

duties. Where there is a dangerous obstruction *a fortiori* where such dangerous obstruction results from a permission accorded by the Commissioners, they are to be held liable for damages caused by it. The mere fact of their giving permission to another person although for a perfectly proper purpose would not relieve them of their statutory duty.

202. The Commissioners may issue a notice requiring any person to remove any wall which he may have built, or any fence, rail, post or other obstruction or encroachment which he may have erected in or on any road or open drain, sewer or aqueduct, after the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality; or, in case none of the said Acts was in force in the municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto; and, if such person shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed; and thereupon the Commissioners may remove any such obstruction or encroachment; and the expenses thereby incurred shall be paid by the person who erected the same.

No person shall be entitled to compensation in respect of the removal of any wall, fence, rail, post or other obstruction under this section.

Notes.

Notice—As to form of notice see sec 203 and sec 175 and the note thereunder.

As to the mode in which the notice is to be served see secs 203, 356 and 357 *post*

Road.—The word has been defined in sec 6, cl (13). In this and sec. 204 it includes a passage over which the public have a right of way and not merely a road which is vested in the Commissioners under sec. 30 — *Ram Chunder Ghose v Bally Municipality*, I. L. R., 17 Cal, 634 See notes to sec 217 *post*.

Class of encroachments.—This section refers to encroachments or obstructions made after any of the Acts referred to had first come into force in any municipality and those made prior to any of them, are provided for in sec 233 *post*.

Remedies open to Commissioners.—For non-compliance with the requisition of a notice provided by this section, the Commissioners may proceed against the defaulting person by a prosecution under sec 218, and after conviction may, by an order of the Magistrate, remove the obstruction or encroachment, or, instead of prosecuting, they may have recourse to the latter procedure after the expiration of the period of the notice or of the notice under sec 179.

The Commissioners may, instead of issuing a notice prescribed by this section, prosecute under sec 217, cl. (5)

Procedure—For giving effect to the provisions of this and section 204 the procedure laid down in secs. 175, 177, 178 and 179 must be strictly observed. When an objection against the notice is filed it must be disposed of by a written order under sec 178, and the same shall, under sec. 179, either be explained or communicated to him, otherwise the action of the Commissioners towards the removal of the encroachment or obstruction will be illegal. — *Boikunto Nath Sen v Howrah Municipality (unreported)*. See notes to sec. 179 *ante*

The Magistrate—For the definition of the term see sec. 6, cl. (8)

Under sec 205 the Commissioners are bound to execute the orders of the Magistrate and cannot be sued for damages. (See India Act XVIII of 1850)

"Expenses incurred"—may be recovered by distress warrant or by a civil suit. See notes to sec. 180 *ante*.

203 If the person who built or erected the said wall, fence, rail, post or other obstruction or encroachment is not known or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said wall, fence, rail, post or other obstruction or encroachment requiring any person interested in the same to remove it, and it shall not be necessary to name any person in such requisition; and if the said wall, fence, rail, post, or other obstruction or encroachment, be not removed in compliance with the requisition contained in such notice within eight days of the posting up of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed; and thereupon the Commissioners may remove any such obstruction or encroachment, and may recover the cost of such removal by sale of the materials so removed.

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

The provisions of sec 360 may also apply for the recovery of the cost of removal under this section

See notes to sec 202 and sec. 205.

204. The Commissioners may give notice in writing to the owner or occupier of any house requiring him to remove or alter any projection, encroachment or obstruction erected or placed against or in front of

Projections from houses erected in future to be removed.

such house which may have been so erected or placed after the date on which the District Municipal Improvement Act, 1864 or the District Towns Act, 1868 or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality ; or, in case none of the said Act was in force in the municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto, if the same overhangs the road or juts into, or in any way projects or encroaches upon, or is an obstruction to the safe and convenient passage along any road ,

or obstructs, or projects, or encroaches into or upon any aqueduct, drain or sewer in such road.

And, if such owner or occupier shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such projection, encroachment or obstruction be removed or altered, and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction, and the expenses thereby incurred shall be paid by owner or occupier so making default.

No person shall be entitled to compensation in respect of the removal of any projection, obstruction or encroachment under this section

Notice—For the form and mode of service of, see secs 203 and 175 and note to latter

House—For the definition of, see sec 6, cl (4),

Road—See secs 6, cl (13) and 30 and also *Ram Chunder Ghose v. Bally Municipality*, I. L R, 17 Cal, 634.

Projection—In Bombay (*Ollivant v Rahimtula Nurmahomed*, I. L R, 12 Bom, 474) a person was directed to remove the eaves of

a building projecting over the public road to the extent of one foot and eight inches, the width of the road in front of the building being about 40 feet. The party sued to restrain the Municipal Commissioner from removing the projection. The lower Court found on the evidence that the traffic was not likely to suffer any appreciable obstruction from the projection and that nobody could reasonably complain of any practical inconvenience and accordingly decreed the suit. On appeal the High Court held that as the law contemplated "obstruction to the safe and convenient passage along" the road, the words obviously meant passage along the *whole* of the road, and therefore along *every part of it*. The projection was therefore one which the Commissioner was quite competent to remove. The question was not whether it constituted a real practical inconvenience to public traffic, but whether it came within the meaning of the law.

The public have a right of passage over the *whole* of a street.—*Ahmedabad Municipality v Manilal*, I. L. R., 19 Bom., 212.

As to projections existing prior to any of the Acts mentioned in this section see sec 233 *post*.

Erected or placed—The words "which may have been so erected or placed" in this section must mean erected or placed *for the first time*. This section therefore applies to the case of a projection which is caused by a building which is new, that is, erected after the passing of the Acts referred to in it. It does not apply to the case of a projection forming part of a building which is merely in substitution for an old building, which had existed upon the same site, before the passing of the Acts mentioned in the section.—*Eshan Chunder Mitter v. Banku Bihari Pal*, I. L. R., 25 Calc., 160, 1 C. W. N., 660. See also *Kala Govind v. Municipality of Thana*, I. L. R., 23 Bom., 248. Cf sec. 206.

See notes to sec. 202 and sec 205.

Penalty for non compliance, see sec. 218.

205. Every order made by the Magistrate under sections 202, 203, 204 or 233 shall be deemed to be an order made by him in the discharge of his judicial

Effect of order made under sections 202, 203, 204 or 233.

duty; and the Commissioners shall be deemed to be persons bound to execute such orders of a Magistrate within the meaning of Act XVIII of 1850 (*for the protection of Judicial Officers.*)

The Magistrate.—For the definition of the term see sec 6, cl. (8).

India Act XVIII of 1850 runs as follows:—

“No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction: provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of: and no officer of any court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same”.

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

Scope of section.—Though this section bars any action for damages against the Commissioners acting under the orders of the Magistrate it does not preclude any person from suing them for declaration of title in respect of a property affected by their acts in pursuance of such orders. In the unreported case of *Doyal Chunder Sett v. The Howrah Municipality*, in which the plaintiffs sued for a declaration of title to a piece of land from which they were dispossessed by the Commissioners, who removed, under the orders of the Magistrate, a pucca staircase on the ground of encroachment, the defendant Commissioners objected to the entertainment of the suit on the ground that they had acted in pursuance of the Magistrate's order. The *Munsif* overruled the objection and was of opinion that the rulings reported in 24 W. R. 414 and 12 W. R. 160 did not apply. This decision was upheld in appeal. See *Ujul Moyee Dassee v. Chunder Kumar Acharji*, 12 W. R. F. B. 18.

206. Whenever any house, part of which projects beyond the regular line of a road or drain, or beyond the front of the house on either side thereof, shall be burnt down or otherwise destroyed, or shall be taken down in order to be rebuilt or repaired, the Commissioners may require the same to be set back to, or beyond, the line of the road or drain, or the line of the adjoining house, and may pay reasonable compensation to the owner of such house if any damage shall be thereby sustained

Houses projecting beyond line of road or drain when taken down to be set back.

See notes to sec. 204.

Penalty for non-compliance, see sec. 218.

207. Whenever any private house, wall or other erection, or any tree, shall fall down and obstruct any public drain or encumber any public highway, the Commissioners may remove such obstruction or incumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners shall seem fit,

Fallen house, &c, obstructing road or drain to be removed by owner.

Penalty for non-compliance, see sec 218.

208. The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges thereon bordering on any road, and to cut and trim any trees thereon overhanging any road or tank or any well used for drinking purposes, or obstructing any road or causing, or likely to cause, damage any road or any property of the Commissioners or likely to cause damage to any person using any road, or fouling or likely to foul the water of any well or tank.

Commissioners may require land holders to trim hedges, &c.

Change.

This section has been substituted by sec. 58 of Beng. Act. IV of 1894 for "The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges bordering on any road, and to cut and trim any trees overhanging any road and obstructing the same or causing damage thereto"

Notes.

Road.—See sec. 6, cl. (3) and sec. 30 and *Ram Chunder Ghose v. Bally Municipality*, 1 L. R., 17 Cal., 634.

Penalty for non-compliance, see sec. 218.

Of General Conservancy and Improvement.

209. If any well, tank or other excavation, whether on public or private ground, be, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith, if it appears to them to be necessary, cause a temporary hoard or fence to be put up for the protection of passengers, and may require the owners or occupiers, or the owners and occupiers, of the land on which such tank, well or other excavation is situated, within seven days properly to secure or protect such well, tank or other excavation.

Wells, tank, &c., to be secured.

Dangerous to passengers—In order to justify an order under this section it is necessary to show that there is danger to passengers. The mere fact of the passage of municipal scavengers does not put any place within the provisions of this section so as to require the owner to fence it as dangerous from its proximity to a tank.—*Boikunto Nath Sen v. The Howrah Municipality* (unreported).

Penalty for non-compliance, see sec. 219.

The Commissioners may execute the work themselves and recover the expenses under sec. 360. See sec. 180 and notes, also *Re. Jages Chandra Dutta* 16 W. R. 285 and the unreported case, *Chairman of the Howrah Municipality v. Kristo Dhon Kurr* cited under sec. 180.

210. If any building, or portion of a building, or structure affixed to a building, be deemed by the Commissioners to be in a ruinous state and dangerous to the inmates, if any, of such building or of any other building or to passers-by, or if any wall or other structure be deemed by the Commissioners to be in a ruinous state and dangerous to passers-by or to any other persons, they shall forthwith, if it appears to them necessary, cause a proper hoard or fence to be put up for the protection of passers-by or of other persons who may be endangered, and may require the owner or occupier of the building or the owner or occupier of the land to which such building, wall or other structure is affixed, within seven days, to take down, secure or repair such building, wall or other structure, as the case may require.

Fencing of buildings in a dangerous state.

Changes.

This section has been substituted by sec. 59 of Beng. Act IV of 1894 for "If any house, wall, structure, or any thing affixed thereto be deemed by the Commissioners to be in a ruinous state, or in any way dangerous, they shall forthwith, if it appears to them to be necessary, cause a proper hoard or fence to be put up for the protection of passengers and may require the owners or occupiers of the owners and occupiers of the land to which such house, wall or structure is affixed, within seven days to cause such repairs to be made to such house, wall or structure as they may consider necessary for the public safety, or to remove such house, wall, structure or thing affixed thereto."

Notes

For penalty see sec 219.

Owner—For the definition of, see sec 6 cl (11). See *App. I, Goot. Lett., para 26*, also secs. 211 and 212.

210A. Whenever it appears to the Commissioners that any building, by reason of being unsecured and untenanted, or by reason of having fallen into ruins, affords facilities for the commission of a nuisance

Commissioners may require owners to pull down ruins.

or for the harbouring of snakes or other noxious animals, the Commissioners may require the owner of such building or the owner of the land to which such building is attached, to properly secure the same, or to remove or level such ruins, as the case may require.

Changes.

This section has been added by sec. 60 of Beng. Act IV of 1804.

Notes.

Owner — Defined in sec. 6, cl. (11).

For penalty see sec. 219.

No time has been fixed for the requisition.

211. If the Commissioners shall have caused any repairs to be made to any house or other structure, and if such house or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them.

The Commissioners may also recover the expenses by distress warrant or by civil suit. See notes to sec. 180.

212. The materials of anything which shall have been pulled down or removed under the provisions of section 175 and 210 may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred.

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

The words "175 and" have been added by sec. 61 of Beng. Act IV of 1894.

213. The Commissioners may, by published order, appoint from time to time, certain periods within which any dogs without collars or other marks distinguishing them as private property, found straying in the roads or beyond the enclosures of the houses of the owners of such dogs, may be destroyed; and such dogs may be destroyed in accordance with such order.

As to rewards for killing dogs see sec. 214.

214. The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of a municipality.

215. The Commissioners at meeting may cause a name to be given to any road and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house; and in like manner may, from time to time, cause such names and numbers to be altered.

Road—defined in sec 6, cl (13). This section has reference to any road and not to roads vested in the Commissioners.

House—defined in sec. 6, cl. (4).

As to **penalty** for doing any injurious act in respect of name or number see sec. 216, cl. (2).

Penalties.

Penalty—is used in many places in the Act as equivalent to fine. There is no distinction between the word 'penalty' and the word 'fine' as used in sec 64 of the Indian Penal Code.—In *Re. Lakmia*, I. L. R., 18 Bom, 400.

Preliminaries requisite for prosecutions.—All prosecutions under this Act shall be instituted with the order or consent of

the Chairman or the Vice-Chairman generally or specially delegated by sec. 45 with powers of the Chairman. See sec. 353, also *Khiroda Prosad Pal v. Chairman, Howrah Municipality*, (I. L. R., 20 Cal., 448) and *Queen Empress v. Mokunda Chundra Chatterji*, (I. L. R., 20 Cal., 662).

Court fee.—Petitions of complaint by municipal officers are not chargeable with court fees.—Sec. 19, cl. xviii, Court Fees Act (VII of 1870).

Procedure.—Chapters XX and XXII of the Criminal Procedure Code apply to the trial of all offences under this Act except offences under sec. 366.

Punishment.—In default of payment of fines imposed Courts may direct offenders to be imprisoned.—See sec. 25 of the General Clauses Act (X of 1897), secs. 64 and 67, Indian Penal Code and *Reg. v. Gulab Chund*, I. L. R., 18 Bom., 400.

Courts shall, in addition to fines imposed on persons convicted, order them to repay the fees paid by complainants for serving process.—Sec. 31, sub-sec. iii, Court Fees Act (VII of 1870).

Realization of fines.—See sec. 355 *post* and sec. 386 of the Criminal Procedure Code. Process fees order to be repaid in addition to fines may be similarly realized.—Sec. 31, sub-sec. iv, Court Fees Act.

Limitation.—See sec. 353 and notes thereunder.

216. Any person who, in any municipality—

(1) places, or allows his servants to place, rubbish on a public road at other than the times appointed by the Commissioners under the provisions of section 189, or

Offences under sections 189 and 215.

(2) destroys, pulls down, defaces or alters any name or number put up by the Commissioners under the authority of section 215,

shall for every such offence, be liable to a penalty not exceeding twenty rupees.

217. Any person who, in any municipality—

- (1) being the occupier of a house in or near a public road, keeps, or allows to be kept, for more than twenty-four hours, or for more than such shorter time as may be prescribed by a bye-law, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter, in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same, or
- Occupier not removing filth, &c.
- (2) keeps any public necessary without a license from the Commissioners under section 194, or, having a license for a public necessary, suffers such necessary to be in a filthy or noxious state, or neglects to employ proper means for cleansing the same, or
- Keeping unlicensed public necessary.
- (3) being the owner or occupier of any private drain, privy or cess-pool, neglects or refuses, after warning from the Commissioners, to keep the same in a proper state, or
- Not keeping private drain, &c., in proper order.
- (4) disobeys an order passed by the Commissioners under the provisions of section 199 or 199A, or
- Disobeying order under sec. 199 or 199A.
- (5) encroaches upon any road, drain, sewer, aqueduct or water-course by making any excavation, or by erecting any wall,
- Erecting obstruction.

fence, rail, post, or other obstruction,
shall, for every such offence, be liable to a penalty
not exceeding fifty rupees.

Change.

In cl. (4) the words "or 199 A" have been added by sec 62 of Bengal Act IV of 1894.

Notes.

Offensive matter.—See sec 6, cl (10).

Liability for filth on land.—*Pes Jackson, J* "It appears to me that the occupier who suffers the land to be in a filthy state is the person liable for the penalty, because the words 'owner and occupier' are only words qualifying the main proposition—*Queen v Brigo Lal Mitter*, 8 W. R 45 C R.

When the owner of a land lived in another district and there was no evidence that he suffered the same to be in a filthy state the conviction of his Muktear, Kemp, J, held to be bad—*In the matter of Dwarka Nath Hazra, petitioner*, 16 W R 45 C R

Sec. 199—setting apart of tanks, &c, for drinking purposes

Sec. 199A—prohibition to the use of unwholesome water

Clause (5).—The term 'Road' in cl. (5) of this section is not limited to roads vested in the Municipal Commissioners. A person was charged at the instance of a municipality under that clause with obstructing a path through his paddy fields by erecting a fence at either end of it. It was found that the public had a right of way over the path, and the lower Court convicted the accused. In revision it was contended that the clause could only refer to a road vested in the Municipal Commissioners; but the High Court held that the conviction was right and upheld it.—*Ram Chunder Ghose v Bally Municipality*. I. L R., 17 Cal., 634.

A conviction obtained at the instance of a Local Board of all the co-owners for an encroachment made by one was upheld by the High Court.—*Bengalee, August 21, 1901*.

See notes under *Penalties ante*.

218. Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections 202, 204, 206, 207 or 208, shall be liable, for every such default, to a penalty not exceeding fifty rupees, and to a further penalty, not exceeding ten rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

Disobeying requisition under section 202, 204, 206, 207 or 208.

Change.

The references, "206, 207" were inserted by sec. 63 of Beng. Act IV of 1894.

Notes.

Scope of inquiry.—A notice was issued requiring A to remove an alleged obstruction. The requisition was not complied with, and A was prosecuted for non-compliance.—*Held* (per Prinsep, J) that the Court had power to inquire whether the alleged obstruction was in point of fact an obstruction or not, and the accused could when prosecuted for disobedience, claim exemption from operation of the order of the Commissioners on the ground that it was not a proper order.—*Municipal Committee of Dacca v. Someer*, 1 L. R., 9 Cal., 98.

In the unreported case of *The Kutchandpore Municipality* the accused, who was prosecuted for non-compliance with a notice under sec 202, admitted the service of notice and was convicted. *Held* (per Petheram, C. J. and Rampini, J.) that the mere admission by the accused of the receipt of notice in the absence of any finding upon the requirements of law does not justify a conviction.—*The Statesman*, June 2, 1894.

Second prosecution before conviction in first, bad.—In the case of *the Corporation of the Town of Calcutta v. Matu Bewah*, (1 L. R., 13 Cal. 108) it was held that a second prosecution for the continuance of an offence before conviction in the first is bad.

Daily fine.—Daily fine, in addition to substantive fine, is bad in law. In *Re. Sagore Dutta*, Norman, J. was pleased to observe that

the infliction of a daily fine in such a case is in fact an adjudication in respect of an offence which had not been then committed. The conviction cannot be amended: a conviction must either be wholly good or wholly bad. Part of it being bad it is bad altogether.—18 W. R., 44 C R., note. But in the case of *W. N. Lore* the High Court, while setting aside the daily fine, upheld the conviction in respect of the substantive fine—18 W. R., 44 C R. Jackson, J., however, distinguished this case from that of *Sagore Dutta* in the following words. “We think it proper to follow the precedent given at page 44, 18 W. R., C R. In the case mentioned in a foot note on the same page (*Sagore Dutta*) the Court had before it a conviction before Justices regulated by the English law and which could not be amended”—*Chairman of the Suburban Municipality v. Aneesudd'in Meah*, 20 W. R., 64 C. R. See also *Queen v. Tarini Charn Bose*, 21 W. R., 31 C R., *Kristo Dhone Dutta v. The Chairman of the Suburban Municipality*, 25 W. R., 6 C. R., the unreported cases of *Mutty Lall Bose* (Revision No 645, April 20, 1872), and of *Raja Fanendra Deb Raikata of Jalpaiguri* (*Amrita Bazar Patrika*, November, 27, 1894)

Procedure for infliction thereof.—In a similar case in Bombay (*In re. Lumbaji Tulsiram*, I. L. R., 22 Bom., 766) in which the accused was “fined Rs. 5 and Re. 1 per diem until work completed,” the order relating to the daily penalty was set aside as illegal. It was held that the law necessitated a separate prosecution for a distinct offence, on a charge for a specific contravention for a specific number of days which must be proved; so that the order was bad as involving convictions and punishments for offences which the accused had not committed and with which he was not and could not have been charged at the time the sentences were passed. The High Courts of Calcutta and Allahabad have taken the same view of the law in recent cases—*Ram Krishna Biswas v. Mshendra Nath Mozumdar*, I. L. R., 27 Calc., 565 and *Emperor v. Wazir Ahmad*, I. L. R. 24 All. 309.

Limitation.—The offence provided for in this section is the failure to comply with a requisition and is of a continuous nature. Limitation against a prosecution for such offence, therefore, begins to run from the time when the failure to comply with the requisition is first brought to the notice of the Chairman—*Lutti Singh v. The Behar Municipality*, 1 C. W. N., 492.

219. Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with any requisition issued by the Commissioners under the provisions of sections 195, 200, 209, 210 or 210A, shall be liable, for every such default, to a penalty not exceeding one hundred rupees, and to a further penalty, not exceeding twenty rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

Disobeying requisition under section 195, 200, 209, 210 or 210A.

Change.

The word "210A" has been added by sec 64 of Beng Act IV of 1894

Notes.

Sec. 105—Requisition upon owner to clear noxious vegetation and to improve bad drainage.

Sec 200—Power to deal with private tanks.

Sec. 209—Requisition upon owners, &c, to secure tanks, &c.

Secs 210 and 210A—Ruinous houses and powers in connection therewith.

Procedure &c.—See notes under *Penalties*, pp. 171-2

Liability of owner or occupier—See 8 W R 45, C. R. and 16 W. R. 70, C. R. cited under sec. 217

Second prosecution and daily fine—See notes to sec. 218.

PART VI.

Of Special Regulations.

220 No provision contained in this Part, or in Part VII, VIII, IX or X, shall apply to any municipality, unless and until it has been expressly extended thereto

Operation of Parts VI, VII, VIII IX and X.

by the Local Government in the manner provided by the next succeeding section :

Provided that, except as is otherwise provided by this Act, in the case of any municipality to which all the provisions of any one of the Parts VII, VIII or IX of the Bengal Municipal Act, 1876, may have been extended, and provided that such provisions were still in force in such municipality immediately before the commencement of this Act ; all the provisions of the corresponding Part of this Act, namely, of parts VI, IX or X respectively shall be, and shall be deemed to have always been, in force in such municipality without such provisions being expressly extended thereto

Saving clause.

Change.

The proviso was added by sec 65 of Beng Act IV 1894

See *App. I, Govt Lett., para. 28*

221. The Commissioners may apply, in pursuance of a resolution passed at a meeting specially convened, to consider the question, to the Local Government, to extend to the municipality all or any of the provisions of this Part, or of Parts VII, VIII, IX or X, or to exclude from the operation of the said provisions, or any of them, any place within the municipality.

Local Government may order the provisions of the said Parts to be in force

And the Local Government may thereupon make an order accordingly.

222. Every such order shall be published in the *Calcutta Gazette*, and the Commissioners shall, within fifteen days of such publication, cause a copy of the same, with a

Publication of order.

translation thereof into the vernacular of the district, to be posted up at their office, with a notice of the date on which such order shall take effect, and shall cause the same to be published as prescribed in section 354.

And the said provisions shall come into force in the municipality from the date so fixed

Provided that the date so fixed shall not be less than fifteen days after the publication under the said section, or more than three months after the publication of the order of the Local Government as aforesaid in the *Calcutta Gazette*

Publication—Unless the requirements of this section are strictly complied with, a conviction, under the provisions of the *Parts* mentioned in sec. 220, shall be bad and liable to be set aside. In the unreported case of *Empress v Satya Kumar Chatterji*, (*Amrita Bazar Patrika*, October 19, 1894), a conviction under sec. 273, cl (2) was set aside on the ground, amongst others, that the local notification was made after the expiration of the period allowed by law.

223. The Local Government, on a similar application made by the Commissioners, may at any time cancel or modify an order made under section 221 and such cancellation or modification shall be published and shall take effect in the manner prescribed by the last preceding section

Local Government may cancel or modify order.

Of a Survey

223A The Commissioners at a meeting may order that a survey shall be made of the lands situated in the municipality, and thereupon all the provisions of the Calcutta Survey Act, 1887, shall, so far as may be practicable, apply and be extended to such municipality.

Survey of a municipality.

Change.

This section is new and has been added by sec. 66 of Beng. Act IV of 1894.

Notes.

For the Calcutta Surveys Act, 1887, see *Appx.*

The cost of a survey is chargeable to the municipal fund.—Sec 69 cl. (9)

Of Privies, Drains and Excavations.

224. The Commissioners may require the owners or occupiers, or the owners and occupiers of any land, within fifteen days, to repair and make efficient any drain, privy or cess pool, or to remove any privy or close any cess-pool which is situated on such land.

Commissioners may require owner or occupier to repair drain, &c.

Notes.

Penalty for non-compliance, see sec 271 *post*

This section contemplates a case of more efficiency even when no repair is necessary. It is imperative that a notice under this section should contain or make mention of the second clause or proviso to section 175. When therefore a prosecution was started upon a notice not containing or making mention of the said proviso, it was held that failure to comply with the requisition of such a notice did not amount to an offence under section 271.—In the matter of *Chairman of the Puri Municipality v Kessori Lal Sen*, 1 C. W. N., p cxxliv (notes)

A municipality is authorised under this section to direct the removal of a latrine without giving the owner an option to repair and make it efficient. For the purposes of a prosecution for non-compliance with a requisition no second notice, as provided by section 179 is necessary. But such a notice is necessary if the municipality contemplate to proceed to do the work under section 180—*Jagadis Chunder Ganguli v. Sreenath Bose*, 2 C. W. N., p. clxxxvii, (notes).

The action of the Municipal Commissioners requiring the removal of a *pucca* privy by means of a notice issued under sec. 245 was held not to be *ultra vires*, in as much as the Commissioners have the right

to make such requisition under this section.—*Duke v. Ramsewar Maliah*, I. L. R., 27 Cal., 811.

225. Every person constructing a privy shall have such privy shut out by a sufficient roof and wall or fence from the view of persons passing by, or residing in, the neighbourhood; and the Commissioners may require any owner or occupier of land on which a privy stands to cause the same to be shut out from view as aforesaid within fifteen days.

Privies must be properly enclosed.

Penalty for failing to have a new privy shut out from view, see sec. 266, and for non-compliance with the requisition see sec. 271.

226. If any person, without the written consent of the Commissioners first obtained, makes or causes to be made, or alters or causes to be altered, any drain leading into any of the sewers or drains vested in the Commissioners, the Commissioners may cause such branch drain to be demolished, altered, re-made, or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such branch drain.

Unauthorized drains leading into public sewers may be demolished.

For penalty, see sec. 272, cl. (1).

227. If any land, being within one hundred feet of a sewer, drain or other outlet into which such land may, in the opinion of the Commissioners, be drained, is not drained to the satisfaction of the Commissioners, the Commissioners may require the owner, within one month, to drain the said land into such sewer, drain or outlet.

Commissioners may require owner to drain land.

For penalty, see sec. 271 *post*.

228. If it appear to the Commissioners that a group or block of houses may be drained or improved more economically or advantageously in combination than separately, and a sewer, drain or other outlet already exists within one hundred feet of any part of such group or block of houses, the Commissioners may cause such group or block of houses to be so drained and improved ;

Group or block of houses, &c., may be drained by a combined operation.

and the expenses thereby incurred shall be recovered from the owners of such houses in such proportions as shall to the Commissioners seem fit.

229. If any branch drain, privy or cess-pool be constructed contrary to the directions and regulations of the Commissioners, or contrary to the provisions of this Act ; or if any person, without the consent of the Commissioners, constructs, re-builds or unstops any branch drain, privy or cess-pool which has been ordered by them to be demolished or stopped up, or not to be made, the Commissioners may cause such amendment or alteration to be made in any such drain, privy or cess-pool as they think fit, or may cause the same to be removed ; and the expenses thereby incurred shall be paid by the person by whom such drain, privy or cess-pool was improperly constructed, re-built or unstopped.

Commissioners may alter any drain, &c., made contrary to their orders.

For penalty, see sec. 272, cl. (2).

230. No person shall, without the written permission of the Commissioners, construct or keep any latrine, urinal, cess-pool, house-drain or other receptacle for sewage or other offensive

No latrine, &c., to be constructed within fifty feet of tank or water course.

matter within fifty feet of any public tank or water-course, or a tank or watercourse which the inhabitants of any locality use.

The Commissioners may require any owner and occupier upon whose land any latrine, urinal, cess-pool, house-drain or other receptacle so situated exists, or may hereafter be constructed, to remove the same within eight days.

For penalty for breach of the provisions of the first paragraph see sec. 270, cl. (3), and for non-compliance with the requisition see sec. 271.

231. No person shall, without the written permission of the Commissioners, construct a privy with a door or trap-door opening on to any road or drain. The Commissioners may require any owner or occupier upon whose land any such privy exists to remove the same within eight days.

Road.—For the definition of, see sec 6, cl.(13). See also I. L. R., 17 Cal., 634.

Penalty for breach of the first provision and for non-compliance with the requisition see secs. 270, cl. (3), and 271 respectively.

232 The Commissioners at a meeting may, by a general order, prohibit the making of excavations for the purpose of taking earth or stone therefrom, or for the purpose of storing rubbish or offensive matter therein, and the digging of cess-pools, tanks or pits without special permission previously obtained from them.

If any such excavation, cess-pool, tank or pit is made after the issue and publication of such order without such special permission, the Commissioners may

require the owners and occupiers of the land on which such excavation, cess-pool, tank or pit is made, within two weeks, to fill up such excavation.

Special permission.—The Commissioners have discretion in granting or withholding permission, and shall not be liable for damages for withholding it so long as they act *bona fide* and within the spirit of the law and not arbitrarily—*Bhyrub Chander Banerji v. G. E. Makgill, Chairman Howrah Municipality*, 17 W. R. 215.

Of Obstructions and Encroachments on Roads.

233. The Commissioners at a meeting may determine on the removal or alteration, as they shall think fit, of any projection, encroachment or obstruction which may have been erected or placed against, or in front of, any house on any road within the limits of the municipality before the date on which the District Municipal Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, came into force in the municipality, or in case none of the said Acts was in force in the municipality before the commencement of this Act, then before the date on which this Act may have been extended thereto.

Notice in writing shall be given to the owner or occupier of such house, requiring him to remove or alter the said projection, encroachment or obstruction, or to show cause before the Commissioners why he should not be required so to do; and, if such owner or occupier shall fail to comply with such requisition within thirty days of the receipt of the same, or if after such owner or occupier shall have shewn cause against being required to remove or alter the said projection, encroachment or obstruction, the Commissioners shall make an

absolute order directing such removal or alteration ; and, if such owner or occupier shall fail to comply with such order within fifteen days of the date of the same, the Magistrate may, on the application of the Commissioners, order such projection, encroachment or obstruction to be removed or altered ; and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction.

The Commissioners shall make reasonable compensation to every person who suffers damage by any removal or alteration under this section.

In determining the amount of compensation, the value of the land shall not be taken into consideration.

The Magistrate—For the definition of, see sec 6 cl (8).

Compare secs 202 to 205 and the notes thereunder.

H owned a house in the town of A, to which the Towns Improvement Act, 1871, was extended in 1879. In 1882 the Municipal Commissioners, professing to act under sec 139 of the said Act removed a *pia* which projected beyond the main walls of H's house and abutted on a lane which was used by the public. H proved that the *pia* had existed for fifty years. *Held*, that the action of the Municipal Commissioners was illegal—*Hanumayya v N A Ronpell, President of Municipal Commission, Anantapur*, I. L. R 8 Mad. 64.

234 The Commissioners may grant permission to any person, for such period as they may think fit, to deposit any moveable property on any road, or to make an excavation in any road, or to enclose the whole or any part of any road, and may charge such fees as they may fix for such permission:

Leave to deposit materials on, or to excavate or close, a road.

Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences to protect the public from injury, danger

or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.

Cf. sec. 201 and notes thereto.

Liability of Commissioners.—The mere fact that the Commissioners granted permission to another person for a perfectly proper purpose would not relieve them of their statutory duty. They will, however, be held liable for damages even if such person undertakes to make provision for the requirements of the proviso — *Calcutta Corporation v. Anderson*, I. L. R. 10 Cal. 445.

Penalty.—No penalty is provided for depositing &c, without permission, and the Commissioners may frame a Bye-law under this section.

235. Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public road will be obstructed or rendered inconvenient by means of such work, before beginning the same, cause sufficient hoards or fences to be put up in order to separate the house where such works are being carried on from the road, and shall keep such hoard or fence standing and in good condition, to the satisfaction of the Commissioners, during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night:

Hoards to be set up during repairs.

Provided that no person shall put up a hoard or fence without the written permission of the Commissioners, nor shall he keep up the said hoard or fence for a time longer than allowed in the said written permission.

This section does not prescribe a fee for permission to erect a fence or scaffolding, but if it encloses any portion of a road, the Commissioners may probably charge a fee under the preceding section.

For penalty see sec. 273, cl (1).

Of Building Regulations.

236 The Commissioners at a meeting may, by an order published in the manner prescribed in section 354, direct that within certain limits, to be fixed by them, the external roofs and walls of huts or other buildings which may thereafter be erected, or the roofs or walls of which may thereafter be renewed or repaired, shall not be made of grass, leaves, mats or other inflammable materials.

Roofs and external
walls not to be made of
inflammable materials.

Change.

The words "by an order published in the manner prescribed in section 354" have been added by sec. 67 of Beng. Act IV of 1894

Notes.

Penalty.—Penalty for breach of the provisions of the section is now provided by sec 270, cl (5).

A person cannot be convicted under sec 188 of the Indian Penal Code for disobedience of an order passed under this section in as much as amongst other grounds such an order is not promulgated by a public servant,—the body of Commissioners being not such within the definition of sec 21 of the Indian Penal Code though an individual Commissioner is—See unreported case of *Tara Chand, Criminal Revision, June 2, 1282, Empress v. The Calcutta Corporation, L. L. R. 3 Cal. 758.*

Renewed or repaired.—*Per Macpherson, J* A renewal, whether of only a portion of a roof, or of a whole roof must not be made of any inflammable material The one question always is whether any portion of the roof is renewed, that is to say, made new again. To read the law otherwise would enable owners or occupants of huts, by repairing their roofs piecemeal, to defeat the object of the Act and bye-law wholly.—*The Howrah Municipality v. Montani Bewah, 24 W. R. 70 C. R.*

237. (1) Every person who intends to erect or re-
Notice of erecting a
house not being a hut. erect any house, not being a hut,
 shall give notice in writing of his
 intention to the Commissioners, and shall accompany
 such notice with a general description of the building
 which he intends to erect, and of the provision he in-
 tends to make in respect of drainage and latrine ac-
 commodation, and the Commissioners may, within six
 weeks after the receipt of such notice, either refuse to
 sanction the said building or may sanction the said
 building either absolutely or subject to any written di-
 rections which the Commissioners may deem fit to issue
 in accordance with the rules, if any, made under sec-
 tion 241.

Provided that the Commissioners shall make full
 compensation to the owner for any damage which he
 may sustain in consequence of the prohibition of the
 re-erection of any house, or of their requiring any land
 belonging to him to be added to the street.

(2) Any person giving notice to the Commissioners
 under this section shall, if required to do so by any rule,
 forward with his notice a plan and specification of the
 house, not being a hut, which he intends to erect or re-
 erect, together with a site plan of the land of such charac-
 ter, and with such details as the rule may require; and
 no notice under this section shall be valid until such
 plans and specification have been supplied.

Change

This and the four next succeeding sections have been substituted by sec. 65
 of Beng. Act IV of 1894 for the old secs. 237 to 241.

Notes.

See App I, Govt Lett. para 30

House and Hut.—See sec. 6, cl. (4), and notes thereunder. A *compound wall* is included within the meaning of the word "building" in sec. 33 Bom Act VI of 1873 (The District Municipal Act)—See also *Dave Harishankar v. The Town Municipality, Umreth*, I. L. R. 19 Bom 27.

For penalty see sec. 273, cl. (1) Compare *Krishanji Narayan v. Municipality of Tasgaon*, I. L. R. 18 Bom. 547.

238 (1) Should any person commence to erect or re-erect such house, not being a hut, without giving notice, or without submitting such plans and specification as aforesaid, or without waiting for the orders of the Commissioners for six weeks from the date of his giving notice in writing under section 237, or in contravention of any legal order of the Commissioners issued within six weeks of receipt of a valid notice under the last preceding section, the Commissioners may, by notice, to be delivered within fifteen days, require the building to be altered or demolished, as they may deem necessary.

Commissioners may order a house not being a hut erected without notice, etc., to be altered or demolished.

(2) Should the Commissioners neglect or omit for six weeks after the receipt of a valid notice under the last preceding section to make and deliver to the person who has given such notice any order in respect thereof, they shall be deemed to have sanctioned the proposed house absolutely :

Provided that no rule under section 241 and no legal order shall be held to have been contravened by anything done in accordance with plans and specifications forwarded to the Commissioners under section 237 and not objected to by them.

Change.

The words "or without waiting", &c., up to "section 237" have been added by sec. 12 of Beng. Act II of 1896.

Notes.

The addition of these words has laid at rest the doubt expressed by the High Court as to whether it was an offence under the section as it stood before to erect a building without waiting for six weeks after giving notice, for the orders of the Commissioners.—See *Chandra Kumar Dey v. Gonesh Das Agarwalla*, I. L. R., 25 Calc., 419.

Erect or re-erect—for meaning of, see sec 240 and note thereunder.—*Cf. Tullaram v. The Corporation of Calcutta*, I L. R., 30 Cal., 317 (335).

In the recent case of *Emperor v. Mathura Prosad* (I L R, 29 Calc, 491) the accused was convicted by the Lower Court under the first clause of section 273 for commencing to add a second storey to his house without permission. On a reference made by the Sessions Judge the High Court set aside the conviction on the grounds that there was no necessity for such permission and that the building regulations contained in sections 236 to 241 related to building or rebuilding a house and not to alterations therein. A reference is made in the judgment to sections 233 and 235, which relate to obstructions and encroachments on roads, apparently with the object of distinguishing the later sections relating to building regulations which do not contain the word "alter" or "alteration" as the earlier sections do, the inference being that the building regulations do not apply to any alterations of an existing building. It is submitted that this view is hardly consistent with section 240, by the terms of which the expression "erect or re-erect any house" as used in this and section 239 includes any material alteration or enlargement of any building. On this point see the recent Govt. Circular, *App. IX*, p. xxiv.

Without giving notice.—Building in excess of permission granted, that is, on land other than that for which notice has been given seems to be simply building without notice, so far as the excess land is concerned.—*Bhawani Shankar v. The Surat Municipality*, I. L. R., 21 Bom., 187.

Six weeks.—This period is to be calculated from the date when complete plans and specifications are submitted in such a form as to be capable of consideration by the Commissioners.—*Sewnandan Rai*

Kayab v. The Vice-Chairman of the Darjeeling Municipality, 5 C. W. N., 42.

Legal order—means an order *consistent and capable of performance*. “Neither the law nor any direction purporting to be made under the law can compel any person to do what is impossible; and a permission which involves a condition absolutely inconsistent with its own terms could not come within the category of legal orders” [I L R, 25 Bom, 142 (151)] In a Bombay case (*Dave Harishankar v. The Town Municipality of Umreth*, I L R, 19 Bom. 27) a wall, not shewn in the original description furnished to the municipality and built in spite of express prohibition, was held to have been built in contravention of legal orders. The municipality was not liable for damages for having it demolished.

Fifteen days—as the section stands, appears to mean fifteen days *from the time when any person commences to erect or re-erect a house*. It is submitted that this limitation of time is likely in many cases to defeat the object of the law, as the commencement of a building may be successfully concealed from the Commissioners for fifteen days and then they will be quite powerless to require an alteration or demolition of the building, however insanitary it may be and however much it may contravene the building regulations

Neglect or omission to make and deliver order within six weeks.—No prosecution under sec 273 (1) lies against a person who commences to build a house in accordance with plan submitted, after waiting for six weeks from the date of submission of notice in a complete form, if the municipality has neglected or omitted to pass orders thereon within that period. The mere fact that the party made certain alterations in his building at the suggestion of the municipality, does not preclude him from raising this objection at the trial.—*Sewmandan Rai Kayab v. The Vice-Chairman of the Darjeeling Municipality*, 5 C. W. N., 42.

Sanction irrevocable.—In a case under the *Calcutta Municipal Consolidation Act* (Beng. II of 1888), the High Court (*per Henderson J*) held that an unconditional sanction, once legally given, was absolute and there was nothing in the Act which enabled the Corporation to revoke it. The Corporation must be taken to be bound by the acts of its officers and the plea that it was misled by an

overseer or that an overseer had made a mistake would not avail it. The question would, however, assume a different aspect, if the sanction had been obtained by fraud or collusion of the party seeking it, or the erection of the sanctioned building had been carried on in non-compliance of the party's own undertaking, in which case the remedy open to the Corporation was by an injunction or such other legal steps.—*Tallaram v. The Corporation of Calcutta*, I. L. R., 30 Cal., 317.

239. Every sanction for the erection or re-erection of any house, not being a hut, which Sanction available for one year only. shall be given or deemed to be given by the Commissioners, shall be available for one year from the date on which the notice shall have become valid and complete, and no longer; and should the house so sanctioned not have been begun by the person who has obtained such sanction, or some one lawfully claiming under him within such year, it shall not be begun without fresh sanction, but such person as aforesaid may at any subsequent time give fresh notice to the Commissioners in the manner hereinbefore prescribed, and thereupon the provisions hereinbefore contained shall apply to such notice.

Erection or re-erection—for meaning of, see sec. 240 and note thereto.

Definition of expression
"erect or re-erect any
house, not being a hut."

240 The expression "erect or re-erect any house, not being a hut" as used in the two last preceding sections includes:—

- (a) any material alteration or enlargement of any building ;
- (b) such alterations of the internal arrangements of a house as effect an alteration of its drainage or sanitary arrangements, or affect its stability.

U was convicted and fined, the charge against him being that one of the walls of a house belonging to the Mission at P was raised by about a foot and a half without notice to the municipality. It was contended on behalf of the petitioner in the High Court that, upon the facts proved, he was guilty of no offence and that he was not bound to give any notice to the municipality for making such microscopic alterations in the house. Reference was also made in argument to the definition of the term 're-erect' in the Calcutta Act where it meant an alteration in the cubical extent by at least one-half. Their Lordships however held that the raising of a wall and a roof by one foot and a half would be a material alteration within the meaning of this section making a notice to the municipality obligatory and declined to interfere.—In the matter of *Re: H. Uffmann (unreported)* *Bengalee, June 27, 1900*

241 (1) The Commissioners at a meeting may from time to time make, repeal or alter rules to regulate the erection or re-erection of houses, not being huts, within the municipality in respect of all or any of the following matters:—

Power of the Commissioners to make rules as to mode of construction of houses not being huts.

- (a) the materials and method of construction to be used for external and party walls, roofs, floors, fire-places and chimneys;
- (b) the provision, position and ventilation of drains, privies and cess-pools,
- (c) the free passage or way in front of the house;
- (d) the space to be left about the house to secure free circulation of air and facilitate scavenging, and for the prevention of fire;
- (e) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on.

- (f) the level and width of the foundation, the level of the lowest floor and the stability of the structure ;
- (g) the number and height of the storeys of which the house may consist ;
- (h) the means to be provided for egress from the house in case of fire ,
- (i) the line of frontage with neighbouring houses if the house abuts on a street.

(2) Rules under this section, not inconsistent with the Act, shall be subject to the sanction of the Local Government, and shall, if sanctioned, be published in such manner as the Local Government may direct, and shall have the force of law.

(3) If in and during the erection or re-erection of any house, any rule under this section is contravened, the Commissioners may by notice to be delivered within fifteen days require the building to be altered, or, if necessary, demolished within the space of thirty days, so as to secure conformity to such rule.

(4) This section shall not take effect in a municipality until it has been specially extended thereto by the Local Government at the request of the Commissioners at a meeting

Fifteen days—for meaning of, see note to sec. 238.

Penalty for breach of the provisions, see sec. 273, cl. (1).

See App I, Govt. Lett. para 30

242. The Commissioners may prohibit the owner of any house, not being a hut, from letting it for occupation, if in their opinion it is unstable, or if the

Commissioners may prohibit letting of unstable or ill-drained house.

drainage or latrine accommodation of such house is in their opinion defective, until its stability shall have been secured or such defects in drainage or latrine accommodation shall have been made good to their satisfaction.

Change.

This section has been substituted by sec. 69 of Beng Act IV of 1894 for the original section.

For penalty for disobedience see sec. 273 cl. (1)

Appeals from orders of
Commissioners.

242A. (1) Any person aggrieved—

- (a) by the prohibition by the Commissioners under section 237 of the erection or re-erection of a house, not being a hut, or
- (b) by a notice from the Commissioners under section 238 or sub section (3) of section 241 requiring the alteration or demolition of a building, or
- (c) by any order made by the Commissioners under the powers conferred upon them by section 242,

may appeal within thirty days from the date of such prohibition, notice or order, to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal.

- (2) The appellate authority may, for sufficient cause, extend the period allowed by sub-sec-

tion (1) of this section for appeal

- (3) The order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final :

Provided that the prohibition, notice or order shall not be modified or set aside until the appellant and the Commissioners have had reasonable opportunity of being heard.

Change.

This section has been added by sec. 70 of Beng. Act IV of 1894.

Sub-sec. (3), Final.—Compare notes to secs 113 and 116.

243. It shall not be lawful for any person to erect a hut, or any range or block of huts or sheds, or to add any hut or shed to any range or block already existing, or to enlarge any existing hut, without one month's previous notice to the Commissioners, and the Commissioners may require such huts or sheds to be built so that they may stand in regular lines, with a free passage or way in front of each line and between every two lines of such width as they may think proper for ventilation and to facilitate scavengering, and with such number of privies, and with such means of drainage, as to them may seem necessary, and at such a level as will admit of such drainage, and with a plinth at least two feet above the level of the nearest street.

Erection of new huts to be under the control of the Commissioners.

Changes

By sec. 71 of Beng. Act IV of 1894 the words "one month's," "each line" have been added, and "every two lines" have been substituted for "each line."

Notes.

One month's previous notice.—Mere submission of an application for permission to build would not entitle a person to build,

before permission has been obtained.—*Deputy Superintendent and Remembrancer of Legal Affairs on behalf of the Government of Bengal v. Choita Raj Bhor*. Cri App'l No 1507 of 1902 (unreported)

Hut—as to the meaning of, see notes sec 6, cl. (1)

For penalty for infringement see sec 267 and notes thereunder
post

244. If any such huts or sheds be built without giving such notice to the Commissioners, or otherwise than as required by the Commissioners, the Commissioners may require the owners of the land on which such huts and sheds are built, and the occupiers of such huts and sheds, to take down and remove the same within one month, or to effect such alterations as they may deem necessary.

Penalty for non compliance with the requisition, see sec. 267 *post* and for execution of the works see sec 180 and notes

Of Sanitary Measures with regard to Blocks of Huts.

245. Whenever the Commissioners at a meeting are satisfied, from inspection, or by report of competent persons, that any existing block of huts within the municipality is, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage and the impracticability of scavenging, attended with risk of disease to the inhabitants or the neighbourhood, they may cause the locality to be inspected by two medical officers, who shall make a report in writing on the sanitary condition of the said block of huts; and shall specify, if necessary, in the said report, the huts which should be removed, the

Power to direct removal of huts built without notice.

Power of Commissioners as to inspection of huts.

roads, drains and sewers which should be constructed, and the low lands which should be filled up, with a view to the removal of the said risk of disease.

But—for the meaning of, see sec 6 cl. (4) and notes.

Commissioners sole judges of necessity — Where a municipality, having proceeded in accordance with sections 245 and 246, decide that certain works are necessary, that conclusion, in the absence of *mala fides*, fraud or considerations of that nature, cannot be questioned in a Civil Court — *F W Duke v Rameswar Mahah*, I. L. R., 26 Calc. 811, 3 C. W. N 508

Construction of section — The following judgment of the High Court in the unreported case of *G. v. L. Seal and others v. Mr L C Abbott, Chairman of the Howrah Municipality* in appeals from Original Decrees, Nos 264, 265, 266 and 267 of 1884, decided on the 15th January 1884, will explain the construction to be put upon the section :—

No 264 Prinsep, J —

The plaintiffs are the proprietors of certain lands in Bagdeeparah, Howrah. The Ward Commissioners of the Howrah Municipality took action under section 264 of the Bengal Municipal Act, 1876, with respect to a strip of land, about 4½ feet, within plaintiffs' property directing the plaintiffs within a specified time to carry out the recommendations of the Medical Officers appointed under section 264. On the default of the plaintiffs the Howrah Municipality have themselves executed the necessary works. The plaintiffs have accordingly brought the present suit to recover possession of 18 cottahs of land, of which they have been dispossessed or to obtain a certain sum of money as damages.

It is contended that the order of the municipality and the report of the Medical Officers on which that order proceeded, are beyond the terms of the Act.

It appears to me that so far as the order relates to the removal of huts or portions of certain huts in consequence of their being so crowded together that there was risk of disease to the inhabitants of the locality, can be maintained, but in other respects the order passed is beyond the terms of the Act. The learned Advocate-General, who

appears for the appellants, has pointed out that the effect of the order will be to deprive the plaintiffs of the right of property in these lands in as much as the lands have been converted into a public road. In our opinion, so far as there is any interference with the right of property of the plaintiffs in these lands, the order must be modified. The lands in excess of $4\frac{1}{2}$ feet occupied by public path, must be restored to the possession of the plaintiffs. They are also entitled to the refund of any money that has been realized from them to carry out the improvements on these lands so far as they exceeded the actual removal of the huts.

The plaintiffs are entitled to receive costs of the suit.

This decision governs the appeals Nos 265, 266 and 267 of 1882 No 264 O'kinealy, J.—

The question in this case appears to me to be simply a question of construction, that is to say, the construction to be put upon the report submitted by the Medical Officers to the Corporation authorities under section 264 of the Municipal Act V of 1876, of the Bengal Council. When the Commissioners at a meeting are satisfied of a certain state of facts, they may cause the locality to be inspected by two Medical Officers, who shall make a report in writing on the huts, the drains and roads and sewers which are to be constructed with a view to the removal of risk of disease. By the words "risk of disease" is meant the risk of disease referred to in the previous part of the section. In order then that the corporation could proceed to exercise the very summary power given to them by the Act, it seems to me that it was absolutely necessary that the medical certificate should cover what purported to have been done under the Act.

Now on turning to the medical certificate we find nothing of the kind. It runs as follows — "We the undersigned Medical Officers have the honor to report that at the request of the Municipal Commissioners, we have carefully inspected the blocks of huts situated within the localities specified below, and we are of opinion that the huts are so crowded together and so irregularly situated that there is risk of disease to the inhabitants and there are no means for efficiently scavengering the localities and there is a want of drainage. We have specified below in detail what improvements we consider to be necessary in the way of making roads and drains and removing huts." The crowding

of huts is a matter which gives jurisdiction to the Commissioners under section 264: irregular building does not. So looking at the certificate we must read it to be that so far as the huts are crowded together, there is risk of disease. Further than this we cannot go, for it certainly does not state that inefficiency of scavenging or the want of drainage is attended with any risk whatever. The order cannot go beyond the certificate. I think, therefore, that so much of the order as refers to the crowding of the huts and the removal of them, is good, while the latter portion which refers to the inefficiency of scavenging and want of drainage is bad. I therefore concur in the decision which has been arrived at by my learned brother. The appellants are entitled to receive back the lands covered by the drain and the road with costs. [This criticism, however, appears to have lost its force in view of the wording of the present section—Ed.]

This decision governs the appeals Nos. 265, 266 and 267 of 1882

Section not applicable to masonry structure.—The Howrah Municipality referred the question of *Bastee* improvements to the Local Government; and the Government in the Municipal Department letter, No. 2040, dated, the 19th July 1886 to the address of the Commissioner of the Burdwan Division expressed its views as follows:—

“The ruling of the Judge of Hoogly that the provisions of the Bengal Municipal Act in regard to blocks of huts do not apply to masonry structures, is apparently correct. The existence of such a structure might, therefore, be fatal to progress in *bustee* reclamation, if the owner insisted on his legal rights to the detriment of his neighbours.

But a pucca privy may be removed.—Where a municipality among other works required the removal of a *pucca* privy by means of a notice issued in accordance with this section, it was held that their action was not *ultra vires*, in as much as the municipality had a right to make such requisition under section 224—*F. W. Duke v. Rameswar Maliah*, I. L. R. 26 Cal, 811, 3 C. W, N. 508.

Policy to be adopted in effecting busti improvement.—The following extracts, from the letter No. 571, dated the 7th June, 1886, addressed by the late Hon'ble Sir Henry Harrison to the Under-

Secretary to the Government of Bengal, Municipal Department, may be found useful in giving effect to the provisions of this section.—

"A bustee road once constructed becomes "a street" under the Calcutta Act, and the Commissioners have full power, under section 202, to compel the owner to keep it in repair. This power is systematically exercised. But we have never questioned the right of the owner to build over the road, if he wishes to convert the bustee or part of the bustee into a pucca house. The land is his own, and though we claim a voice in its sanitary management, as long as it is used for blocks of huts, if he wishes to change the disposition of any portion of it, and build (say) a ware-house, it is perfectly open to him to do so. The question has often been put to us by the owners when constructing the roads, and they have invariably been informed that there is nothing to prevent their building on the land afterwards if they wish to do so.

The question about huts referred to in paragraph 8 of Mr. Carstairs' letter will be found discussed at paragraphs 320 and 321 of our report for 1882-83. We have always assumed in Calcutta the power of granting compensation for huts under the proviso to section 282; and the hardship of making poor hut-owners remove their huts without compensation would be so great that we make it a rule to give compensation. Such compensation not being obligatory, we fix a fair rate, and not the imaginary market values which the courts usually award in acquisition cases, and no difficulty whatsoever is experienced. Our difficulty is in recovering the amount from the owners; there has been a trial case in the Small Cause Court which was given against us. * * * No wonder bustee improvement is unpopular at Howrah, if hut-owners, who have nothing whatsoever to gain by the improvements, have their huts pulled down without compensation."

Bustee roads.—In a recent case, however, the High Court (*Per Rampini and Pratt, JJ.*) was pleased to hold that roads made under these sections are vested in the Commissioners under section 30. There is no clause in the Act which, in any way, limits the right of user of the municipality in bustee roads.—*Ramanath Ghosh v. Duke*, Spl. Appl. No. 1105 of 1900. (unreported).

246. On receipt of the said report, the Commis-

On receipt of report, Commissioners may cause notice to be served.

sioners at a meeting may require the owners or occupiers of the huts, or at the option of the Commissioners the owner of the land on which such huts are built, to carry out and execute within a reasonable time, to be fixed by the Commissioners, for such purpose, all or any of the works specified in the aforesaid report or any portion thereof respectively, and, if such owner, owners or occupiers shall fail to comply with such requisition, the Commissioners themselves may execute all or any of such works.

Owner of land—includes all the owners of land to which the sections are applicable. Compare sec. 180.

247. The Commissioners at a meeting may order that any expenses payable in respect of any work done by them in consequence of the failure of the owners or occupiers to execute such work when required to do so under the last preceding section shall be recovered by instalments from the person liable to pay the same; or if it should appear to them that the said person is unable by reason of poverty to pay the same, may order the same, or any portion thereof, to be paid out of the municipal fund.

Expenses may be recovered by instalments or remitted in case of poverty.

As to recovery of expenses, see sec 360 and notes to sec. 180.

248. If any of the said huts be pulled down, the Commissioners shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or if the owner be unknown, or the title disputed, shall be held in deposit by the Commissioners, until the person interested therein

Sale of huts.

shall obtain the order of a Civil Court of competent jurisdiction for the payment of the same.

*Of the Regulation of the Sale of Food, Drink
and Drugs*

249 Every owner, or occupier, or farmer, of any place for the sale of meat, poultry, fish or vegetables, or of any slaughter-house, within the limits of a municipality, shall cause such drains to be made therein as shall be considered sufficient by the Commissioners, and (if required so to do by the Commissioners) shall cause all the floors and drains to be paved with stone or burnt brick, and shall also cause a supply of water to be provided, sufficient for keeping such place or slaughter-house in a clean and wholesome state.

Markets, slaughter houses, &c., to be properly drained.

Compare sec. 340 *post*. For penalty for default, see sec. 268

250. Any Magistrate, on the application of the Commissioners or any of their officers setting forth that there is just cause to believe that any article which has been rendered or has become noxious or unfit for use as food or drink for man, is in the possession of any person for the purpose of being sold or offered or exposed for sale, within the limits of a municipality as food or drink for man, may grant a warrant to enter upon the premises of such person, and to search for and seize such article.

Sale of unwholesome food or drink.

And, if it appear to the said Magistrate that the same is noxious or unfit for such use, he shall order it to be forfeited and disposed of any such way as to him shall seem proper.

Destruction of unwholesome food.—In a case under the Calcutta Municipal Act (Beng. III of 1899) it was held by the High Court (*per* Stevens and Harington JJ) that in order to justify an order for the destruction of articles, the magistrate must be satisfied and there must be a finding in the judgment directing such destruction that the articles were either exposed or hawked about for sale, or deposited in, or brought to, any place for the purpose of sale or preparation for sale, and were intended for human food. Unless and until some attempt was made to dispose of them for such purpose, the mere fact that there was risk of their being so used would not justify an order for the destruction of a man's property which might be disposed of in a perfectly legitimate way.—*Chundra Coomar Biswas v Calcutta Corporation*, I. L. R., 30 Cal. 421.

251. No person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser under a penalty not exceeding one hundred rupees :

Prohibition of the sale of articles of food not of the proper nature, substance or quality.

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say—

- (1) where any matter or ingredient not injurious to health has been added to the food, because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the food, or conceal the inferior quality thereof;
- (2) where the food is unavoidably mixed with some extraneous matter in the process of collection or preparation

The term 'food' shall include every article used for food or drink by man other than drugs or water.

In any prosecution under this section it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale.

Change

This section has been substituted for the original section of Beng. Act III of 1884 by sec. 2 of Beng. Act III of 1886.

Notes.

Prejudice of purchaser.—The adulteration of mustard oil with *til* oil is to the prejudice of the purchaser, in as much as it becomes less suitable for the purposes for which it is used and also because adulterants are used for the purpose of increasing the bulk of the oil and the profit of the manufacturer.—*Mati Lal Pal v, The Calcutta Corporation*, 7 C. W. N. 637.

Nature of the article demanded.—When a person asks for mustard oil he expects what is commercially known as mustard oil i. e. pure mustard oil and not oil adulterated with *til* and other oils.—*Ibid*.

Required for production.—It is not necessary for the purposes of manufacturing mustard oil to use any hard seed (such as *til*) to assist in expressing oil. Adulterants are used in such cases simply to save expense and increase profit.—*Ibid*.

251A. No proceedings shall be instituted under the last preceding section without the order or consent of the Commissioners.

No proceedings to be had without leave of the Commissioners.

Change.

This and the next succeeding three sections have been added by sec. 3, Beng. Act III of 1886.

251B. The Commissioners, or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any market, building, shop, stall or place used for the sale or

Power of Commissioners to enter and inspect markets, shops, &c., and to seize unwholesome articles exposed for sale.

storage of articles intended for food, or as a slaughter-house, and may examine any such articles which may be therein, and, if upon examination such articles, or any of them, appear to be unfit for food, may seize the same.

251C. Upon the seizure of any article of food under the last preceding section, the Power to destroy unwholesome articles. same may, if the owner or the person in whose possession the same is found consents, be forthwith destroyed or so disposed of as to prevent it being used as food; but, if the owner or the person in whose possession the same is found do not consent, then, if it appear to a Magistrate upon sufficient evidence that the same is unfit for food, he shall order the same to be destroyed or so disposed of as to prevent it being used as food, and may impose a penalty not exceeding one hundred rupees upon the owner or person in whose possession the same was found, such person not being merely a carrier or bailee thereof.

251D. If the Commissioners, or any person authorized by them in that behalf, shall Person refusing to sell any article to Commissioners liable to penalty. apply to purchase any article of food exposed to sale, and shall tender the price for a quantity not more than shall be reasonably requisite for the purpose of analysis, and the person exposing the same for sale shall refuse to sell the same, such person shall be liable to a penalty not exceeding fifty rupees.

252. No shop or place shall be kept for the retail Registry of shops for sale of European drugs. sale of drugs recognized by the British Pharmacopœia, not being

also articles of ordinary domestic consumption, unless the same shall have been registered in the office of the Commissioners. Any keeper of such shop or place failing to register the same within two months after this section shall come into force, or within two months from the date of the establishment of such place, shall be liable to a fine not exceeding one hundred rupees. The Commissioners shall, upon registration, grant the keeper of such shop or place a license which he shall be bound to display in some conspicuous part of his premises.

No person shall compound, mix, prepare, dispense or sell any drug in any such registered shop or place unless he be duly certified as a fit person to be entrusted with such duties under rules made for that purpose by the Local Government:

Provided that the provisions contained in the second clause of this section shall not come into operation until after the expiration of a period of six months from the publication of a notification to that effect in the *Calcutta Gazette* by Local Government.

Nothing in this section contained shall be construed to apply to the sale of drugs used by practitioners of indigenous medicines, whether recognized by the British Pharmacopœia or not, when such drugs are not sold in a shop or place where medicines, recognized by such Pharmacopœia are dispensed upon prescription.

Penalty for failure to register is provided in sec. 275 and for an offence under para. 2 in sec. 276.

253. The Commissioners, or any person authorized

by them in that behalf, may at all
Inspection of drugs. reasonable times enter into and inspect any place kept for the sale of drugs, or in which drugs are sold, and if they have reason to suspect that any drug in the said place is adulterated or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, may remove the same on giving a receipt therefor, specifying the nature and quantity of the drug removed, and its approximate value; and if it appear to a Magistrate that the said drug removed as aforesaid is adulterated or has become inert, unwholesome or deteriorated as aforesaid, he may order the same to be destroyed, or to be so disposed of as to him may seem fit.

If it shall appear to the said Magistrate that the drug so removed is not adulterated or has
Compensation if drug be not adulterated. not become inert, unwholesome or deteriorated as aforesaid, the person from whose shop or place it has been taken shall be entitled to have it restored to him, and it shall be in the discretion of the said Magistrate to award him such compensation as he may think proper, not exceeding the actual loss which has been sustained.

If the drug removed as aforesaid is not brought before a Magistrate, it shall be restored to the person from whose shop or place it was taken, and such person shall be entitled to compensation for any actual loss which he may have sustained by the removal of the said drug.

Of Burial and Burning Grounds.

254. Within three months from the date on which this and the six next succeeding sections may come into force as provided in section 222 every place which is used as a burial or burning ground for corpses shall be registered as such by the owner thereof in the office of the Commissioners, but no fee shall be charged for such registry.

Registration of existing burial and burning grounds.

255. No burial or burning ground, whether public or private, shall be made or formed, or, having lapsed into disuse, shall be again used as such, otherwise than with the permission of the Commissioners, or under the authority of the Local Government.

No new or disused burial or burning place henceforth to be used without leave of Government or of Commissioners.

Delegation.— By Notification, No 1095 T.M. dated, the 12th June 1903, the Local Government, in the exercise of the powers conferred on it by cl (1), sec 29A, was pleased to delegate its powers and functions under sec. 30, 255 and 259 to the Divisional Commissioners in regard to all municipalities within their respective Divisions.—*Cal. Gaz., 1903, Part, 1B, p. 107.*

256 If it shall appear to the Commissioners at a meeting that any public or private burial or burning ground is dangerous to health or offensive to the taxpayers or to the inhabitants of the neighbourhood, and also that a suitable place for interment or burning, as the case may be, exists within a convenient distance, and is open and available to the inhabitants of the municipality, the Commissioners shall give public notice of their intention to close such burial or burning ground, and shall consider any objections which may

Commissioners may order certain burial or burning grounds to be closed.

be preferred within fifteen days of the publication of such notice; after considering such objections they may, by notification to be affixed on some conspicuous part of the ground, appoint a time, not being less than two months, for the closing of such burial or burning ground.

If any building is attached to, and used in connection with, a burning-ground closed under this section, the Commissioners shall, if the owner of such building make an application to them in that behalf, take over the same on payment of a fair price therefor.

Two months.—In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held that the point of time from which the period is to run must be mentioned. In the absence of express mention of a point of time, the period cannot be taken to run from the date of the certificate (here notification—Ed) itself.—*Lutfer Rahaman Nusker v. The Calcutta Municipal Corporation*, 2 C. W. N. 145.

256A When notice is given of the intention to close any burial-ground under the last preceding section, private burial-places in such burial grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf.

Provided that the limits of such burial-places are defined, and that they shall only be used for the burial of members of the family of the owners thereof.

This and the next succeeding sections have been added by sec. 72 of Beng. Act IV of 1894.

256B. Any person, aggrieved by any order made by the Commissioners under the powers conferred upon them by the two last preceding sections may appeal to the Magistrate,

Private burial places may be excepted.

Appeals from orders under sections 256 and 256A.

whose decision shall be final.

The Magistrate—See sec. C cl (8).

257. After the expiration of the three months mentioned in section 254, no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning ground; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

Prohibition to bury or burn in unregistered ground.

For penalty see sec. 274 *post*

258. After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried, and the expenses thereby incurred shall be recoverable as a debt due from the estate of such person. In every such case, the corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenets of the deceased.

Commissioners may cause corpses to be burnt or buried according to the religious tenets of the deceased.

259. The Commissioners at a meeting may from time to time, out of the municipal fund, with the sanction of the Local Government, provide fitting places to be used as burial or burning grounds, and may impose a fee not exceeding two rupees in respect of every corpse buried or burnt within such burial or burning grounds.

Commissioners may provide places to be used as burial or burning grounds.

Fitting.—Cf. *Muhammad Mohidin v The Municipal Commissioners of Madras*, I. L. R., 25 Mad., 118

Local Government--The powers and functions of, delegated to Divisional Commissioners.—See note to sec 256 *ante*.

260. The Commissioners at a meeting may, from time to time, out of the municipal fund, provide for the burial and burning of paupers free of charge within the limits of the municipality.

Commissioners may provide for burial of paupers free of charge.

260A. (1) The Commissioners may, from time to time, grant licenses to persons applying for the same, for the sale at burning grounds of fuel and other articles used for the cremation of dead bodies, and in case any such license shall be granted shall, at a meeting, prescribe a scale of rates for the sale of such articles; and any person not so licensed, who shall, within three hundred yards of any such burning ground, sell or offer for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.

Power to license fuel shops at burning grounds.

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such license they may think fit, and any person to whom any such license is granted, who shall charge for the sale of any such article any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled, and shall be liable also to a fine not exceeding ten rupees.

This section is new and has been added by sec. 78 of Beng. Act IV of 1894 at the instance of the Commissioners of the South Barrackpur Municipality.

*Of certain Offensive and Dangerous Trades
or Occupations.*

261 Within such local limits as may be fixed by the Commissioners at a meeting, no place shall be used without a license from the Commissioners, which shall be renewable annually, for any of the following purposes, namely:—

Certain offensive and dangerous trades not to be established within limits to be fixed by the Commissioners without license.

melting tallow ;

boiling offal or blood ;

skinning or disemboweling animals ;

as a soap-house, oil-boiling house, dyeing-house ;

as a tannery, slaughter-house, or kiln for making bricks, pottery, tiles or lime ,

as a manufactory or place of business from which offensive or unwholesome smells may arise ;

as a yard or depot for trade in hay, straw, wood, thatching-grass, jute or other dangerously inflammable material ,

as a store-house for kerosine, petroleum, naphtha or any inflammable oil or spirit ;

as a shop for the sale of meat ;

as a place for the storage of rags or bones or both ; or

as a lodging-house or a serai.

Such license shall not be withheld unless the Commissioners have reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood.

The Commissioners at a meeting may, in accordance with a scale of fees to be approved by the Commissioner of the Division, levy a fee in respect of any such license and the renewal thereof, and may impose such conditions upon the grant of any such license as they may think necessary.

Changes.

By sec. 74 cl. (1) of Beng. Act IV of 1894 the words "as a place for the storage of rags or bones or bath" have been added, and by cl. (2) the last paragraph has been substituted for the words "the Commissioners may levy a fee in respect of such license and the renewal thereof, and may impose such conditions upon the license as they may think necessary."

Notes.

Annually—has reference to the definition of the term "year" in sec 6 cl. (19) which means a year beginning on the 1st April.

By secs. 46 and 46A of Beng. Act I of 1893 as amended by Beng. Act I of 1894 (*The Licensed Ware-House and Fire Brigade Act*) this section has been repealed in so far as it entitles the Commissioners to levy fees in respect of premises licensed as depots for hay, straw, wood, rags, jute or other dangerously inflammable materials and used as ware-houses. By sec. 1 cl. (2) the said Act has been made applicable to the Municipality of Howrah and other Municipalities near Calcutta or Howrah, to which its provisions may be extended by an order of the Local Government. For the Licensed Ware-House and Fire Brigade Act see *App.*

The question of licensing places for making bricks, &c., for a person's own use is set at rest by the insertion of sec. 262A. See *Sree Ram Haldar v. Chairman of the Howrah Municipality*, 20 W.R. 65 C.R.

In the case of the *Suburban Municipality v. Zamir Shaik and others* 18 W. R. 4 C. R., Norman, C.J. held that no person is liable to any penalty (for using any place for the purposes of this section) except a person who uses a place or building either by letting it out or by employing servants and others for the purpose of carrying on the business.

The High Court (Mitter & Pigot, J.J.) on a reference by the

District Magistrate of Howrah agreed with him that in a prosecution under this section the Magistrate was only to try whether the accused was carrying on his business without a license and not any other question.—See Criminal Revision No 16 of 1883, *Overseer, Howrah Municipality v. Deno Manjee*, dated, 25th October 1883, unreported.

Using a place without a license is a continuous offence (see sec 353); and a penalty is provided in sec. 273 cl. (2); and cl. (3) of the same section provides a penalty for breach of the conditions imposed under the last paragraph.

As to institution of prosecution and procedure of trial see notes under *Penalties* (pp 171-2) and sec. 217.

264. If it be shown to the satisfaction of the Commissioners at a meeting that any place licensed under section 261 is a nuisance to the neighbourhood, they may, notwithstanding anything contained in the said section, give notice to the occupier to discontinue the use of such place within one month after the date of such notice :

Commissioners may, in certain cases, order the use of slaughter houses and the carrying on of dangerous and offensive trades to be discontinued.

Provided that in this case the Commissioners shall refund so much of the fee levied under the last preceding section as may be proportionate to the unexpired portion of the year for which the license was granted

The proviso was added by sec. 75 of Beng. Act IV of 1894. For penalty see sec. 278.

As to the power of any Magistrate for suspension or revocation of license see sec. 278.

A previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance to the neighbourhood—*The Municipal Commissioners of the Suburbs of Calcutta v. Mohamed Ali and another*, 18 W.R. 6 C. R.

262A. Within such local limits as may be fixed by