known as that of Prag Narain. Otherwise, in case of non-compliance, legal steps will be taken in accordance with the rules of the municipal board (section 56), and no excuse will be heard." It so happened that the notice of the 23rd of July was one which would not fit in with the existing rules of the municipal board. The then existing rules of the municipal board, even according to the contention of the board, only gave them power to deal with new markets. It is to be observed that in the notice of the 23rd of July the board did not suggest that the market was a new one—as in fact it was not—but they were determined to try it on, and accordingly served the notice of the 25th of July, in which they alleged the market to be new. Even that notice did not much frighten the plaintiff, for he continued to hold his market. Thereupon the municipal board proceeded to put the criminal law in motion. They did not attempt to prosecute the plaintiff under the Indian Penal Code for conducting a market which was a public nuisance, for in truth it was a well-conducted market and no case of nuisance could be made out, but they proceeded to prosecute his brother, Jamna Narain, who managed for him, under their rules. The case was tried by a magistrate of another district, this Court having made an order of transfer, and the magistrate of the other district (Fatehpur) on the 16th of November 1892 acquitted Jamna Narain on the ground that the market was an old market. One would have thought that that ought to have satisfied the municipal board, but it was not so. They were determined not to let the matter drop, and were determined, if they could, to confiscate, in order to benefit their own market, the plaintiff's long-acquired right in his market. Accordingly, in December 1892, they proceeded to apply to the Local Government for sanction of an amendment of the rule under which they had taken proceedings by leaving out the qualifying word "new" which that rule contained, and by practically reverting to the words of a rule which had been made under section 22 of Act No. XV of 1873, which was a section which gave a Committee power to frame rules for declaring what acts or omissions within a municipality shall be considered to be public nuisances. The old rule which they practically wished to reinstate was as follows: It was declared that "the establishment or maintenance of a public market, *bazar*, *ganj*, or slaughter-house, except under such conditions as the board may from time to time prescribe, was a public nuisance." It has been contended here before us that, under section 22 of Act No. XV of 1873, a municipal board had, subject to the sanctioning of their rules by Government, unlimited and uncontrolled discretion to declare any act or any omission within their municipal boundaries to be a public nuisance; to declare, for instance, that a man should not eat his dinner within his house, or that persons should not walk along the streets of

Cawnpore with any clothes on; the argument went as far as that. The contention was that the municipal board, in its discretion or indiscretion, whether for the purposes of public health or for the oppression of traders in Cawnpore, might by a rule declare anything which might happen in Cawnpore to be a nuisance; and that a person not hearkening to such a rule would be liable to a prosecution. In our opinion the Legislature was never so foolish as to intend to give so sweeping a discretion to a municipal body. Certainly the proceedings in this case, as we shall presently point out, will be a warning, we hope, to the Legislature to be more precise in future in limiting and defining the powers which it grants to municipal boards in these provinces.

Now we have said that, in order to close the plaintiff's market, the municipal board were desirous of getting back to some rule similar to the old one, and of striking the limitation "new" out of the then rule. The matter went from the municipal board to the then Commissioner of Allahabad apparently by means of a letter signed by the Chairman of the board and dated the 6th of January 1893, in which reference was made to some objections to any alteration of the rule recently taken by the plaintiff. The letter of the Chairman alleges that the insertion of the word "new" in the rule in question he believed was due to a mistake. We believe that it was more probably due to the fact that the High Court at Calcutta, in the case of *Moran* versus *The Chairman of Motihari Municipality* (I. L. R., 17 Cal. 329), had pointed out in vigorous, but not too strong, language the lamentable consequence of entrusting municipal boards with powers under which they might practically confiscate private rights without making any compensation. The Chairman of the board, in the letter to which we are referring, says as to the objection that if the word "new" is omitted from the rule, the municipal board will have authority to remove hundreds of markets from private places and establish them in places fixed by the municipality, that "it cannot be said that the Board had misused the powers it had in the past." Probably not before that period and before this case arose, because the board had not found that the markets and shops of private persons in Cawnpore were in competition with the market which the board had established. As soon, however, as the board met with competition, it, in our opinion, misused its supposed powers. Then the Chairman goes on to make a representation as to the facts connected with this market. We cannot believe that he was acting on his own knowledge; we must believe that he was entirely misled by those about him. In fact, the language of the sentence which we are about to quote is not the language which an educated Englishman would use. The letter says: "When the municipal board tried to close this market, it was heard that they could not do so under the new bye-laws, as for many years a few vegetable sellers had been allowed to sit in the temple compound for the convenience of people frequenting the temple." It has been found—and we entirely agree with the finding—that the market was an old established market of from twenty to twenty-five years' standing, at which sales, not only by retail, but also by wholesale, had been publicly conducted. We regard that description of the market as a false and misleading description. We do not believe that it was false and misleading to the knowledge of the Chairman, but certainly false and misleading to the knowledge of those who were instructing him. Now let us see what was the view that the Local Government took of this matter when it came before it. The Local Government, in replying to the Municipal Board of Cawnpore, says that "the amended rule which has been submitted for sanction really asks sanction for the following proposals: first, that no private *bazar*, however old, will be maintained until the sanction of the board has been obtained; second, the Chairman may be empowered to shut up and close by means of a written notice any private *bazar* where retail selling is going on, however old and well managed it may be and however willing its owner may be to carry out all instructions." The Local Government had no difficulty in divining what the motives and objects of the municipal board were. Its comment is as follows:—"From the foregoing it will appear that the municipal board should be empowered to withhold sanction to the holding of any particular private bazar at any time it likes without assigning any reason, and without making any compensation to the owner, who may lose his valuable right which he may have acquired by prescription. Furthermore, if the municipal board sanctions the holding of any private *bazar* and that *bazar* is subsequently sold for

a large value, the Chairman will, even if the conditions prescribed by the board are all fulfilled in that *bazar*, be empowered at any time he pleases to close the *bazar* without consulting the board or taking any evidence or assigning any reason": and it says further that, "although the Government does not wish to curtail those powers, still it is quite inadvisable to grant such arbitrary powers to the board as have been suggested." On that the Chairman of the Municipal Board writes to the Commissioner and informs him that the board is prepared to modify its request—we presume by leaving out the arbitrary powers of the Chairman—and to simply ask that the bye-law which was in force for years in the municipality may be sanctioned, "as this bye-law is practically the same as the rule printed at page 76 of the Government Manual as one of the rules approved by Government." The Chairman forgot to draw the attention of the Commissioner to the fact that section 22 of Act No. XV of 1873, under which the old rules or bye-laws had been made, had been most materially altered by section 56 of Act No. XV of 1883—the Act then in force. The Legislature by 1883 had obviously become aware of the danger of entrusting a power to municipal boards under which they could declare any act or any omission to do any act to be a nuisance and make a person liable to a prosecution. The old rule which the Chairman asked the Government practically to re-introduce could not have been re-introduced under Act No. XV of 1883. The municipal board had no longer the right or the power, either with or without the sanction of the Local Government, to declare what acts or omissions should be deemed to be nuisances within municipal limits. Section 56 of Act No. XV of 1883 put the question of nuisance at rest for ever by giving the board power to interfere only in the case of a public nuisance.

How it came to pass we know not, but the Local Government sanctioned the following rule: "No person shall establish or maintain a public market, *bazar*, ganj or slaughter-house in any place without the sanction of the board or except under such conditions as the board may from time to time prescribe." The board, having been defeated up to that time in their attempts to confiscate without compensation the private rights and private property of the plaintiff, had now got a rule which they thought gave them a free hand, and accordingly they at once proceeded to prosecute the plaintiff again in order to force him to close the market and abandon the competition. That prosecution, we understand, is awaiting the decision of this case.

It has been said to us in this case on behalf of the board that the board will make compensation. All we can say is that, seeing how the board has acted in this case, we should be very sorry to be anywhere in the position of the plaintiff going to the board for compensation. The plaintiff forwarded a petition against this alteration of the rule to the Governor-General. The board, we presume, had got their opportunity of representing the facts as they chose. For it is obvious, on looking at the letter of the 5th of February 1894 from the Government of India to the Secretary to the Government of the North Western Provinces, that misleading representation as to the facts had been put before the Government of India. It is obvious that it was represented to the Government of India that the selling of vegetables by wholesale in the plaintiff's market was quite recent. That was not a fact. It was represented to the Government of India that if the municipal board did close the plaintiff's market under their rules, the plaintiff would have a right to obtain through the civil courts compensation. In one sense that representation was true. If the municipal board, having no authority to close the market, did close it, no doubt they would have to pay damages; but if the municipal board was right in believing that they had the power to close the market lawfully, no provision had been made, either under the rules or by the Legislature, to compel them to pay one anna of compensation to any person whose rights they might confiscate. The Governor-General in Council decided that he did not consider that the previous practice in respect of this market should be stopped, or that the income derived from it should be confiscated, without a grant of suitable compensation, and the Governor-General in Council expressed an opinion that the new rule, *i.e.*, the altered rule, should be worked with due regard to the custom of the temple and to the rights which had accrued before the rule was framed, and a suggestion was thrown out that it might be possible that a court of

law might not hold that the last rule was retrospective; that is, that the last rule did not apply to a market which was in existence before it was made. So we understand it.

This case came on for trial before the Subordinate Judge of Cawnpore, who dismissed it on a preliminary point. He was set right upon that point, and then he started to try the case on the merits. He found that there had been no old market there for wholesale. A perusal of his judgment is sufficient to show that he went in that finding entirely against the evidence. The plaintiff's witnesses proved his case. Six of the witnesses called by the board proved the plaintiff's case, but the Subordinate Judge found for the defendants upon the evidence of three witnesses. What he has written about these three witnesses in our opinion shows that he ought not to have depended upon their evidence. The plaintiff appealed. The District Judge of Cawnpore in a very careful and well-considered judgment, found every issue of fact in the plaintiff's favour. He found that this was an old market for retail sales and also for wholesale. He found that it was a well-conducted market, against the management of which not one word could be said, and, indeed, the only thing that can be said in favour of the Municipal Board of Cawnpore is that, with all their determination to ruin the plaintiff, they have not ventured to suggest that any fault can be found with the management or with the conduct of the plaintiff's market. The District Judge, having found all the facts, as we think rightly, in favour of the plaintiff, dismissed his suit on a construction of the last rule to which we have referred and which, he held, applied in this case.

We have got to consider first what is the true construction of clause (*c*) of section 55 of Act No. XV of 1883. It is contended upon behalf of the municipal board that that section enables them to make a rule which they can put in force against new markets or old markets, whether they are well conducted and unexceptionable or the reverse, and that they can do this with the prime object of promoting the revenue of the municipal market at the expense of ratepayer or ratepayers of Cawnpore whose market is to be confiscated. In our opinion, although the clause is ambiguously worded, it never could have been the intention of the Legislature to give power to a municipal board to make a rule which would enable them to confiscate private rights in markets where holdings of the market and the maintenance of the market could not be objected to upon any public ground, and to do this without making any compensation to the person whose rights are affected. We find that in Act No. XV of 1883, when the Legislature did intend to give to municipal boards the power to acquire private property, they put them under the obligation of complying with the Land Acquisition Act, that is, if the board desired to obtain the land of a private person, they had to pay just compensation for the rights which they were taking for themselves; but it is contended that if the board had a right to close any market in Cawnpore, although the market may be absolutely unobjectionable on the ground of public health or convenience, there was no obligation imposed by this Act on the board to pay one anna of compensation. It is quite obvious from the conduct of the board in this case that it would not be advisable for the man whose rights were confiscated to trust himself to the tender mercies of the board or to their conceptions of justice.

There is another reason against our construing this clause as the board contends we should, and it is this. We do not believe it possible that the Legislature could have intended to give a power to the board by the exercise of which they might confiscate private rights for the purpose of increasing their own revenues; and that in truth is what the board has been trying to do with regard to the plaintiff and his market. The Legislature could not have intended that a municipal board should, of its own free will and at its own indiscretion, have a right to treat that as a nuisance which by no possible view could be regarded by the public or by a lawyer as a nuisance. As we read the clause, it was meant to give to municipal boards power to make rules for prohibiting the establishment of markets, that is, to prevent new markets being established, and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction. By "maintenance," we presume, was intended the keeping up of a market in such a

manner as would make it a fit place for the carrying on of a market, having regard both to public health and public convenience. It also gave them the power to make rules for the management of such markets. But until the Legislature tell us that it was their intention to confer upon municipal boards power to confiscate private rights, the maintenance of which is entirely unobjectionable on public grounds, and to do so without paying any compensation, we must construe clause (*c*) in such a manner as not to cast the slur upon the Legislature of having worked a gross injustice, and we do so construe it.

We allow this appeal with costs in this Court and in the Courts below, and we decree the plaintiff's suit and make the declaration which he has asked for. In the costs of this Court will be included fees on the higher scale.

Copy of the Discussion in the Bengal Legislative Council resulting in amendment of Section 339 of the Bengal Municipal Act, 1884.

The Hon'ble Moulvi Serajul Islam Khan Bahadur moved that, after section 85 of the Bill, the following new section be added:—

"85 A. In line 5 of section 339 of the Act, between the word 'Commissioners' and the words 'may grant' the following words shall be inserted:—shall as regards markets (already existing) at the time of the extension of this part to the municipality and in all other cases."

He said:

"I am sorry I have to detain the Council with this amendment at this late stage; but it is after much deliberation and consultation with some of the most eminent members of the Calcutta bar that I have been induced to bring forward this motion. On a reference to Part X of the Act, sections 335 to 340, it would appear that the power of the Commissioners to grant licenses for markets is purely discretionary, and cases have occurred in which the Commissioners have exercised their purely arbitrary powers without due regard to the private rights of parties. The well-known case of the Motihari Municipality is an instance in point. In that case the Municipal Commissioners refused to grant a license to Messrs. Moran, the owner of an old and very valuable market, simply because they themselves had set up a rival market; and although Messrs. Moran obtained a certificate from the Chairman under section 340 to the effect that they had complied with the provisions of the law, still the Commissioners did not think it proper to grant a license. The result was that Messrs. Moran were deprived of their market, and when they went to law the Courts declared that they could not interfere. I would invite the attention of the Council to a passage in the judgment of Mr. Justice Pigot at page 333 of the Indian Law Reports (volume XVII, Calcutta series). The learned Judge says:—'There is no doubt that the powers possessed by the municipality under Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the municipality of doing those acts destructive of the plaintiffs' property, and yet no remedy or no right was allowed by the Act to persons in the position of the plaintiffs in case of the act being so used to the destruction of their property'. Their Lordships held that, under the law as it at present stands, a person who is deprived of his property by the Municipal Commissioners under Part X has no remedy. I therefore submit that it is the duty of the Legislature to step in and remedy such a state of things and on these grounds the amendment I have the honour to propose should be accepted."

The Hon'ble Mr. Bourdillon said:—

"I may at once inform the Hon'ble Member that the Lieutenant-Governor has considered the matter, and read the case to which the Hon'ble Member has referred me as well as another case, the case of the Madiripur Municipality, and the opinion

of the Lieutenant-Governor is, that if the Hon'ble Member will substitute the words 'lawfully established' for 'already existing', there will be no objection to the amendment."

The Hon'ble Moulvi Serajul Islam Khan Bahadur said: "I accept the alteration."

The motion as amended was then put and agreed to.

No. 408.

Transferred to the Legislative Department.

(Signed) S. G. ROBERTS,
Ag. Assistant Secretary.

4th April 1898.

Order—No. 22, Legislative, dated 16th April 1898.

Communicated to the Select Committee on the Bill further to amend the Madras Local Boards Act, 1884.

(True Extract.)

H. TREMENHEERE,
Ag. Secretary to Government.

To the Select Committee on the Bill further to amend
" the Madras Local Boards Act, 1884, with copies of
G.Os., No. 35, Legislative, dated 27th February 1894,
and No. 371, Financial, dated 11th April 1893.
" Local and Municipal Department.

Ens A. Reitt.

Government {1898} of Madras.

LEGISLATIVE.

Submitted to C.S. for approval.

CRU
28/4
Approved
28.4.98

Recd.	1898	*Enclosures*
Regd.		*Spare copies*

G.O., No. 22, 16th April 1898.

APRIL.

Bill further to amend the Madras Local Boards Act, 1884.

Communicating to the Select Committee on the — letter from the Government of India communicating ~~with remarks~~, the sanction of the Governor-General in Council to the penal clauses of the Bill.

Subject to certain observations and suggestions

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—the following paper:—

From J. P. HEWETT, Esq., C.I.E., Secretary to the Government of India, Home Department (Local Boards), to the Secretary to the Government of Madras, Local and Municipal Department, dated Calcutta, 25th March 1898, No. 4.

I am directed to acknowledge the receipt of your letter, No. 39 L., dated the 7th January last, with which was forwarded a Bill further to amend Madras Act V of 1884 (The Madras Local Boards Act, 1884), to the penal clauses of which the sanction of the Government of India was asked.

2. In the telegram from this department, No. 3, dated the 5th instant, the Government of India agreed to the Bill being introduced at once in the local Legislative Council subject to the consideration by the Select Committee of the remarks which they might have to make.

3. I am now to communicate the sanction of the Governor-General in Council to the penal clauses of the Bill, subject to the following observations and suggestions:—

(*a*) *Clause 55.*—This clause, as at present drafted, appears to the Governor-General in Council to be open to objection. In the first place the sub-section which it is proposed to insert as sub-section (3) of section 81 of the Act, enabling the Chairman of a Panchayat or his representative to force open and enter into premises, which are locked up, for the purpose of distraining any property found therein, would give a power which appears to the Governor-General in Council to be liable to abuse. I am to invite attention to the provisions contained in sections 121 and 122 of the Bengal Municipal Act, 1884, as amended by Bengal Act IV of 1894, and to suggest that the Bill should provide (1) for the exemption from distraint and sale of ploughs, plough-cattle, and tools or implements of agriculture or trade (wearing apparel, cooking utensils and beds in use by the occupants might also, it seems to the Government of India, with advantage be exempted), and (2) for the issue in each case of distraint of a warrant in proper form and signed by the proper authority. In the second place the words "on conviction" in the sub-section which it is proposed to insert as sub-section (4) of section 81 of the Act appear to be vague, inasmuch as no

offence to which they refer is mentioned. I am to suggest that for those words should be substituted the following which occur in section 111 of the Madras District Municipalities Act, 1884, as amended by Madras Act III of 1897, viz., "on proof to the satisfaction of the magistrate that he wilfully or negligently omitted to pay the amount due by him or that he wilfully prevented distraint or a sufficient distraint."

(*b*) *Clause 71.*—The Government of India consider that the imprisonment to which a defaulter would be liable under section 98-C (4) should not be rigorous.

(*c*) *Clause 85.*—It appears to the Government of India that the proposed section 117-F would enable the taluk board to confiscate old established private rights without being required by law to give compensation and that it is therefore open to objection. In this connection I am to forward, for the information of the Governor in Council, a copy of the judgments of the High Courts at Calcutta and Allahabad, respectively, in the cases marginally noted, and of the discussion in the Bengal Legislative Council which resulted in the amendment of section 339 of the Bengal Municipal Act, 1884, and I am to request that the provisions in the draft Bill relating to markets may be modified on the lines of the addition made to that section by section 91 of Bengal Act IV of 1894.

Moran and others (Plaintiffs) *versus* Chairman of Motihari Municipality (Defendant).
Ganga Narain Tiwari (Plaintiff) *versus* the Municipal Board of Cawnpore (Defendant).

4. I am also to convey the following further observations for the consideration of the Governor in Council and the Select Committee:—

(i) In connection with section 20 of the Act, which is left untouched by the Bill, I am to invite attention to paragraph 4 of the letter marginally noted, in which it was intimated that, in the opinion of the Government of India, the power of electing their Vice-President was one which might with advantage be left freely to the local boards in all cases without the intervention of the Local Government. I am to observe that in Bengal, the North-Western Provinces and Oudh and the Punjab, the appointment of Vice-Chairman does not require such intervention.

From the Legislative Department, No. 1534, dated the 8th July 1884.

(ii) I am to invite attention to the correspondence ending with the letter from this department, No. 5 (Municipal), dated the 24th January 1894, with reference to the remuneration of Chairmen and Members of Municipal Committees, and to suggest that an amendment should be made in section 26 of the Madras Local Boards Act, 1884, of a similar nature to that effected in section 16 of the Madras District Municipalities Act III of 1897.

(iii) I am to suggest the omission of the provision which it is proposed by clause 74 of the Bill to insert in section 100-B of the Act that fines levied under that section shall be credited to taluk funds. I am to observe that fines imposed by a criminal court form part of the public revenues, and the Government of India are therefore opposed to their alienation by law. While they will not object to the retention of section 54 (iv) of the Act, they would prefer that no further extension of the principle embodied in that section should be entered in the Bill. The Governor-General in Council will, however, have no objection to the fines which may be levied under the proposed section being credited to taluk funds under executive order which can apparently be passed under section 55 of the Act.

(iv) I am to invite attention to paragraph 3 of the Resolution of the Home Department, No. 7-Public—407–419, dated the 30th March 1893, on the subject of the grant of pension for mixed service under Government and under municipal and other local authorities.

Enclosures.

Before Mr. Justice Pigot and Mr. Justice Rampini.

Moran and others (Plaintiffs) *v.* Chairman of Motihari Municipality (Defendant).*

High Court, Powers of—Enforcement of public duties—License for a provision market—Construction of the word "may"—Bengal Municipal Act, 1884 (Bengal Act III of 1884), s. 339.

The High Court has no power to compel municipalities beyond the local limits of its ordinary original civil jurisdiction to do their duty or to restrain them from doing that which it is not in their province to do.

There are no words which render it obligatory on a municipality to grant a license under section 339 of Bengal Act III of 1884.

The word "may" in section 339 of that Act is not to be construed as "shall".

This was a suit brought by the plaintiffs for an order directing the Municipal Commissioners of Motihari to grant a license to the plaintiffs under section 339 of the Bengal Municipal Act, 1884, and for compensation.

The facts of the case were as follows:—

The plaintiffs, who were the proprietors of an indigo concern in Motihari, carried on their business through a lawfully-constituted attorney and agent under the name and style of "The Motihari Indigo Concern." They were also the proprietors of an ancient market, called Goodri Bazar, centrally situated within the town of Motihari and within easy access of its inhabitants. Upon the extension of Part X of the Bengal Municipal Act, 1884, to the Municipality of Motihari about the end of 1885, a license under section 340, clause 2, of the Act for the sale of perishable articles in Goodri Bazar was granted to the plaintiffs for the remainder of the then current year ending the 31st March 1886. About this time the municipality opened a market called Henry-ka-bazar at a short distance from the town of Motihari. On the 1st April 1886, the plaintiffs applied for a license for their market under that Act; but their application was refused on the ground that the place where the market was held was not a fit place where articles of a perishable nature could be exposed for sale consistently with the sanitation of the town and the convenience and comfort of its inhabitants.

On the 9th June 1886, the plaintiffs applied that an officer should be deputed to point out the defects which required rectification, and the wants which should be supplied to entitle the plaintiffs to a certificate from the Chairman under section 340 of the Act. On the 15th June, Mr. Henry, the then Chairman of the municipality, passed an order, in which he pointed out the defects which ought to be remedied and the alterations which should be carried out before he would grant a certificate. The plaintiffs, having remedied the defects and carried out the alterations pointed out by the Chairman, again applied for and obtained a certificate under section 340. The certificate was dated 25th and 28th September 1886, and was granted by Mr. C. F. Worsley, the Chairman, who thereby certified, "after inspection of the Goodri market land, the new building and drainage arrangements, that the land is fit to be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetable and similar provisions."

On the 30th September 1886, the plaintiffs applied to the Commissioners of the Motihari Municipality for a license under section 339 of the Act, and presented the certificate of the Chairman along with their application. On the 1st November 1886, at a meeting duly convened, the Commissioners refused a license on the grounds and for the reasons set forth in their resolution of that date, which was in these terms:—

"The petition of the Manager of the Motihari Indigo Concern for a license for the Goodri Bazar was put up before the Commissioners. The Chairman had no objection to grant the license applied for, but it was unanimously resolved by the Municipal Commissioners that the

* Appeal from Original Decree No. 152 of 1888, against the decree of Baboo Amrit Lal Chatterji, Subordinate Judge of Sarun, dated the 29th of March 1888.

application for license should be rejected on the grounds that, this town being a small one, there is no necessity for granting a license for the use of the land as a market for the sale of provisions mentioned in section 337, when there is a properly-constructed and well-managed market close to it; that there is no sufficient space in the market regarding which application has been made, and the consequence would be that on the *hât* days the place would become overcrowded, and the public roads would be used by the persons who would attend the market on *hât* days and that inconvenience would be caused to the people who pass by; that the Municipal Commissioners and the Municipal servants could not exercise proper and efficient control over the market in question; and that, having regard to the fact that this town has of late years been subject to recurring epidemics of cholera, and to the remarks made by the Sanitary Commissioner on the occasion of his visits to this town on the 22nd February 1884 and 2nd February 1886, respectively, it is particularly desirable that the sale of perishable articles of food should be under the sole supervision of Municipal Commissioners and Municipal servants."

The plaintiffs appealed under section 63 of the Act to the Commissioner of Patna against the resolution of the Commissioners refusing a license for their market: and, by an order passed on the 13th January 1887, the Commissioner declined to interfere, on the grounds that the granting of a license, even after a certificate of fitness for a market had been obtained from the Chairman, was optional with the Municipal Commissioners, that there was nothing in the resolution of the Commissioners which would authorize him to interfere under section 63 of the Municipal Act; and that, therefore, he could not suspend the execution of that resolution.

On the 15th December 1886, the plaintiffs gave the Motihari Municipality notice of cause of action under section 363 of the Act and on the 28th January 1887 filed their plaint. The plaintiffs alleged that the refusal of the Municipal Commissioners to grant them a license was arbitrary and without good and valid reasons. They charged the Commissioners with having *malâ fide* exercised the powers conferred on them to the injury and loss of the plaintiffs. They also alleged that the loss they had suffered, and would suffer, from such wrongful refusal of a license, was over Rs. 1,200 a year; and assessed their total loss at Rs. 20,000. The plaintiffs prayed (1) for an order directing the Commissioners to grant a license to the plaintiffs and to pay compensation; (2) that the Court should grant a license in the event of the Commissioners failing to do so. In the alternative the plaintiffs prayed that the Court should award them compensation in the sum of Rs. 20,000 for the illegal and wrongful acts of the Commissioners.

The defendant Chairman denied *malâ fides*, and urged that the action of the Commissioners in rejecting the plaintiffs' application for a license was valid, *bonâ-fide*, legal and fully justified, and that the Commissioners refused the license because the place was not one fit for a bazar. He denied the liability of the Commissioners to pay compensation, and questioned the correctness of the amount of the plaintiffs' income. He further contended that the Civil Courts had no jurisdiction to compel the Commissioners to grant a license; that where the statute did not give compensation, the Civil Courts had no jurisdiction to grant compensation; and that no suit like the present one would lie.

On behalf of the plaintiffs it was contended that when the Chairman of the Municipality had granted a certificate under section 340 under his own hands, the Commissioners were bound under section 339 of the Act to grant a license to the plaintiffs.

The Subordinate Judge held that the Municipal Commissioners had a discretion under section 339 to refuse a license for good and valid reasons, notwithstanding the certificate of fitness granted under section 340 by the Chairman. He was of opinion that under section 55 of the Specific Relief Act, 1877, he could not issue any mandatory order against a body corporate, and that section 45 of the same Act was not applicable to the Mofussil Courts; and accordingly held that he had no jurisdiction to compel the Commissioners to grant a license.

The Subordinate Judge found that Goodri Bazar was an ancient market. He also found that the Commissioners in refusing a license had acted legally and in the proper exercise of their powers; that the reasons assigned for their refusal were sufficient in law and fairly reasonable; and that there was no ground for imputing

mala-fides to them for such refusal. He also found that the plaintiffs had suffered loss of income from their market in consequence of such refusal, and was of opinion that the refusal of the license was an act done in the exercise of powers conferred by the Act within the meaning of section 362, and that under sections 362 and 363 the Court could award compensation. He thought that Rs. 500 a year for two years would be sufficient compensation for the plaintiffs. Accordingly, the Subordinate Judge gave the plaintiffs a decree for Rs. 1,000 with costs on that amount, dismissing the plaintiffs' claim for specific relief.

The plaintiffs appealed to the High Court.

The defendant also filed cross-objections against the decree of the Subordinate Judge.

Mr. *Evans*, Dr. *Trayluckya Nath Mitter*, and Baboo *Prosunno Gopal Roy* for the appellants.

Mr. *Phillips* and Baboo *Annoda Prosad Banerjee* for the respondent.

The judgment of the High Court (Pigot and Rampini, JJ.) was as follows:—

This is an appeal from a decision of the Subordinate Judge of Champarun so far as it dismisses the suit which is brought by the plaintiffs in respect of the refusal by the Municipality of Motihari of a license for the use of certain lands in the occupation of the plaintiffs as a market.

There is no doubt, and it has been so found, that this is an ancient market. There is no doubt that the powers possessed by the municipality under Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the municipality of doing those acts destructive of the plaintiffs' property, and yet no remedy or no right was allowed by the Act to persons in the position of the plaintiffs in case of the Act being so used to the destruction of their property.

The sections which relate to this matter are sections 337 to 340 inclusive, and perhaps one or two of the later sections of Part X. Section 337 gives the Commissioners power to "order that within such limits as they may fix, no land shall be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetables and similar provisions, otherwise than under a license to be granted by the Commissioners." Section 338 confers upon them the power, when they have passed such a prohibitory order as section 337 provides, of granting such a license as is contemplated by section 337.

Section 339 provides that the Commissioners may grant such a license year by year on the certificate of the Chairman. Section 340 provides that the Chairman shall grant such a certificate, unless the land be defective for the purposes of a market in the respects specified in the section; and the second part of this section (340), which is that upon which the appellants rely, enacts that "the owners or lessees of all lands used as markets for the sale of provisions as aforesaid at the time of the extension of this Part to the municipality shall be entitled to receive a license for the current year without the certificate required by s. 339, but in subsequent years the license shall not be renewed without such certificate."

There is no doubt the plaintiffs were the owners or lessees of land used as a market at the time of the extension of this part of the Act to the Municipality of Motihari.

What the municipality did was to start a market of their own and then refuse the plaintiffs a license, thereby shutting up their market; and with reference to that, one of the later sections of this part may be referred to, that is, s. 344, which makes it *an offence, punishable by fine*, to permit land to be used as a market without a license under s. 338. It is contended that the later words of s. 340 may—and assuredly, if they may, they ought to—be read so as to save the property of the plaintiffs from the complete confiscation with which this public body, in exercise of the powers with

which they have been vested, has visited them. If they cannot obtain a remedy in damages for the refusal to grant a license, they are wholly without any remedy at all. The Legislature in its wisdom having deliberately withdrawn from the Courts in this country that power, which is possessed by the Courts of Justice at home, to compel corporations to do their duty, and to restrain them from doing that which it is not in their province to do—a power, which has been reserved to the High Court in its Ordinary Original Jurisdiction with respect to the presidency-town, but which has been withheld in respect of any of the municipalities in the mofussil—the plaintiffs are wholly without remedy unless we can give them damages for the conduct of the municipality: but to do that, we must be satisfied that it was the duty of the municipality under the provisions of the Act to issue the license which they have refused: for breach of such a duty they might perhaps (at least, that is plaintiffs' case) be liable in damages. There are no words in ss. 339 or 340 rendering it obligatory on the municipality to issue a license, unless, in the words in s. 339 "and the Commissioners *may* grant such license year by year" the word "may" is to be read as "shall" or is to be read in some cases as "shall". That is the contention of the appellant; and the cases in which it is contended that "may" ought in that section to be read "shall" are cases in which land was actually being used as a market at the time of the extension of this part of the Act to the municipalities. It is argued that as the owners of lands so used at such a time are declared entitled to receive a license for the current year without the certificate required by s. 339, but for subsequent years it is provided that the license shall not be renewed without such certificate, that that must mean that the license in subsequent years must also be renewed, provided the certificate is granted.

There are two difficulties in the way of adopting this construction. One, that the word "may" in s. 339 must, according to it, in the majority of cases be read as "may," but in exceptional cases as "shall". That is a serious difficulty: and the second difficulty is that the scope of the sentence at the close of s. 240, which it is suggested ought to be read as "provided that in subsequent years a license is to be issued in case a certificate is granted," seems not capable of bearing such a construction and not to contemplate anything of the kind. We think that the effect of it is merely to relieve persons, using land as a market at the time the Act is made applicable, from the necessity in that year of obtaining a certificate; and the words "but in subsequent years the license shall not be renewed without such certificate" are merely words, as we read them, of caution to avoid the very unreasonable supposition that the one year's holding without a certificate involved the right to a license for subsequent years without a certificate. That they contemplate an enactment that such holders shall get a license for all subsequent years, if they please, without a certificate, we much regret we are unable to hold.

That being so, we must affirm the decision of the Court below and dismiss the appeal.

We think that it is most lamentable that Acts should be drawn, as they too often are, without that intelligent consideration of, or that anxious regard for, private rights, which ought to be the study of every Legislature that springs from English authority.

The cross appeal must be allowed. As we have pointed out in our judgment in the plaintiffs' appeal, the municipality was legally entitled to refuse the renewal of the license; the Subordinate Judge, with a very natural wish to do something for the loss sustained by the plaintiffs, gave them damages for that legal refusal. It is impossible that that order of the Subordinate Judge can be sustained. We therefore set it aside.

We are very glad to hear from the learned Counsel for the respondent that a license will be granted to the plaintiffs, and that the preposterous proceeding of which we have been studying the consequences will be so far corrected. Under the circumstances we shall give no costs either in the appeal or cross-appeal.

Appeal dismissed and cross-objections allowed.

HIGH COURT OF JUDICATURE, NORTH-WESTERN PROVINCES.

Civil Side—Appellate Jurisdiction.

Dated Allahabad, the 16th February 1897.

Present:

The Hon'ble Sir John Edge, *Kt.* ... ... *Chief Justice,*

and

The Hon'ble H. F. Blair ... ... *Judge.*

Case No. 404 *of* 1895.

Second appeal from the decision of the Judge of Cawnpore, dated 1st April 1895.

Ganga Narain Tiwari ... ... *Plaintiff-Appellant,*

versus

The Municipal Board of Cawnpore ... *Defendant-Respondent.*

By the Court.

In this case the plaintiff sought an injunction restraining the Municipal Board of Cawnpore from interfering with the exercise of his right to hold and maintain a market for the sale of vegetable, fruit and other articles within the grounds of a temple of which he was manager. The defence to the suit was that, according to certain rules of the municipal board, the plaintiff had no right to establish or continue a market without the permission of the municipal board. It is necessary to see how this suit arose.

The Municipal Board of Cawnpore had established within the municipality a market for the sale by wholesale of vegetables, fruit and such like things. They had let that market to a contractor. The contractor had by his conduct so disgusted the people who had used the market that they had refused any longer to come to that market, and they had betaken themselves to a market in the cantonments of Cawnpore. One can easily understand that it was not pleasing to the Municipal Board of Cawnpore that the market over which they had spent a considerable amount of money should be abandoned, and that the tolls which they expected to derive from the use of their market should go into other pockets. It is not quite clear how they approached the cantonment authorities of Cawnpore, but they were determined, if they could, to obtain the closing of the market in cantonments, in the hope, no doubt, of compelling the public to return to their own municipal market. The correspondence between the cantonment authorities and the municipality, if we had it, would probably be instructive. This much we know that the cantonment authorities, having granted a lease of their market to certain contractors, were apprehensive that they might be sued for damages if they complied with the request of the municipal board, and that they insisted upon having an indemnity bond to secure them against loss by any damages which might be awarded to the persons with whom they were about to break their contract. Whether the cantonment authorities would have been liable in damages or not, and whether or not they had the power to put an end to the lease granted to their contractors, are beside the question here: what we know is that the cantonment authorities thought it reasonable that they should get an indemnity bond and declined to act without it, and that the Municipal Board of Cawnpore authorized the execution of an indemnity bond, and the bond was apparently given, signed by the Chairman. Whether the Municipal Board of Cawnpore intended, if the cantonment authorities were made liable for their breach of contract, to pay the damages out of the public moneys of the Municipal Board of Cawnpore, or whether the members of the board intended to pay these damages out of their private purses, we do not know. It is probable that an auditor would have surcharged the municipal board and have forced the members of the board individually to make good the sums, if any, which had been

paid under that indemnity bond. Municipal boards are not entrusted with public moneys in order that they may employ them in inducing other persons to break their lawful contracts. However, the indemnity bond was given, the cantonment market was closed, and thereupon the customers who had formerly attended the market of the municipal board looked about to see whether they could find another place to sell their goods, and they proceeded to the market which had been lawfully held by the plaintiff within the grounds of the temple for a period of something like twenty-five years.

The municipal board, by closing the cantonment market, had not effected their object, but they were not to be defeated. The indemnity bond was given on the 25th of June 1892. By the 23rd of July 1892 the board awoke to the necessity of closing another market in order to get back their customers, and on this occasion they had no cantonment authorities who would be willing to close a market on receiving an indemnity to deal with; they had to deal with the plaintiff in this suit. On the 23rd of July 1892 they served the plaintiff with the following notice:—"Under order of this date you are directed to discontinue at once within 24 hours the holding of the *bazar* established by you without permission; otherwise proceedings will be taken. In case of non-compliance legal steps will be taken in accordance with the rules of the municipal board, and no excuse will be heard." That threat was not sufficient; the market continued, and on the 25th of July 1892 they served on the plaintiff the following notice:—"Under order of this date you are directed to close at once within twenty-four hours the *bazar sabzi mandi* (market for the sale of vegetables and fruit) which you have newly established without permission within the enclosure known as that of Prag Narain. Otherwise, in case of non-compliance, legal steps will be taken in accordance with the rules of the municipal board (section 56), and no excuse will be heard." It so happened that the notice of the 23rd of July was one which would not fit in with the existing rules of the municipal board. The then existing rules of the municipal board, even according to the contention of the board, only gave them power to deal with new markets. It is to be observed that in the notice of the 23rd of July the board did not suggest that the market was a new one—as in fact it was not—but they were determined to try it on, and accordingly served the notice of the 25th of July, in which they alleged the market to be new. Even that notice did not much frighten the plaintiff, for he continued to hold his market. Thereupon the municipal board proceeded to put the criminal law in motion. They did not attempt to prosecute the plaintiff under the Indian Penal Code for conducting a market which was a public nuisance, for in truth it was a well-conducted market and no case of nuisance could be made out, but they proceeded to prosecute his brother, Jamna Narain, who managed for him, under their rules. The case was tried by a magistrate of another district, this Court having made an order of transfer, and the magistrate of the other district (Fatehpur) on the 16th of November 1892 acquitted Jamna Narain on the ground that the market was an old market. One would have thought that that ought to have satisfied the municipal board, but it was not so. They were determined not to let the matter drop, and were determined, if they could, to confiscate, in order to benefit their own market, the plaintiff's long-acquired right in his market. Accordingly, in December 1892, they proceeded to apply to the Local Government for sanction of an amendment of the rule under which they had taken proceedings by leaving out the qualifying word "new" which that rule contained, and by practically reverting to the words of a rule which had been made under section 22 of Act No. XV of 1873, which was a section which gave a Committee power to frame rules for declaring what acts or omissions within a municipality shall be considered to be public nuisances. The old rule which they practically wished to reinstate was as follows: It was declared that "the establishment or maintenance of a public market, *bazar*, *ganj*, or slaughter-house, except under such conditions as the board may from time to time prescribe, was a public nuisance." It has been contended here before us that, under section 22 of Act No. XV of 1873, a municipal board had, subject to the sanctioning of their rules by Government, unlimited and uncontrolled discretion to declare any act or any omission within their municipal boundaries to be a public nuisance; to declare, for instance, that a man should not eat his dinner within his house, or that persons should not walk along the streets of

Cawnpore with any clothes on; the argument went as far as that. The contention was that the municipal board, in its discretion or indiscretion, whether for the purposes of public health or for the oppression of traders in Cawnpore, might by a rule declare anything which might happen in Cawnpore to be a nuisance; and that a person not hearkening to such a rule would be liable to a prosecution. In our opinion the Legislature was never so foolish as to intend to give so sweeping a discretion to a municipal body. Certainly the proceedings in this case, as we shall presently point out, will be a warning, we hope, to the Legislature to be more precise in future in limiting and defining the powers which it grants to municipal boards in these provinces.

Now we have said that, in order to close the plaintiff's market, the municipal board were desirous of getting back to some rule similar to the old one, and of striking the limitation "new" out of the then rule. The matter went from the municipal board to the then Commissioner of Allahabad apparently by means of a letter signed by the Chairman of the board and dated the 6th of January 1893, in which reference was made to some objections to any alteration of the rule recently taken by the plaintiff. The letter of the Chairman alleges that the insertion of the word "new" in the rule in question he believed was due to a mistake. We believe that it was more probably due to the fact that the High Court at Calcutta, in the case of *Moran* versus *The Chairman of Motihari Municipality* (I. L. R., 17 Cal. 329), had pointed out in vigorous, but not too strong, language the lamentable consequence of entrusting municipal boards with powers under which they might practically confiscate private rights without making any compensation. The Chairman of the board, in the letter to which we are referring, says as to the objection that if the word "new" is omitted from the rule, the municipal board will have authority to remove hundreds of markets from private places and establish them in places fixed by the municipality, that "it cannot be said that the Board had misused the powers it had in the past." Probably not before that period and before this case arose, because the board had not found that the markets and shops of private persons in Cawnpore were in competition with the market which the board had established. As soon, however, as the board met with competition, it, in our opinion, misused its supposed powers. Then the Chairman goes on to make a representation as to the facts connected with this market. We cannot believe that he was acting on his own knowledge; we must believe that he was entirely misled by those about him. In fact, the language of the sentence which we are about to quote is not the language which an educated Englishman would use. The letter says: "When the municipal board tried to close this market, it was heard that they could not do so under the new bye-laws, as for many years a few vegetable sellers had been allowed to sit in the temple compound for the convenience of people frequenting the temple." It has been found—and we entirely agree with the finding—that the market was an old established market of from twenty to twenty-five years' standing, at which sales, not only by retail, but also by wholesale, had been publicly conducted. We regard that description of the market as a false and misleading description. We do not believe that it was false and misleading to the knowledge of the Chairman, but certainly false and misleading to the knowledge of those who were instructing him. Now let us see what was the view that the Local Government took of this matter when it came before it. The Local Government, in replying to the Municipal Board of Cawnpore, says that "the amended rule which has been submitted for sanction really asks sanction for the following proposals: first, that no private *bazar*, however old, will be maintained until the sanction of the board has been obtained; second, the Chairman may be empowered to shut up and close by means of a written notice any private *bazar* where retail selling is going on, however old and well managed it may be and however willing its owner may be to carry out all instructions." The Local Government had no difficulty in divining what the motives and objects of the municipal board were. Its comment is as follows:—"From the foregoing it will appear that the municipal board should be empowered to withhold sanction to the holding of any particular private bazar at any time it likes without assigning any reason, and without making any compensation to the owner, who may lose his valuable right which he may have acquired by prescription. Furthermore, if the municipal board sanctions the holding of any private *bazar* and that *bazar* is subsequently sold for

a large value, the Chairman will, even if the conditions prescribed by the board are all fulfilled in that *bazar*, be empowered at any time he pleases to close the *bazar* without consulting the board or taking any evidence or assigning any reason": and it says further that, "although the Government does not wish to curtail those powers, still it is quite inadvisable to grant such arbitrary powers to the board as have been suggested." On that the Chairman of the Municipal Board writes to the Commissioner and informs him that the board is prepared to modify its request—we presume by leaving out the arbitrary powers of the Chairman—and to simply ask that the bye-law which was in force for years in the municipality may be sanctioned, "as this bye-law is practically the same as the rule printed at page 76 of the Government Manual as one of the rules approved by Government." The Chairman forgot to draw the attention of the Commissioner to the fact that section 22 of Act No. XV of 1873, under which the old rules or bye-laws had been made, had been most materially altered by section 56 of Act No. XV of 1883—the Act then in force. The Legislature by 1883 had obviously become aware of the danger of entrusting a power to municipal boards under which they could declare any act or any omission to do any act to be a nuisance and make a person liable to a prosecution. The old rule which the Chairman asked the Government practically to re-introduce could not have been re-introduced under Act No. XV of 1883. The municipal board had no longer the right or the power, either with or without the sanction of the Local Government, to declare what acts or omissions should be deemed to be nuisances within municipal limits. Section 56 of Act No. XV of 1883 put the question of nuisance at rest for ever by giving the board power to interfere only in the case of a public nuisance.

How it came to pass we know not, but the Local Government sanctioned the following rule: "No person shall establish or maintain a public market, *bazar*, ganj or slaughter-house in any place without the sanction of the board or except under such conditions as the board may from time to time prescribe." The board, having been defeated up to that time in their attempts to confiscate without compensation the private rights and private property of the plaintiff, had now got a rule which they thought gave them a free hand, and accordingly they at once proceeded to prosecute the plaintiff again in order to force him to close the market and abandon the competition. That prosecution, we understand, is awaiting the decision of this case.

It has been said to us in this case on behalf of the board that the board will make compensation. All we can say is that, seeing how the board has acted in this case, we should be very sorry to be anywhere in the position of the plaintiff going to the board for compensation. The plaintiff forwarded a petition against this alteration of the rule to the Governor-General. The board, we presume, had got their opportunity of representing the facts as they chose. For it is obvious, on looking at the letter of the 5th of February 1894 from the Government of India to the Secretary to the Government of the North Western Provinces, that misleading representation as to the facts had been put before the Government of India. It is obvious that it was represented to the Government of India that the selling of vegetables by wholesale in the plaintiff's market was quite recent. That was not a fact. It was represented to the Government of India that if the municipal board did close the plaintiff's market under their rules, the plaintiff would have a right to obtain through the civil courts compensation. In one sense that representation was true. If the municipal board, having no authority to close the market, did close it, no doubt they would have to pay damages; but if the municipal board was right in believing that they had the power to close the market lawfully, no provision had been made, either under the rules or by the Legislature, to compel them to pay one anna of compensation to any person whose rights they might confiscate. The Governor-General in Council decided that he did not consider that the previous practice in respect of this market should be stopped, or that the income derived from it should be confiscated, without a grant of suitable compensation, and the Governor-General in Council expressed an opinion that the new rule, *i.e.*, the altered rule, should be worked with due regard to the custom of the temple and to the rights which had accrued before the rule was framed, and a suggestion was thrown out that it might be possible that a court of

law might not hold that the last rule was retrospective; that is, that the last rule did not apply to a market which was in existence before it was made. So we understand it.

This case came on for trial before the Subordinate Judge of Cawnpore, who dismissed it on a preliminary point. He was set right upon that point, and then he started to try the case on the merits. He found that there had been no old market there for wholesale. A perusal of his judgment is sufficient to show that he went in that finding entirely against the evidence. The plaintiff's witnesses proved his case. Six of the witnesses called by the board proved the plaintiff's case, but the Subordinate Judge found for the defendants upon the evidence of three witnesses. What he has written about these three witnesses in our opinion shows that he ought not to have depended upon their evidence. The plaintiff appealed. The District Judge of Cawnpore in a very careful and well-considered judgment, found every issue of fact in the plaintiff's favour. He found that this was an old market for retail sales and also for wholesale. He found that it was a well-conducted market, against the management of which not one word could be said, and, indeed, the only thing that can be said in favour of the Municipal Board of Cawnpore is that, with all their determination to ruin the plaintiff, they have not ventured to suggest that any fault can be found with the management or with the conduct of the plaintiff's market. The District Judge, having found all the facts, as we think rightly, in favour of the plaintiff, dismissed his suit on a construction of the last rule to which we have referred and which, he held, applied in this case.

We have got to consider first what is the true construction of clause (*c*) of section 55 of Act No. XV of 1883. It is contended upon behalf of the municipal board that that section enables them to make a rule which they can put in force against new markets or old markets, whether they are well conducted and unexceptionable or the reverse, and that they can do this with the prime object of promoting the revenue of the municipal market at the expense of ratepayer or ratepayers of Cawnpore whose market is to be confiscated. In our opinion, although the clause is ambiguously worded, it never could have been the intention of the Legislature to give power to a municipal board to make a rule which would enable them to confiscate private rights in markets where holdings of the market and the maintenance of the market could not be objected to upon any public ground, and to do this without making any compensation to the person whose rights are affected. We find that in Act No. XV of 1883, when the Legislature did intend to give to municipal boards the power to acquire private property, they put them under the obligation of complying with the Land Acquisition Act, that is, if the board desired to obtain the land of a private person, they had to pay just compensation for the rights which they were taking for themselves; but it is contended that if the board had a right to close any market in Cawnpore, although the market may be absolutely unobjectionable on the ground of public health or convenience, there was no obligation imposed by this Act on the board to pay one anna of compensation. It is quite obvious from the conduct of the board in this case that it would not be advisable for the man whose rights were confiscated to trust himself to the tender mercies of the board or to their conceptions of justice.

There is another reason against our construeing this clause as the board contends we should, and it is this. We do not believe it possible that the Legislature could have intended to give a power to the board by the exercise of which they might confiscate private rights for the purpose of increasing their own revenues; and that in truth is what the board has been trying to do with regard to the plaintiff and his market. The Legislature could not have intended that a municipal board should, of its own free will and at its own indiscretion, have a right to treat that as a nuisance which by no possible view could be regarded by the public or by a lawyer as a nuisance. As we read the clause, it was meant to give to municipal boards power to make rules for prohibiting the establishment of markets, that is, to prevent new markets being established, and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction. By "maintenance," we presume, was intended the keeping up of a market in such a manner as would make it a fit place for the carrying on of a market, having regard both to public health and public convenience. It also gave them the power to make rules for the management of such markets. But until the Legislature tell us that it was their intention to confer upon municipal boards power to confiscate private rights, the maintenance of which is entirely unobjectionable on public grounds, and to do so without paying any compensation, we must construe clause (*c*) in such a manner as not to cast the slur upon the Legislature of having worked a gross injustice, and we do so construe it.

We allow this appeal with costs in this Court and in the Courts below, and we decree the plaintiff's suit and make the declaration which he has asked for. In the costs of this Court will be included fees on the higher scale.

Copy of the Discussion in the Bengal Legislative Council resulting in amendment of Section 339 of the Bengal Municipal Act, 1884.

a/ The Hon'ble Moulvi Serjul Islam Khan Bahadur moved that, after section 85 of the Bill, the following new section be added:—

"85 A. In line 5 of section 339 of the Act, between the word 'Commissioners' and the words 'may grant' the following words shall be inserted:—shall as regards markets (already existing) at the time of the extension of this part to the municipality and in all other cases."

He said:

"I am sorry I have to detain the Council with this amendment at this late stage; but it is after much deliberation and consultation with some of the most eminent members of the Calcutta bar that I have been induced to bring forward this motion. On a reference to Part X of the Act, sections 335 to 340, it would appear that the power of the Commissioners to grant licenses for markets is purely discretionary, and cases have occurred in which the Commissioners have exercised their purely arbitrary powers without due regard to the private rights of parties. The well-known case of the Motihari Municipality is an instance in point. In that case the Municipal Commissioners refused to grant a license to Messrs. Moran, the owner of an old and very valuable market, simply because they themselves had set up a rival market; and although Messrs. Moran obtained a certificate from the Chairman under section 340 to the effect that they had complied with the provisions of the law, still the Commissioners did not think it proper to grant a license. The result was that Messrs. Moran were deprived of their market, and when they went to law the Courts declared that they could not interfere. I would invite the attention of the Council to a passage in the judgment of Mr. Justice Pigot at page 353 of the Indian Law Reports (volume XVII, Calcutta series). The learned Judge says:—'There is no doubt that the powers possessed by the municipality under the Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the municipality of doing those acts destructive of the plaintiffs' property, and yet no remedy or no right was allowed by the Act to persons in the position of the plaintiffs in case of the act being so used to the destruction of their property'. Their Lordships held that, under the law as it at present stands, a person who is deprived of his property by the Municipal Commissioners under Part X has no remedy. I therefore submit that it is the duty of the Legislature to step in and remedy such a state of things and on these grounds the amendment I have the honour to propose should be accepted."

The Hon'ble Mr. Bourdillon said:—

"I may at once inform the Hon'ble Member that the Lieutenant-Governor has considered the matter, and read the case to which the Hon'ble Member has referred me as well as another case, the case of the Madiripur Municipality, and the opinion

of the Lieutenant-Governor is, that if the Hon'ble Member will substitute the words 'lawfully established' for 'already existing', there will be no objection to the amendment."

The Hon'ble Moulvi Serfjul Islam Khan Bahadur said: "I accept the alteration."

The motion as amended was then put and agreed to.

No. 408.

Transferred to the Legislative Department.

(Signed) S. G. ROBERTS,
Ag. Assistant Secretary.

4*th April* 1898.

Order—No. 22, Legislative, dated 16th April 1898.

Communicated to the Select Committee on the Bill further to amend the Madras Local Boards Act, 1884.

(True Extract.)

Ag. Secretary to Government.

To the Select Committee on the Bill further to amend the Madras Local Boards Act, 1884.

Ead. Ar. Barr.

Local & Munl. (1898) Department.

SECRETARY TO GOVERNMENT * 2--APR-1898 * LOCAL & MUNICIPAL DEPARTMENT

CURRENT No. 896

From The Govt of India Home Dept.

~~Order~~ No 408 Dy 4-4-98

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Dy. Rlns
Ag Assistant Secretary.
4.4.98

No. 4.

Dated 25. 3. 98.

Received 2-4-98.

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H.E. the Governor ~~to Cirs~~

Hon. Act Secy

Order
PS.

SUBJECT.

Copy of the Secretary of State Governor General in Council to the second clause of the Bill to amend Act V of 1884 subject to certain observations & suggestions.

Communicated to the Select Committee on the Bill further to amend the Madras Local Boards Act, 1884.

128

13-4-98

To the Secy
The Select Committee on the Bill further to amend the Madras Local Boards act 1884 with copies of 3 Os 35 Leg + 37 Jud 27.2.94 11.4.93

Please see G of I's telegram flag A. The reply to the Govt of India will issue when the Select Committee report

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No. 129 a

No. 129 a

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