

Commissioners may prohibit private kilns.
the Commissioners at a meeting, no place shall be used as a kiln for making bricks, pottery, tiles or lime for private purposes.

This section was added by section 76 of Beng. Act IV of 1894.

Compare notes under sec. 261 *ante*.

For penalty see sec. 273 cl. (2).

263. Within such limits as the Commissioners at a meeting may determine, no milkman, cartman, livery stable-keeper or keeper of hackney carriages shall keep horses, ponies or cattle, for the purposes of trade or business, except in a place licensed by the Commissioners.

Milkman, &c., not to keep animals or cattle without license.

The Commissioners may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

It shall be in the discretion of the Commissioners at a meeting to grant any such license subject to such conditions as they may think fit.

Change.

The words "exceeding ten in number" after "cattle" have been omitted by sec. 77 of Beng. Act IV of 1894.

Notes.

Object of change.—The omission of the words was found necessary, for, in many cases the municipal authorities were not able to enforce the taking out of licenses by reason of the proprietor stating that ten or a less number belonged to him and the rest to other persons.

The Hon'ble Mr. Ghose objected to the omission on the ground that it might cause great hardship to poor persons who keep one or

two cows for their living. The Hon'ble Mr. Bourdillon, however, was pleased to observe that "it is not reasonable to suppose that the taking out of a license will be required in the case of a poor woman who keeps a cow for her support, and the Commissioners are not anxious to tax poor persons, but to obtain effective control over those who keep considerable number of cattle and yet manage to evade the law as it now stands." But it is doubtful whether any poor person having a cow and calf will be justified in claiming exemption.

For penalty for failing to take out a license and for breach of conditions thereof see sec. 273 cls. (2) and (3).

In a case the evidence showed that "the accused had 7 or 8 ponies, 4 cows and some sheep and let out one carriage and a pair of ponies on a monthly hire, kept the same in her stable and also kept other ponies for sale and supplied milk to others out of her cows". It was however held that on the facts found the case did not come under the terms of this section or of sec. 273 so as to render the accused liable under cl. (2) of the latter section. No reason for the decision appears in the judgment, and the report shows that the opposite party who prosecuted the accused was unrepresented at the hearing.—*Fairweather v. Suresh Chundra Dutta*, 5 C. W. N. 331.

In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held that the defendants, not being in direct possession of the premises, could not be prosecuted under sec. 307. When a property is let out, it is the duty of the lessee to obtain license.—*Abhoy Charan Das v. Fuller*, 2 C. W. N. 289.

264. The Commissioners may provide public stables for the accomodation of horses and cattle, and may direct that, within such limits as they shall at a meeting determine, no person shall keep horses or cattle exceeding ten in number, for the purpose of trade or business, except in such public stables, or in places licensed under the preceding section.

The Commissioners may charge such reasonable fees as they shall think fit for the use of such public stables.

For penalty see sec. 273 cl (4)

265. Within such limits as the Commissioners may direct, no person shall keep any pig-sty adjoining or near a road unless it is shut out therefrom by a sufficient wall or fence, and in no place within such limits shall more than ten pigs or more than twenty sheep or goats be kept without the written permission of the Commissioners

The Commissioners may charge an annual fee not exceeding two rupees for such permission, and may impose such conditions in respect of such permission as they may think necessary

For penalty see sec. 273 cl (5)

Penalties

[For procedure for institution of prosecution, &c., see notes under *Penalties* (pp. 171-2) and sec 217]

266 Any person constructing a privy within a municipality, and failing to have it shut out from view, as in section 225 required, shall be liable to a fine not exceeding twenty rupees.

Compare notes under sec 225.

267. Whoever erects a hut, or any range or block of huts or sheds, or adds to any hut or shed, or to any range or block already existing, contrary to the provisions of section 243, and whoever fails to remove such hut, block of huts or shed when required by the Commissioners to do so, shall be liable to a fine not exceeding twenty rupees for every such offence, and to a further fine, not exceeding five rupees, for each day during which the

offence is continued after he has been convicted of such offence.

Daily fine.—See notes under sec. 218 *ante*.

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

When a person was prosecuted for having constructed a hut without previous notice under section 243, and the defence was that the accused had made an application, the magistrate held that the municipality had no right to prosecute until that application had been disposed of. The High Court (Stevens and Harington, JJ) on appeal held that the view taken by the magistrate was clearly erroneous. "The mere submission of an application for permission to build would not entitle a person to build before such permission had been obtained; and if it was proved that the hut had been built without previous permission having been obtained, it would be no answer in a prosecution under section 237 that an application had been made, but had not been disposed of by the Commissioners — *Deputy Superintendent and Remembrancer of Legal Affairs on behalf of the Government of Bengal v Chota Ray Bhor*, Crl. Appl. No 1507 of 1902, decided on 2. 4. 02, (unreported).

268. If any owner, occupier or farmer of any place for the sale of meat, poultry, fish or vegetables, or of any slaughter house,
Disobeying requisition under section 240. within the limits of a municipality, after notice in writing given to him by the Commissioners that such place or slaughter-house is defective in any of the particulars specified in any section 249, and requiring him to remedy the defect specified within not less than thirty days, makes default therein, he shall be liable to fine not exceeding twenty rupees for every day during which such default is continued after the expiration of the period mentioned in such notice.

For daily fine see notes to sec. 218.

269. If any person, in order to provide for the passage

Cutting up road for passage of water.

of water, or for any other purpose, shall, without the consent of the Commissioners, dig or cut up any public road or thoroughfare, he shall be liable to a fine not exceeding twenty five rupees, and shall in addition be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road or thoroughfare

Public road.—Compare sec 30

The expenses under the latter portion of this section may be recovered in the manner provided by sec 360

270. Whoever, within a municipality,—

(1) without the permission of the Commissioners, throws or puts, or permits his servants to throw or put, any sewage or offensive matter on to any road, or who throws or puts or permits his servants to throw or put, any earth, rubbish, sewage or offensive matter into any sewer or drain belonging to the Commissioners, or into any drain communicating therewith; or

Allowing water of any sewer, &c, to run on any road.

(2) causes or allows the water of any sink, sewer or cess-pool, or any other offensive matter belonging to him or being on his land, to run, drain, or be thrown or put upon any road, or causes or allows any offensive matter to run, drain or be thrown into a surface drain near any road, or

Constructing latrine, &c in contravention of sections 230 and 231

(3) constructs a latrine, urinal, cess-pool, house drain or privy, in contravention of the provisions of sections 230 or 231; or

(4) without the written permission of the Commissioners, digs or makes, or causes ^{Making excavations} or suffers to be dug or made, any excavation, cess-pool, tank, or pit, in contravention of the provisions of section 232 ; or

(5) makes or repairs a roof or wall with grass, leaves, mats or other inflammable material ^{Making a roof or wall of grass &c} in contravention of the provisions of section 236 ;

shall be liable, for every such offence, to a fine not exceeding twenty-five rupees

Change.

Clause (5) has been added by sec 78 of Beng. Act IV of 1894

Notes.

Definitions.—For the definitions of the terms “rubbish”, “sewage” and “offensive matter” see sec. 6 cls (14), (17) and (10) respectively.

Cl. (1), “Road.”—See sec 6 cl (13) and also I L. R 17 Cal. 634,

Cl (3)—The word “latitude” rather imports public convenience and the word “privy” applies to private places.—*Cal. Gaz*, Sup. page 807, May 9, 1894.

An offence under cl (3) of this section is not a continuous one, but one under cl (1) would be.—*Bidhu Bhusan Mullick v. Asansole Municipality*, 6 C W. N. 167

271. Whoever, within a municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections 224, 225, 227, 230, 231 or 238, shall be liable, for every such offence, to a fine not exceeding twenty-five rupees, and to a further fine, not exceeding five rupees, for every day

^{Disobeying requisition under section 224, 225, 227, 230, 231 or 238.}

during which he shall continue to make such default after service on him of such requisition.

Changes

By sec. 79 of Beng. Act IV of 1894 the figures "224," "227" and "or 238" have been added.

Notes.

Sec 224—Requisition upon owner or occupier or both to repair and make efficient any drain or privy, &c.

Sec 225—Requisition upon owner or occupier of land to cause privy to be shut out from view.

Sec. 227—Requisition upon the owner to drain his land into sewer, &c.

Sec. 230—Requisition upon owner and occupier to remove any latrine &c, built within 50 feet of a tank.

Sec. 231—Requisition upon owner or occupier to remove a privy built with a door or trap-door opening on to any road or drain.

Service of requisition on a person, who is charged with disobedience thereof, as well as the requisition itself should be proved and found before there can be a conviction for an offence under this section—*Bidhu Bhusan Mullick v. The Asansole Municipality*, 6 C. W. N., 167.

See also *Chairman Puri Municipality v. Kisori Lal Sen*, 1 C. W. N., p cxxlv (notes) and *Jagadis Chundra Ganguli v. Sresnath Bose*, 2 C. W. N., p. clxxxvii (notes)

272. Whoever, within a municipality,—

(1) without the written consent of the Commissioners

Altering, &c., drains
leading to public sewers.

ers previously 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 by this Act; or

(2) constructs any branch drain, privy or cess-pool

Making drains contrary to the orders of the Commissioners.

contrary to the directions and regulations of the Commissioners or contrary to the provisions of this Act; or, without the consent of the Commissioners, constructs, rebuilds or unstops any drain, privy or cess-pool which has been ordered by them to be demolished or stopped up or not to be made;

shall be liable, for every such offence, to a fine not exceeding fifty rupees.

273. Whoever, in a municipality,—

(1) begins to build or to take down, or alter or repair any house contrary to the provisions of sections 235, 238 or 241, or lets a house for occupation contrary to the provisions of section 242, or, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever, or who, being permitted, fails to put up such fence or hoard, or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night; or who does not remove the same within eight days, when directed by the Commissioners; or

(2) without a license uses any place for any of the purposes specified in section 261 or section 263; or uses any place as a kiln in contravention of the provisions of section 262 A; or

(3) being a holder of a license under section 261 or section 263, breaks any condition of such license; or

Offence under section 261 or 263.

(4) after the issue of an order under section 264
Offence under section 264. keeps horses or cattle exceeding ten
in number in 'contravention of such
order; or

(5) keeps any pig-sty, pigs, sheep
Offence under section 265. or goats contrary to the provisions
of section 265,

shall be liable, for every such offence, to a fine not
exceeding fifty rupees, and to a further fine, not exceed-
ing ten rupees, for every day during which the offence is
continued after he has been convicted of such offence.

Changes.

By sec. 80 of Beng Act IV of 1894 the figures "238" have been inserted before
"241" in cl. (1) and the words "uses any place as a kiln in contravention of the
provisions of section 262A or" have been added in cl. (2).

"House" — See sec. 6, cl. (4).

274. Whoever, within a municipality, after the ex-
piration of the period mentioned in
Burying or burning
corpse in unregistered
grounds. section 257, knowingly buries or
burns, or causes, procures or suffers
to be buried or burned, any corpse in or on any ground
not registered as a burial or burning ground, shall be
liable to a fine not exceeding one hundred rupees.

275. Whoever, within a municipality, uses any such
place as is mentioned in section 252,
Offence under section 252. without the same being registered,
shall be liable to a fine not exceeding
one hundred rupees and to a further fine not exceeding
twenty rupees for each day during which the offence is
continued after he has been convicted of such offence.

276. Whoever, within a municipality, not being the

Uncertificated persons
dispensing drugs.

holder of such certificate as is mentioned in the second clause of section 252, shall compound, mix, prepare or sell any drugs in any registered shop or place, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees for each offence ; and any owner, occupier or keeper of any such shop or place, who shall employ any such uncertificated person to perform any one or more of such duties, shall, on conviction before a Magistrate, be liable to a fine not exceeding two hundred rupees, and shall be further liable, at the discretion of such Magistrate, to forfeit his license:

Provided that 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 the Local Government

277. Whoever, within a municipality, after the expiration of the time specified in a notice issued by the Commissioners under the provisions of section 262, uses or permits to be used, the place specified in such notice in such a manner as to be a nuisance to the neighbourhood, shall be liable to a fine not exceeding two hundred rupees, and to a further fine not exceeding forty rupees for each day during which the offence is continued after he has been convicted of such offence.

278 Any Magistrate before whom any person is convicted of an offence contrary to the provisions of this Act relating to the use of any place for a purpose for which a license is required, or of the non-observance of any of the bye-laws relating thereto made under this Act,

Suspension or revocation of license, &c.

in addition to the fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such license.

And the Commisisoners, upon the conviction of any person for a second or other subsequent like offence, may cancel his license.

See notes to sec. 262

PART VII

Of a Water-supply.

279. (1) In any municipality to which the provisions of this part shall be extended <sup>Imposition of water-
rate,</sup> in the manner prescribed by section 222, it shall be lawful for the Commissioners, at a meeting to impose a water-rate not exceeding seven and-a-half per centum on the annual value of holdings when the houses and lands are situated in any road supplied with water, and not exceeding six per centum when the houses and lands are situated in any road not so supplied

(1a) With the sanction of the Local Government the amount of the water-rate imposed under this section may vary with the distance of houses or lands from the nearest standpipe or other source of water-supply, and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises,

(2) In fixing the amount or amounts of the rate, regard shall be had to the principle that the total net proceeds of the tax, together with the estimated income from payments for water supplied from the works under

special contract or otherwise, shall not exceed the amount required for carrying out the purposes of this Part.

(3) The water-rate shall be paid by the occupiers of the holdings by quarterly instalments in advance:

Provided that such water-rate shall not be levied upon—

- (a) any house or land, no part of which is within a radius to be fixed by the Local Government for each municipality from the nearest stand-pipe or other supply of water available to the public; or
- (b) any land used exclusively for purposes of agriculture: or
- (c) any holding consisting only of tanks.

Changes.

This section has been substituted by sec. 81 of Beng. Act IV of 1894 for the original section and clause (c) has been added by sec. 14 of Beng. Act II of 1896.

Notes.

Under this section the rate is payable by the occupier but when he is not the owner of the holding he may recover a fourth of the rate paid by him in the manner provided by sec. 281 from the owner. Compare sec. 282.

280. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections 96 to 109 (both inclusive),

Valuation, assessment,
and collection of water-
rate.

and 112 to 130 (both inclusive), shall *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this Part, be applicable to the assessment and collection of the water-rate.

281. Whenever the person by whom the water-rate shall have been paid, or from whom the said rate shall have been recovered, is not the owner of the house or land in respect of which the water-rate shall have been assessed, such person may recover from the owner one-fourth of the water-rate so paid or recovered, and may deduct the same from the rent payable by him to such owner.

Occupier paying water rate may deduct one-fourth from rent due to owner.

282. Whenever any house or land has been unoccupied during an entire quarter, the owner of the said house or land shall pay to the Commissioners one-fourth of the sum which would have been payable as water-rate by the occupier if such house or land had been occupied.

When house is unoccupied, owner to pay one-fourth of water-rate.

The sum payable by the owner under this section shall be deemed to be due on the first day of the quarter following that in respect of which the said sum is payable.

283. Whenever any quarterly instalment of the water-rate shall have been paid in respect of any house or land, and such house or land shall, during the quarter for which such instalment shall have been paid, cease to be occupied, the person who shall have paid such water-rate shall be entitled to be repaid by the Commissioners three-fourths of such sum as shall bear

Refund of water-rate when house ceases to be occupied.

to the amount paid by him the same proportion which the residue of the quarter bears to the entire quarter :

Provided that notice shall have been given in writing to the Commissioners of such house or land being unoccupied, and that the application for refund be made within six months next after the date on which the house or land ceased to be occupied.

The date on which the said notice is delivered at the office of the Commissioners shall, for the purposes of this section, be deemed to be the date on which the house or land ceased to be occupied

284. Whenever any house or land which shall have been unoccupied shall begin to be occupied during any quarter, there shall be forthwith payable by the occupier in respect of such house or land a sum calculated at one-fourth of the rate that would have been payable if the house or land had been occupied during the entire quarter for the period during which the house or land was not occupied, and the full rate for the residue of the quarter.

And such occupier shall be entitled to deduct from the rent, or otherwise recover from the owner, one-fourth of the water-rate that would have been payable if the house or land had been occupied during the entire quarter.

285. Whenever any person holding any house or land from the owner thereof has sublet the same in severalty to two or more persons, the person holding from the owner shall, for the purposes of this Part, be deemed to be the occupier of such house or land.

Rate payable on house
being re occupied

Person sub-letting to
several different tenants
to be deemed occupier.

Owner to pay water-rate
in certain other cases.

286. The provisions of sections
312, 313 and 314 shall be appli-
cable to this Part :

Provided that the owner shall not be entitled to re-
cover from any occupying tenant more than three-fourths
of the water-rate that would but for this proviso be
recoverable by him under the said sections.

287. In any municipality to which the provisions
of this Part shall be extended, the
The Commissioners to
provide water supply. *Commissioners shall provide a sup-
ply of water within the limits of the municipality ; and
for this purpose it shall be lawful for them to cause such
mains and pipes to be laid, and such tanks, reservoirs
or other works to be made and constructed, as shall be
necessary for the supply of water in the chief public
streets ; and they may also erect in all such streets
sufficient and convenient stand-pipes or pumps for the
use of the inhabitants of the municipality for domestic
purposes.*

Domestic purposes.—See next section.

288. A supply of water for domestic purposes
What are domestic pur-
poses. shall not include a supply of water
for animals or for washing carriages,
where such animals or carriages are kept for sale or
hire, or a supply for any trade, manufacture or business,
or for watering gardens or roads, or for any ornamental
or mechanical purpose.

289. The Commissioners at a meeting shall deter-
Pressure at which
water must be kept. mine what pressure of water shall
be maintained in their service pipes
and mains, and during what hours such pressure shall

be continued: and any rule made under this section shall be published in such manner as the Commissioners may direct, and shall not be altered except with the sanction of the Commissioners at a meeting.

290. Whenever the Commissioners deem it practicable and consistent with the maintenance of an efficient water-supply, they may at a meeting and subject to such rules and conditions as the Local Government may make and impose, allow the owners and occupiers paying the water-rate hereinbefore mentioned to lay down communication-pipes from the service-pipes of the Commissioners, for the purpose of leading water to their premises for domestic purposes.

This section has been substituted by sec. 32 of Beng. Act IV of 1894 for the original section.

291. The communication-pipes and all fittings thereon leading water from the service-pipes of the Commissioners into any house or land, and the pipes, works and fittings inside the house or land, must in all cases be executed subject to the inspection and satisfaction of the Commissioners.

Communication pipes, &c., must be made to satisfaction of officers of the Commissioners.

Such communication-pipes, works and fittings may be made by the servants and workmen of the Commissioners upon such terms as may be agreed upon between the Commissioners and the person requiring the supply, or subject to such charges as may be fixed by the Commissioners; and the Commissioners may require the amount necessary for the execution of such works to be paid or deposited before such works are executed.

And such charges and expenses shall be recoverable in the same manner as the water-rate.

292. Any officer authorised in that behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land supplied with water as aforesaid in order to examine all pipes, works and fittings connected with the supply of water, and to ascertain whether there be any waste or misuse of such water.

And, if such officer at any such time be refused admittance into such house or land for the purposes aforesaid, or be prevented from making such examination, the Commissioners may forthwith cut off the supply of water from such house or land.

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated for the *zinana* or residence of women which, by the custom of the country, is considered private, unless a notice in writing of not less than four hours be given.

293. In the event of any pipes, works or fittings connected with the supply of water to any house or land being at any time found on examination by any officer of the Commissioners authorized in that behalf, to be out of repair to such an extent as to cause waste of water, the Commissioners may cause the water to be turned off from such house or land, after giving notice in writing of not less than twenty-four hours, and may recover from the occupier of such house or land the expense incurred for turning off the water.

When pipes are out of repair, Commissioners may turn off water.

294. The Commissioners may supply water for purposes other than domestic purposes, and may, subject to such charges,

Supply for business

and rates as may have been fixed by the Commissioners at a meeting, lay down, or allow to be laid down, the necessary pipes and works of such dimensions and character as may be approved by them

The words "through a meter" after "water" have been omitted by sec. 88 of Beng. Act IV of 1894.

295. The Commissioners at a meeting may determine what quantity of water shall be supplied to the occupier of every house, free of further charge, for every rupee paid to the Commissioners as water-rate on account of such house.

Householder entitled to certain supply of water for domestic use.

If the Commissioners have reason to believe that the occupier of any house consumes more water than he is entitled to as aforesaid, it shall be lawful for them to provide a water-meter at their own expense, and to attach the same to the water-pipes of the said house: and any water which may be used over and above the quantity to which the occupier is entitled as aforesaid shall be paid for by him at such rate as the Commissioners at a meeting may determine.

296. It shall be at the option of the Commissioners to provide filtered or unfiltered water for all latrines and water-closets, and it shall be lawful for them to require that all latrines and water-closets supplied with water, filtered or unfiltered, shall be provided with a cistern of such size and description as the Commissioners shall direct, and all such cisterns shall be put up at the cost of the owner of the house or land so supplied with water.

Commissioners may provide filtered or unfiltered water for latrines.

297. If any person supplied with water shall neglect

Water may be cut off on neglect to pay the rate.

to pay the water-rate hereinbefore mentioned at the times of payment thereof, or the charge made for the said water when supplied for other than domestic purposes, the Commissioners may turn off the water from the house or land in respect of which such rate or charge is payable, and may recover the expense of turning off the water from such person:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he may have incurred.

298. The occupier of any house or land in which water supplied by the Commissioners under this Part is, from negligence or other circumstances under the control of the said occupier, wasted, or in whose house or land the pipes, works or fittings for the supply of water shall be found to be out of repair to such an extent as to cause waste of water, shall be liable to a fine not exceeding twenty rupees

Occupier in whose house water is wasted liable to penalty.

299. Any person otherwise causing waste of water supplied by the Commissioners shall be liable to a fine not exceeding five rupees.

Person causing waste of water liable to penalty.

300. It shall be within the discretion of the Commissioners to allow any person not residing within the limits of the municipality to take or be supplied with water for domestic use, on such terms as the Commissioners in meeting may from time to time prescribe.

Commissioners at their discretion may allow person outside the town to take water.

And any person taking or causing to be taken for use, outside the limits of the municipality, water supplied by the Commissioners, without the permission of the Commissioners, shall be liable to a fine not exceeding fifty rupees.

Penalty.

301. Before a connection for the supply of water from the service pipes of the Commissioners to any house or land is sanctioned, the Commissioners may cause all the works, pipes and fittings within the said house or land to be inspected by an officer appointed by them in that behalf.

Before connection an officer of the Commissioners to cause all works and pipes to be inspected.

And the cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners in meeting shall from time to time direct.

And, until such officer shall have certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner, a connection with the Commissioners' service pipes shall not be permitted.

302. The connection with the service pipes of the Commissioners, as also the laying of supply pipes under any public road or thoroughfare, shall be executed by an officer of the Commissioners authorized in that behalf and by no other person.

Connection with service pipes to be executed only by an officer of the Commissioners.

And the expense of making such connection shall be payable in advance by the person applying for the same, at such rates as the Commissioners in meeting shall from time to time direct.

303. Any person who shall unlawfully flush, draw, off, divert or take water from any
Obstructing or divert-
ing water. water-works belonging to, or under
the control of, the Commissioners, or from any water
or streams by which such water-works are supplied,
shall be liable to a fine not exceeding one hundred ru-
pees.

Fine.—See notes under *Penalties* (pp 171-2) and sec. 217.

304. No works for introducing a supply of water
Estimate and specifica-
tion of works to be sent. to any house shall be commenced
by the owner without sending a
specification and estimate of the cost thereof to the
occupier, nor by the occupier without sending such
specification and estimate to the owner.

305. Except in the case of a special agreement to
Owner to keep works
in repair. the contrary, the owner of any
house or land shall bear the expense
of keeping all works connected with the supply of
water to such house or land in substantial repair :

Provided that nothing in this section shall affect the
liabilities of parties under leases executed previous to
the extension of this part to the municipality in which
the said house or land is situated.

306. All public tanks, reservoirs, cisterns, wells,
Tanks, &c., vested in
the Commissioners. aqueducts, conduits, tunnels, pipes,
pumps and other water-works,
whether made, laid or erected at the cost of the Com-
missioners or otherwise, and all bridges, buildings,
engines, works, materials and things connected there-
with, or appertaining thereto, and also any adjacent

land (not being private property) appertaining to any public tank, shall become vested in the Commissioners.

307. The water-rate and all moneys collected, received or recovered for or in respect of the supply of water or the execution of works, and all fines connected therewith, or in any respect relating to the water supply, shall be applied by the Commissioners in defraying the expense of making, extending or maintaining the water-works, in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct, in paying the interest of money borrowed for the water-works, and in the liquidation of debts incurred in connection therewith, or for some other purpose connected with the supply of water.

Application of rates and moneys received from the supply of water, &c.

Changes.

The words "in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct" have been added by sec. 84 of Beng. Act IV of 1894.

PART VIII.

Of Lighting with Gas.

308. In any municipality in which this Part shall have been introduced in the manner provided in section 222, it shall be lawful for the Commissioners from time to time to submit to the Local Government, for its sanction, a plan for lighting with gas any portion of any area situate within the municipal

Municipal Commissioners may submit to the Local Government a plan for lighting.

limits, whether so lighted already or not, such portion of the said area having been previously defined by the Commissioners at a meeting held for that purpose. The Local Government shall cause the plan to be published for one month in the *Calcutta Gazette*, and the Commissioners shall publish it in the vernacular within the limits of the municipality; and after such publication, and after consideration of any objections which may be raised to it, or alterations suggested in it, the Local Government may, if satisfied that the lighting proposed in the plan is proper and sufficient, sanction such plan, or may refuse its sanction thereto, or may return it to the Commissioners for alteration in certain particulars to be specified by it, and when altered may sanction it as altered. The Local Government shall cause its sanction to any plan to be notified in the *Calcutta Gazette*, and shall at the same time cause the plan sanctioned to be published in the said *Gazette*.

309. After notification by the Local Government in the last preceeding section mentioned, it shall be lawful for the Commissioners to impose an annual rate, not exceeding three per centum of their annual value upon all holdings situated within such portion of the said area for the purpose of defraying the whole expense of lighting:

Lighting rate not exceeding three per centum may, after sanction of plan, be imposed on holdings.

Provided that, as regards any portion of the said area already lighted with gas, for the future lighting of which a plan shall have been sanctioned by the Local Government under the provision of the last preceeding section, if it shall appear that the estimated proceeds of the said rate

Proviso as to portions already lighted.

at three per centum will not be sufficient to defray the whole expense of such lighting, it shall be lawful for the Commissioners to impose a rate sufficient to defray the whole expense of lighting such portion

Holdings.—See sec. 6 cl (3).

The new section 318A prescribes the mode in which the money realized under this Part shall be applied. It provides that it shall be applied to the payment of a proportionate cost of collection and for purposes connected with lighting

310 The rate imposed under the last preceding section upon holdings shall be paid by the occupiers thereof by quarterly instalments in advance ; but no rate shall be leviable until the lamps in the portion of the area to be lighted shall have been lighted ; nor shall any rate be leviable for any quarter or portion of a quarter antecedent to such lighting.

Rate payable by occupiers quarterly in advance

Compare sec 312 as to this rate being realized from the owner.

311. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part And the provisions of sections 96 to 109 (both inclusive), and 112 to 130 (both inclusive), shall *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this part, be applicable to the assessment and collection of the lighting rate.

Valuation, assessment, and collection of lighting rate

As to the procedure of assessing the valuation of holdings see sec. 101 and notes

312. If any holding shall be occupied by more than one tenant holding severally, or shall be of less annual value than one hundred rupees, it shall be lawful for the Commissioners to recover the rate from the owner of such holding.

Power to assess owners in certain cases.
The owner may recover the amount of rate paid under this section from the occupier, (see next section).

313. Whenever any rate shall be recovered from any owner of any holding under the provisions of the last preceding section, it shall be lawful for such owner, if there shall be but one occupying tenant of such entire holding, to recover from such tenant the entire amount of the rate which shall have been so paid by such owner; and, if there shall be one occupying tenant of a part of such holding or more than one occupying tenant of such holding, then to recover from such tenant, or each of such tenants, such sum as shall bear to the entire amount of rate which may have been so recovered from such owner, the same proportion as the value of the portion of such holding in the occupation of such tenant bears to the entire value of such holding, subject, however, to the provisions of the next succeeding section.

314. Every owner who, under the provisions of the last preceding section, may be entitled to recover any sum from any occupying tenant of any holding or of any portion thereof, shall have for the recovery of such sum all such and the same remedies, powers, rights and authorities as if such sum were rent payable to such owner by such

Owner may recover rate so paid as rent.

tenant in respect of so much of such holding as may be in the occupation of such tenant.

315. Every occupier shall be liable to the lighting-rate for the time of his occupation. When any person shall have been an occupier for a part only of any quarter, he shall be liable only for so much of the rate for that quarter as may be proportionate to the number of days during which he shall have been an occupier.

Occupier liable to the rate for time of occupation only.

If he shall have paid the rate in advance, the amount paid in excess of the sum due under this section shall be refunded.

Excess paid in advance to be refunded.

No such rate shall be chargeable to any person on account of any unoccupied holding for the time during which it may remain unoccupied:

No rate to be charged during vacancy.

Provided always that, when any person ceases to be the occupier of any holding upon which the rate has been assessed, he shall give the Commissioners notice to that effect within seven days from the date of the cessation of his occupancy. If the occupier fail to give such notice within such period, he shall be liable to the rate assessed on such holding for the whole quarter, although he may have occupied for a part only of such quarter; and, in cases to which the provisions of section 312 apply, the rate assessed on such holding for the whole quarter shall be recoverable from the owner, if such owner has failed to give notice that such holding is unoccupied, within seven days from the date on which it ceased to be occupied.

Notice of cessation of occupancy to be given within seven days.

Sec. 312 provides cases in which it shall be lawful for the Commissioners to realize from the owner.

316. When the name of the owner or occupier of any holding is not known, it shall be sufficient to designate him, in any notice served or proceeding held under this Part, as the owner or the occupier of the holding on which the rate is assessed, and without further description.

Unknown owner or occupier how to be designated.

Compare sec. 128 *ante*.

317. If the Commissioners deem it necessary for the purposes of this Part to raise, sink or otherwise alter the situation of any gas-pipe or other gas-work laid in any portion of the said area they may from time to time, by notice in writing, require the person to whom any such pipe or work belongs, or under whose control it may be, to cause forthwith, or as soon as conveniently may be, any such pipe or work to be raised, sunk or otherwise altered in position, in such manner as the Commissioners may direct:

Situation of gas-pipe or other gas-work to be altered at the expense of the Commissioners.

Provided that such alteration be not such as permanently to injure such pipe or work, or to prevent the gas from flowing as freely and conveniently as before; and the expenses attending such raising, sinking or altering, and full compensation for the damage done thereby, shall be paid by the Commissioners out of the municipal fund as well to the person to whom such pipe or work belongs as to all other persons.

318. If the person to whom any such pipe or work

If owner, &c., neglect to make alterations, the Commissioners may cause the same to be made.

belongs, or under whose control it may be, do not proceed forthwith or as soon as conveniently may be, after the receipt of such notice, to cause the same to be raised, sunk or altered in such manner as the Commissioners require, the Commissioners may themselves cause such pipe or work to be raised, sunk or altered as they may think fit :

Provided that such works be not permanently injured thereby, or the gas prevented from flowing as freely and conveniently as before.

318A. The lighting rate and all the moneys collected, received or recovered for, or in respect of, lighting or the execution of works, and all fines connected therewith, or in any respect relating to lighting, shall be applied by the Commissioners in defraying the expenses of making, extending or maintaining the lighting system, in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct, in paying the interest of money borrowed for lighting and in the liquidation of debts incurred in connection therewith, or for some other purposes connected with lighting.

Application of rates and moneys received for lighting.

This section is new and has been added by sec. 85 of Beng. Act IV of 1894.

319. The provisions of this Part shall apply, so far as may be possible, to any scheme which may be adopted by the Commissioners of any municipality for lighting the municipality under any system involving the laying of pipes or wires or other similar apparatus.

Provisions applicable to other systems of lighting.

This section gives power to the Commissioners to adopt a scheme for electric light.

PART IX

Of the Cleansing of Private Privies and Cess-pools.

"Cess-pools" has been substituted for "Latrines" by Beng. Act IV of 1894.

320. In any municipality to which the provisions of this Part shall have been extended in the manner prescribed by section 222, the Commissioners may issue a notice declaring that, from a date to be specified in such notice, they will maintain an establishment for the cleansing of private privies and cess-pools within the limits of the municipality, or any part thereof; and the Commissioners shall make suitable provision accordingly.

Notice to be issued by the Commissioners.

Changes.

By sec. 86 of Beng. Act IV of 1894 the words 'public and' after 'cleansing' have been omitted, and for the word 'latrines' the words 'privies and cess-pools' have been added.

Notes.

Result of change.—Hitherto under the provisions of this Part the Commissioners could maintain public latrines, but by the amendment of this Part it is clear that where this Part has been extended, the establishment to be now maintained will be for the purpose of cleansing private privies and cess-pools only. Cess-pools were hitherto cleansed under the provisions of section 186 which empowers the Commissioners to maintain an establishment for the removal of 'Sewage'. By sec. 69 the Commissioners may apply the municipal fund to the construction and improvement of 'privies'. Under section 322 they can levy a fee for the maintenance of the establishment for the purpose of cleansing privies and cess-pools. It is therefore clear that public latrines are to be constructed and maintained out of the general fund.

See *App. I, Govt Lett. para. 36*

Procedure—for the extension of this Part has been laid down in secs. 221 and 222.

See also note to sec 223

321. When such provision has been made, the Commissioners may levy fees, to be fixed on such scale, with reference to the annual value of holdings containing dwelling-houses or privies within the limits of the municipality, or such part thereof as aforesaid, as the Commissioners at a meeting may from time to time direct ;

but the fee shall not exceed three rupees per annum where the valuation of the holding amounts to, or is less than, twenty-five rupees ;

and the fee on any one holding shall not exceed four hundred and eighty rupees :

Provided that if, on the commencement of this Act, the owners or occupiers of any holding are already under engagement to pay to the Commissioners an annual sum exceeding four hundred and eighty rupees for the cleansing of their premises, such sum, or such other sum as may from time to time be agreed upon between them and the Commissioners, may be levied from them in accordance with the provisions of this Part.

Changes.

The words 'containing dwelling houses' after 'holdings' have been added by sec. 87 of Beng. Act IV of 1894. This addition excludes waste lands, gardens, tanks, &c., which come within the definition of 'holding' in sec. 6, cl. (3). The words 'or privies' after 'dwelling houses' have been added by sec. 15 of Beng. Act II of 1896.

Note.

In this and the following sections the word 'fee' has been retain-

ed. But the Hon'ble Mr. Bourdillon said "that the latrine tax is not a fee for services rendered, but it is a rate on holdings. It was proposed and at one time strongly pressed, that the tax should be a fee for services rendered, but the committee decided that it should continue to be a rate on holdings," (see *Cal. Gaz.* May 9, 1894, Sup. page 807).

322. (1) The said fee shall be payable in quarterly instalments by the occupier for the time being of the holding or by the owner thereof if there is no occupier, or under the provisions of the next succeeding section, and shall be recoverable in the manner prescribed for the recovery of the rate on the value of holdings in this Act, and the provisions of section 110 shall be applicable.

Recovery of fees.

(2) Every instalment of the said fee shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

(3) The net proceeds of the said fees, after deducting a proportionate share, to be fixed by the Commissioners in meeting, of the cost of the staff employed in collecting and in supervising the collection of the fees and in keeping and auditing the accounts thereof, shall be applied to the maintenance of the establishment referred to in section 320, and generally to carrying out the provisions of this Part.

(4) A list of the said fees, and of the persons liable to pay the same, shall be published once in every year as prescribed in section 354 :

Provided that no such fee shall be levied in respect of any shop or place of business which does not contain any privies or cess-pools, when a fee under this Part is levied from the occupier thereof in respect of his dwelling-house within the same municipality.

Changes.

This section was substituted by sec. 88 of Beng. Act IV of 1894 for the original section and clause (3) was substituted for the old clause by sec. 16 of Beng. Act II of 1896.

Notes.

Cl. (1).—“Or by the owner thereof if there is no occupier” and “the provisions of section 110 shall be applicable” are new. These additions materially altered the existing law. Hitherto this fee was payable, except under certain circumstances, by the occupier only, and as such when there was no occupier it was remitted. But henceforth when any holding remains vacant for more than sixty consecutive days a remission of half the fee only shall be allowed when notice of such vacancy is given and the other half shall be payable by the owner.

See notes to sec. 321.

It is to be noted that the lighting-rate is remitted wholly, and the water-rate one-fourth, in case of vacancy of a holding.

Secs. 120 to 129 provide the mode in which the rate on holdings is to be realized.

Holding—containing dwelling-houses, see sec 320.

See 110—remission or refund in case of vacant holdings.

Cl. (3).—The fund raised under this Part shall be a separate fund.

Publication under sec. 354—By posting a vernacular copy in a conspicuous place in the office, and in public places by proclamation by beat of drum.

323. If any holding is occupied in severalty by more than one person, the Commissioners

In certain cases fee may be levied from owner, who may recover from occupier.

may levy the said fee from the owner of such holding, who may recover from each occupier such sum as shall bear to the entire amount of the fee so levied the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of such holding.

324. Every owner who, under the provisions of the last preceding section, is entitled to recover any sum from the occupier of any part of a holding, shall have for the recovery of the said sum all such and the same remedies, powers, rights and authorities as if such sum were rent payable to him by the occupier in respect of such portion of the holding as may be in his occupation.

325. The Commissioners at their discretion may compound, for any period not exceeding one year, with any occupier or owner as aforesaid of any railway premises or of any premises used as a factory, dockyard, workshop, cooly-depot, school, hospital, market, court-house or other similar place, for a certain sum to be paid by such occupier or owner in lieu of such fee.

326. The Commissioners may, in lieu of the aforesaid fee, levy a rate per head, to be fixed by the said Commissioners at a meeting, on the number of persons living within or habitually resorting to any such railway premises, factory, dockyard, workshop, cooly-depot, school, hospital, market, court-house or other similar place.

327, 328. [*Commissioners may reduce or remit fee; penalty.*] *Repealed by Beng. Act IV of 1804, section 89.*

329. No person liable to pay a fee or rate under the provisions of this Part shall be punished with fine for neglecting or refusing to keep his privy in a proper state under section 217 clause (3).

330. All servants of the Commissioners employed ^{Powers of servants of Commissioners} for the purposes of this Part may, within such hours as may be fixed by the Commissioners, enter on any premises of which the occupier or owner is liable to pay a fee or rate as aforesaid, and do all things necessary for the performance of their duties under this Part

331. The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licenses, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits.

The Commissioners at a meeting may grant such licenses subject to such conditions as they may think fit, and may impose fees in respect of the same.

Subject to the approval of the Local Government, the Commissioners may make rules to define the duties of such persons, and from time to time may alter, add to or repeal such rules; and any breach of such rules shall subject the offender to a forfeiture of license, and to a fine not exceeding twenty rupees

'Sewage' see sec. 6, cl. (17).

332. If the Commissioners think that any latrine or additional or common latrine should be provided for any house or land within the limits of the municipality, the owners of such house or land shall, within fourteen days after notice given by the Commissioners, or within such longer time as the Com-

Commissioners may require latrine to be constructed, and in default may construct themselves.

missioners may for special reasons, allow, cause such latrine to be constructed in accordance with the requisition of such notice; and, if such latrine is not constructed to the satisfaction of the Commissioners within such period, the Commissioners may cause the same to be constructed, and the expenses thereby incurred shall be paid by the owners, and shall be recoverable as provided in section 322.

Latrine—The Hon'ble Mr Bourdillon makes a distinction between a *latrine* and a *privy*—"the former imports public convenience and the latter applies to private places" (See *Cal. Gaz.* May 9, 1894, Sup page 807). The distinction appears to have been overlooked in this section.

Recoverable under sec 322—As a rate on the valuation of holdings (see secs. 120 to 129).

333 The Commissioners may, for the purposes of this Part, by a notice in writing, require the owner or occupier of any holding to furnish, within a time to be specified in the notice, a list of the number of persons residing in, or habitually resorting to, such holding.

334. Whoever, being the owner or occupier of any holding, fails to furnish such list within the time specified in such notice, after being required to furnish the same by the Commissioners, shall be liable to a fine not exceeding one hundred rupees

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

334A. The provisions of this Part shall not apply to any jail, reformatory or lunatic asylum in which an establishment is

Commissioners may require list of persons in a holding.

Penalty.

Exemption of jails, &c.

maintained for the cleansing of privies and cess-pools therein.

This section is new and has been added by sec 90 of Beng. Act IV of 1894.

PART X.

Regulation of Markets.

335. In any municipality to which this Part shall have been extended in the manner prescribed by section 222, the Commissioners at a meeting may provide land for the purpose of being used as a municipal market, and may defray the cost of providing such land and of all expenses necessary for the establishment of such market from the municipal fund, and may take a lease of any market ;

and may charge rent, tolls and fees for the right to expose goods for sale in such market and for the use of shops, stalls and standings therein.

All such rents, tolls, and fees may be recovered as arrears of tax under the provisions of sections 120 to 129 (both inclusive).

336. No place shall be deemed to be "a municipal market" within the meaning of the last preceding section, and no place shall be deemed to be a market to which the following sections of this Part apply, unless at least thirty shops, stalls or standings are erected therein for the sale of goods.

Definition of "municipal market" and "market".

337. The Commissioners at a meeting may order

Commissioners may
prohibit use of unlicensed
markets.

that, within such limits as they may fix, no land shall be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetables and similar provisions, otherwise than under a license to be granted by the Commissioners.

The Chairman's certificate—is indispensable for the grant of a license.

Market—For definition of, sec. 336

Order—The order must be in terms of the provisions of this section and sufficiently precise so as to convey a definite meaning, and not a mere repetition of the Government order extending this Part.—*Queen Empress v. Mukunda Chunder Chatterjee*, I. L. R. 20 Cal 663.

Similar provisions—i. e., provisions which are usually described as perishable articles, see I L R. 17 Cal 329 (330).

Penalty.—See sec. 344

338. When the Commissioners at a meeting shall have issued an order under the last preceding section, they may at a meeting grant a license for the use of any land as a market for the sale of provisions as aforesaid within the municipality.

Power to grant licenses
for markets.

Market—defined in sec 336.

May grant.—It is within the discretion of the Commissioners to grant or refuse a license, except as regards markets existing at the time of the extension of this Part to the municipality (sec 339), and the Civil Courts have no jurisdiction to control such power, however arbitrarily exercised.—*Moran v. Chairman of the Motihari Municipality*, I L R, 17 Cal, 329 The **existence** of a municipal market or of an **adjoining** market however will be **no ground** for refusing a license to a rival market. See *Queen Empress v. Mukunda Chunder Chatterjee*, I L R., 20 Cal, 663. See notes to sec 339.

339. Every license granted under this Part shall be liable to the payment of a fee not exceeding twenty-five rupees, and shall be in force until the end of the year, and the Commissioners shall, as regards markets lawfully established at the time of the extension of this Part to the municipality, and in all other cases may grant such license, year by year, on the certificate in writing under the hand of the Chairman, annually renewed, that the land is fit to be used as a market for the sale of provisions as aforesaid.

Duration of licenses
and terms on which granted.

Changes

The words "shall, as regards markets lawfully established at the time of the extension of this Part to the municipality, and in all other cases" after the word "Commissioners" are new and have been added by sec. 91 of Beng. Act IV of 1894.

Notes.

Scope of the change—This addition makes it obligatory upon the Commissioners at a meeting to grant a license to markets existing at the time of the extension of this Part but the law remains unchanged with regard to license for new markets

Reason thereof—The Legislature had in view the following remarks of the Hon ble Mr. Justice Pigot in *Moran v. Chairman of the Motihari Municipality*, (I. L. R. 17 Cal 329):—

"There is no doubt that the powers possessed by the municipality under Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the municipality of doing those acts destructive of the plaintiff's property, and yet no remedy or no right was allowed by the Act to persons in the position of the plaintiffs in case of the Act being so used to the destruction of their property" The learned Judge after holding that the question must be answered in the affirmative, further observed, "we think that

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

The Commissioners—evidently means the Commissioners at a meeting See sec 338

Certificate—See sec 340.

May grant—The decision of the Commissioners at a meeting, exercising their discretion in refusing a license, in the case of a new market, even if the Chairman gives the necessary certificate, is final, and cannot be questioned by the Civil Court, nor can it issue a mandatory order compelling them to do their duty, and restraining them from doing that which it is not in their province to do — *Moran v Chirman of the Motiha Municipality*, I L. R 17 Cal 329, *Queen Empress v. Mukunda Chunder Chatterjee*, I. L. R., 20 Cal., 654. Cf *Ganga Narain v. The Municipal Board of Cawnpore*, I L. R., 19 All 313.

See also *App I. Govt. Lett. para 37*.

340. The Chairman, upon the application in writing of the owner of any land, shall grant such certificate unless the land be defective for the purposes of a market in drainage, ventilation, water-supply or proper width of paths and ways.

Chairman bound to certify fit places.

The owners or lessees of all land used as markets for the sale of provisions as aforesaid at the time of the extension of this Part to the municipality, shall be entitled to receive a license for the current year without the certificate required by section 339, but in subsequent years the license shall not be renewed without such certificate.

Existing markets.

As to drainage, water-supply, &c, see sec. 249 ante

Market.—see sec 336.

341. Every license under this Part shall be regis-

Licenses to be registered tered in a book to be kept for that purpose by the Commissioners in their office, in which shall be stated—

- (a) the name and address of the owner of the land and market ;
- (b) the name and address of the lessee thereof (if any) ;
- (c) the extent and boundary of the market ;
- (d) the description of articles sold therein; and
- (e) the days on which the market will be held.

Transfers to be registered. 342. Every transfer of interest in any such market shall be registered within two months after the date of transfer.

Effect of non-registration of transfer—see sec. 343.

343. Any market the license of which, or the transfer of interest in which, shall not have been duly registered under the two last preceding sections, shall be deemed to be land used as a market without a license.

Unregistered markets to be deemed unlicensed. 344. Whoever, being the owner or occupier of any land, wilfully or negligently permits the same to be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetables or similar provisions without a license under section 338, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees for each day during which the offence is continued, after conviction of such offence

Penalty for using unlicensed market.

Failure to take out a license is a continuous offence. See sec, 333 para (2).

For procedure of trial and institution of prosecutions see notes under *Penalties* (pp. 171-2) & sec 217.

Daily fine—See notes to sec, 218

Market—See sec 336, for the definition of.

345. The Magistrate, on the application of the Commissioners, may order any land, in respect of which a conviction shall have been obtained under the last preceding section, to be closed as a market-place, and thereupon may take order to prevent such land being so used; and every person who shall sell, or expose for sale, meat, fish, butter, ghee, fruits, vegetables or similar provisions on any land which shall have been so closed, shall be liable, for every such offence, to a fine not exceeding ten rupees.

Power to close unlicensed places.

PART XI.

Of the Registration of Births and Deaths.

346. The Commissioners of any municipality, when required by the Local Government to do so, shall provide for the registration of births and deaths within the limits of the municipality in accordance with the provisions of Bengal Act IV of 1873 (*for registering births and deaths*.) or any other similar Act for the time being in force.

Registration of births and deaths.

347. The Local Government may require the Commissioners of any municipality to appoint and maintain at any burning-ghât and burial-ground a sub-registrar for the registration of all

On requisition, of Government, Commissioners to appoint sub-registrars at burning ghâts and burial grounds.

corpses brought to such burning-ghât or burial-ground for cremation or interment.

348. Whenever a sub-registrar shall have been appointed for any burning-ghât or burial-ground under the last preceding section, information of the particulars required by section 8 of Bengal Act IV of 1873 to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghât or burial-ground for cremation or interment to such sub-registrar, and information so given shall be deemed to be information given to the registrar of the district as required by the said section.

Information required by Bengal Act IV of 1873 to be given to such sub-registrar.

Section 9 of Bengal Act IV of 1873 shall be applicable to all sub-registrars appointed under this Act.

349. Whenever a death shall occur in any hospital within the limits of any municipality in respect of which the Local Government has directed that all deaths shall be registered under Bengal Act IV of 1873, it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe; and in such case no other person shall be required to give information of such death to a registrar under Bengal Act IV of 1873 or to a sub-registrar under this Act.

Information of deaths in hospitals.

PART XI A.

Extinction and Prevention of Fire.

This part is new and has been added by sec 92 of Beng Act IV of 1894.

The provisions of this Part have been mostly taken from the Punjab Municipal Act.

349A. For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire-brigade and to provide any implements, machinery, or means of communicating intelligence which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

349B. (1) On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, the Secretary to the Commissioners, any member of a fire-brigade maintained by the Commissioners, then and there directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any police officer above the rank of constable may—

- (a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property ,
- (b) close any street or passage in or near which any fire is burning ;
- (c) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the

passage of any hose or other appliance, any premises ;

(d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred ;

(e) call on the persons in charge of any fire-engine to render such assistance as may be possible ;

(f) generally take such measures as may appear necessary for the preservation of life or property :

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) of this section in good faith.

PART XII

Miscellaneous

350 The Commissioners of any municipality may, from time to time, at a meeting
Power to make bye laws. which shall have been convened expressly for the purpose, and of which due notice shall have been given, frame such bye-laws as they deem fit, not being inconsistent with this Act, or with any other general or special law, for—

(a) regulating traffic, and for the prevention of obstructions and encroachments, and of nuisances on or near roads ,

(aa) prohibiting the letting-off of fire-arms, fire-works, fire-balloons or bombs, except (2) with the permission of the Commissioners or a member

of the ward committee or a municipal officer empowered by the Commissioners in this behalf, and (ii) on payment of fees at such rates as may be sanctioned by the Commissioners at a meeting ;

- (b) regulating the use of, and the prevention of nuisances in regard to, public water-supply, bathing and washing-places, streams, channels, tanks and wells ;
- (c) regulating the disposal of sewage, offensive matter, carcasses of animals and rubbish, and the management of privies, drains, cess-pools and sewers ;
- (d) regulating cremations and burials and the disposal of corpses ;
- (e) preventing nuisances affecting the public health, safety or convenience ; and
- (f) giving effect to the objects of this Act ;

and may by such bye-laws impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of fifty rupees for each offence, and in case of a continuing offence a further penalty not exceeding twenty rupees for each day after written notice of the offence from the Commissioners.

Changes.

Clauses (a) to (f) were substituted for the words "for giving effect to the objects of this Act" by sec. 93 of Beng. Act IV of 1894. Clause (aa) was added by sec. 17 of Beng. Act II of 1896.

Notes.

See *Beni Madhab Naq v Mati Lal Das*, I L R 21 Cal 837 and notes under sec. 2. The English law as to the necessity of bye-laws

being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India.—*Emperor v, Bal Kishan*, I. L. R., 24 All., 439.

See *App. I, Govt. Lett. para 39.*

350A. The Commissioners of a municipality, wholly or in part situated in a hilly tract may, at a meeting, in addition to such bye-laws as they may make under the last preceding section, make, repeal or alter bye-laws—

Additional power to make bye-laws in hill-municipalities.

for regulating or prohibiting the cutting or destroying of trees or shrubs or the making of excavations or removal of soil or quarrying, where such regulation or prohibition appears to the Commissioners to be necessary for any or all of the following purposes :—

- (a) the maintenance of a water-supply ;
- (b) the preservation of the soil ;
- (c) the prevention of landslips ;
- (d) the formation of ravines or torrents ;
- (e) the protection of land against erosion or the deposit thereon of sand, gravel or stones.

This section is new and has been added by sec. 94 of Beng. Act IV of 1904.

See *App. I, Govt. Lett. para 39.*

351. Bye-laws made under this Act shall not take effect unless and until they have been submitted to, and confirmed by, the Local Government ; nor shall such bye-laws be confirmed—

unless one month at least before the making of the application notice of the intention to apply for confir-

mation has been given in one or more of the local newspapers, circulated within the municipality to which such bye-laws relate, or if there be no such newspapers, then in such manner as the Commissioners may direct; and unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the Commissioners, and has been open during office hours thereat to the inspection of the inhabitants of the municipality to which such bye-laws relate, without fee or reward.

The Commissioners shall, on the application of any inhabitant of the municipality, furnish him with a copy of such proposed bye-laws, on payment of four annas for every hundred words contained in the copy.

The Local Government may cancel its confirmation of any such bye-law, and thereupon the bye-law shall cease to have effect.

Local Government may cancel its confirmation of any bye law.

Change.

By sec. 95 of Beng. Act IV of 1894 the last paragraph has been substituted for "a bye-law requiring confirmation by the Local Government shall not require confirmation, allowance or approval by any other authority."

351A (1) The Commissioners at a meeting may from time to time make, repeal or alter rules as to—

Power to make rules as to business and affairs.

- (a) the time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given;
- (b) the conduct of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings;
- (c) the custody of the common seal;

- (d) the division of duties among the Commissioners, and the powers to be exercised by sub-committees or members to whom particular duties are assigned;
- (e) the persons by whom receipts shall be granted for money received under this Act;
- (f) the duties, appointment, leave, fining, suspension and removal of municipal officers and servants,
- (g) and other similar matters

(2) Rules made under this section, consistent with this 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.

Changes

This section was added by sec 96 of Beng Act IV 1894. It is based upon section 32 of the Local Self Government Act III (B C) of 1885. Clause (f) has been substituted by sec. 18 of Beng Act II of 1896.

Notes.

See *App. I, Govt Lett. para 39.*

For Model Rules of Meetings see *App.*

352 The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act, and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.

Public nuisance—for the definition of, see sec. 268, Indian Penal Code.

Not legalized by length of time.—No one has a right to corrupt the air of a particular locality by the exercise of a noxious trade, simply because, at the commencement of the nuisance, no person was in a position to be injured by it; and no prescriptive right can be acquired to maintain, and no length of time can legalize a public nuisance.—*Municipal Commissioners of the Suburbs of Calcutta v. Ruhomotollah*, 14 W. R. 67, C R. Cf. *Preo Nath Dey v. Gobordhone Malo*, I. L. R. 25 Cal 278

There can be no prescription to send sewage into a public river.—*Gale*, 484, note.

353. No prosecution for an offence under this Act or any bye-law made in pursuance

No prosecution for an offence under this Act to be instituted without consent of Commissioners.

thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within six months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman of the Commissioners:

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

Change.

The word 'six' has been substituted for 'three' by sec. 97 of Beng. Act IV of 1894.

Notes.

Consent of Commissioners.—Commissioners in this section means the Chairman or the Vice-Chairman delegated with the powers of the Chairman; see secs. 44 and 45 and notes thereunder.

Sanction of Government.—On a reference made by the Municipal Magistrate of Calcutta asking the opinion of their Lordships as to whether the Administrator-General of Bengal, who was in charge of certain premises appertaining to an estate not by virtue of his office but by virtue of his appointment by the Court as administrator to the estate could be prosecuted without the sanction of Government under sec. 197 of the Criminal Procedure Code for failing to comply with a requisition under the Calcutta Municipal Act (Beng. III of 1891), it was held that no sanction was necessary in the case.—*Municipal Corporation v. Administrator-General of Bengal*, 7 C. W. N. 750.

Institution of Prosecution.—As to court-fee, &c., see notes under *Penalties* (pp. 171-2).

Continuous offence.—The Legal Remembrancer in his letter No. 416, dated 12th March, 1874, to the Secretary, Howrah Municipality, expressed his opinion that when an offence is repeated, every successive act is an offence.

In the case of an obstruction or encroachment a person would be liable if he continued it within six months of the prosecution, and a prosecution may be continued for each day until he removes the obstruction.

Continuation of offence.—See *Corporation of Calcutta v. Jadub Doolay*, I. L. R. 20 Cal. 665.

Offence under this Act.—The powers conferred upon the Commissioners by this section are restricted to the prosecution for offences under this Act or bye-laws framed under it. So where the Chairman of a municipality ordered a prosecution under sec. 199 of the Indian Penal Code, the High Court held that the Commissioners had no power to institute such a prosecution.—*Abdul Rahaman v. Chandi Persad*, I L. R. 22 Cal. 131.

Limitation.—In the case of a continuous offence, a prosecution instituted six months after the fact of its commission being brought to the notice of the Chairman is barred by the provisions of this section.—*Lutti Singh v. The Behar Municipality*, I C. W. N., 492. This section bars all prosecutions under the Act or under any bye-law unless they are instituted within three (six) months next after the commission of such offence or within three (six) months of

the date when such commission of the offence is brought to the knowledge of the Chairman.—*Bidhu Bhusan Mullick v. Asansole Municipality*, 6 C.W. N. 167.

354. Every bye-law, order, notice or other document directed to be published under this
Publication of bye-laws. Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct.

And a public proclamation shall be made throughout such municipality by beat of drum notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

355. Fines under this Act may be imposed by a
Levy of fines. Magistrate on any person who is convicted of the offence to which the fine attaches, and may be levied under the provisions of the Code of Criminal Procedure, 1882.

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

Disqualification of Magistrate.—A Magistrate who is personally concerned in the prosecution or who is a salaried officer of the municipality is disqualified from trying a case under this Act.—See sec. 555 Cr. P. Code, *Khuraok Chand Pal v. Taruck Chunder Gupta*, I. L. R., 10 Cal., 1030 and *Nobin Krato Mukerjee v. The Chairman of the Suburban Municipality*, I. L. R., 10 Cal., 194.

The mere fact that a Magistrate is the Vice-President of a District Municipality and Chairman of the managing committee does not disqualify him from trying a charge of an offence brought by the municipality under Bombay Act VI of 1873. But if he has taken any part in promoting the prosecution, as for instance by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest

over and above what may be supposed to be felt by every municipal Commissioner in the affairs of the municipality.—*Queen Empress v. Pherojsha Pestonji*, I. L. R., 18 Bom., 442; see also *The Queen v. Lee*, 9 Q. B. D., 394 and *The Queen v. Handley*, 8 Q. B. D., 388.

In the unreported case of *Empress v. Sutto Churn Chatterjee*, who was prosecuted under sec. 273, clause 2, of the Bengal Municipal Act, before a Bench of Magistrates, presided over by a gentleman who was the Chairman of the municipality, Banerji J. held that the disqualification created by sec. 555, Cr. P. Code, holds good in his case and the exception introduced by the explanation does not apply to it. His Lordship was pleased to observe "the gentleman, who presided over the Bench that tried the accused, was something more than a mere municipal Commissioner. He was the Chairman of the municipality, and as such the executive head of that body and it was under his orders that the prosecution was instituted".—*Amrita Bazar Patrika*, Oct. 19, 1894. See also *Queen Empress v. Erugudu*, I. L. R. 15 Mad. 83.

In the case of *Wood v. The Corporation of the Town of Calcutta* (I. L. R. 7 Cal. 322) it was held that the proceedings and ultimate conviction of A were illegal, in as much as B being a servant of the prosecutor, i. e., the Corporation, had such an interest as might give him a bias in the matter, and that consequently he ought not to have sat as Justice of the Peace, either at the granting or upon the hearing of the summons.

Extends to appeals.—A Magistrate, who is also the Chairman of a municipality, is no less disqualified to try a case sanctioned by the Vice-Chairman, who acts with delegated authority. The expression "try any case" in sec. 555 of the Cr. P. Code is comprehensive enough to include the hearing of an appeal.—*Nistarini Dobi v. A. C. Ghosh* I. L. R., 23 Calc. 44.

Code of Criminal Procedure, 1882—was repealed by the Code of 1898 (India Act V of 1898).

356. Every notice, bill, form, summons or notice of demand under this Act may be served personally on or presented to the person to whom the same is addressed,

How notice, &c., may be served.

or be left at his usual place of abode with some adult male member or servant of his family ;

or, if it cannot be so served, presented or delivered, may be put on some conspicuous part of his place of abode ;

or of the land, building or other thing in respect of which the notice, bill, form, summons or notice of demand is intended to be served.

The notification under sec. 180 is to be posted on or near the spot where the acts required are to be executed.

357. When any notice is required to be given to the owner or to the occupier of any land, such notice, addressed to the owner³ or occupier, as the case may require, may be served on the occupier of such land, or otherwise in the manner in the last preceding section mentioned :

Provided that, when the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, they shall, if such place of abode be within the limits of their authority, cause every notice required to be given to the owner of any land to be served on such owner, or left with some adult male member or servant of his family ;

and, if the place of abode of the owner be not within such limits, they shall send every such notice by post in a registered cover addressed to his place of abode, and such service shall be deemed to be good service of the notice.

When the name of the owner or occupier is not known, it shall be sufficient to designate him as "the owner" or "the occupier" of the land in respect of which the notice is served.

For the definition of the term **owner** see sec. 6, cl. (11).

358. No assessment or rating of tax on property shall be invalid for error or defect of form, and it shall be enough in any assessment, valuation or rating for the purpose of making such tax if the property so assessed or valued is so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof.

Tax not invalid for want of form.

359. Every person to whom a license has been granted under this Act shall at all reasonable times, while such license shall remain in force, if thereunto required by the authorities which granted the license or by any person authorised by them in that behalf, produce such license to the said authorities or to the person so authorized.

Holder of license to produce it when required.

Whoever fails to produce his license when required to produce the same by any person authorized under this section to demand the production thereof shall be liable to a fine not exceeding one hundred rupees.

Penalty.

360. All costs, expenses, fees, tolls or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 120 to 129 (both inclusive).

Recovery of moneys due to the Commissioners.

361. If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner

Power to sell unclaimed holdings for money due.

of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and, after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase money.

After deducting the amount due to the Commissioners as aforesaid, 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 such Commissioners or in a court of competent jurisdiction.

Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a court of competent jurisdiction from any person beneficially interested in such property.

362. The Commissioners may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

Compensation for damages. **Damage**—evidently means actionable damage i. e., loss caused by an unauthorised interference with private rights resulting in a breach of law (*See Underhill on Torts, page 7*).

Scope of the section—This section gives power to the Commissioners to make compensation for any damage caused to any person by any act done in pursuance of the powers conferred by this Act, and to compromise any suit or threatened action for damages which any person may have sustained by reason of their exercising their statutory powers in excess or violation thereof. It is not the intention of the Legislature that it should apply to every case of damage