Invalid notice.—It is imperative that a notice requiring a thing to be done should contain or make mention of the second clause of this section. When, therefore, a prosecution was started upon a notice not containing or making mention of it, it was *held* that failure to comply with the requisition of such a notice did not amount to an offence under sec. 271.—In the matter of *Chairman of the Puri Municipality* v. *Kissori Lal Sen*, 1 C. W. N. *p* cxliv (notes).

A notice issued by the Vice-Chairman of a municipality, in the absence of proof of delegation of powers under sec. 45, is invalid, *Harendra Nath* v. *The Chairman of Birnagar Municipality*, 1 C. L. J. 51.

Recovery of expenses.—The expenses incurred may be recovered by distress warrant or by civil suit under sec. 360. The limitation for such a suit is governed by Art. 120 of the Limitation Act, and it may be instituted within six years, *President of the Municipal Commissioners* v *Gantom*, *Srikakulopa I. L. R. 3 Mad.* 124.

Fresh notice.—When a conviction is set aside on the ground of invalidity of one notice, there is no bar to the municipality's taking proceeding under a fresh notice. *Harendra Nath* v. *The Chairman of Birnagar Municipality*, 1 C. L. J. 51 (54).

An objection.—"No more than *one* petition of objection against an individual order is admissible, and when once the order has been made absolute under section 178, no subsequent petitions should be permitted to stay its execution," (*see para. 3, B. Govt. Muni. No. 2514 and Cir. No. 31, Octr.* 1903, Govt. Cir. vol. III, *p* 1038)

Person required to execute any work may prefer objection to the Commissioners.

176. Any person who is required by a requisition as aforesaid to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of

the notification containing the requisition; or if the time within which he is required to comply with the requisition be less than five days, then within such less time.

Except as provided in the next succeeding section such objection shall be heard and disposed of by the Chairman or Vice-Chairman.

Court fee.—An application or petition when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement, must bear a court fee stamp of one anna [see Court Fees Act VII of 1870, schedule II Art. 1 cl. (*a*)]. Petitions of objection, under this section, come under the purview of this article of the Court Fees Act, and require a court fee stamp of one anna See *Govt. Cir. No. 47 M., d. 14. 11. 1896* in which the following observations are made,—"only those applications presented to the Commissioners of a Municipality are chargeable with a one anna stamp, which relate solely to matters of "conservancy" or "improvement" such as those covered by parts V, VI, IX and X of the Bengal Municipal Act."

Any objection taken in an informal petition, not properly stamped, is none the less an objection and should be dealt with according to law, *Jagadis Chandra* v. *Sreenath*, 2 C. W. N. clxxxvii (notes), followed in *Harendra Nath* v. *The Chairman of Birnagar Municipality*, 1 C. L. J. 51.

Disposal of objection.—As to procedure of disposing of objections made under this section and consequences of failure therein, see sec. 179 and the notes thereto.

Procedure if person objecting alleges that work will cost more than Rs. 300.

177. If the objection shall allege that the cost of executing the work or of doing the thing required will exceed three hundred rupees such objection shall

be heard and disposed of by the Commissioners at a meeting; unless the Chairman or Vice-Chairman shall certify that such cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman:

Provided that in any case in which the Chairman or Vice-Chairman shall have certified his opinion as aforesaid, and the objection shall in consequence thereof have been heard and disposed of by the Chairman or Vice-Chairman, the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required; whereupon such person shall be relieved of all further liability and obligation in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work, or do such thing, and shall exercise all powers necessary therefor.

Chairman, &c., may make order after hearing objection.

178. The Chairman or Vice-Chairman, or the Commissioners at a meeting, as the case may be, shall, after hearing the objection and making any inquiry which they may deem necessary, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred; and, if such order does not withdraw the requisition,

it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.

See notes to sec. 179.

Invalid order.—A Magistrate, who also happened to be the Chairman of a municipality, while acting as Magistrate, convicted a person under section 273 cl. (1) and also passed an order requiring the accused to demolish the building without giving him an opportunity to object. A recommendation, made by the District Judge on reference for setting aside the order for demolition as illegal, was approved of by the High Court, *Emperor* v. *Mathura Prosad*, I. L. R. 29 Cal. 491.

Order to be explained orally.

179. If the person making such objection be present at the office of the Commissioners, the said order shall be explained to him orally; and, if such order cannot be so explained, notice of such order shall be served as provided in section 356 on the person making the objection; and such explanation of, or service of, the notice of the said order shall be deemed a requisition duly made under this Act to execute the work or do the thing required.

Such explanation or service.—So where the objector is personally present before the Chairman, Vice-Chairman or the Commissioners in meeting, hearing objection, and the order has been explained to him, no further service of the notice under this section is necessary. In such case, however, a note should be recorded at the foot of the final order passed in each case to the following effect:—

"The order shall be carried out within * days from this date.

This order has been orally explained by me to the objector who is present in person. (sd.) ." * The number of days to be noted here shall not be less than the shortest time which might have been mentioned under the Act in the original requisition (see sec. 178)

Consequence of failure to hear objection.—An *omission* to comply with the provisions of this section and section 178 shall vitiate all subsequent proceedings In an unreported case (*Boikunto Nath Sen* v. *Howrah Municipality*) the petitioner was convicted by a Bench of Magistrates for failing to comply with the requisition of a notice under sec. 209. He had presented a petition of objection after receipt of the notice, but the Commissioners, without recording an order under sec 178, instituted the prosecution The High Court (Prinsep and Ghose, JJ.) held that it was not competent to proceed in any way under the order made under sec. 209 until the objections, regularly made in accordance with the notice, had been disposed of.—*Hindu patriot* December 6, 1892.

Cf. *Kanai Lal* v. *The Corporation of Calcutta* decided under the Calcutta Municipal Act, wherein **Holmwood, J** was pleased to observe,—"they (the corporation) have been invested with the most ample powers, but when certain penal sections enforced by the criminal law were put in motion on the report of the servants of the municipality, it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure which is a condition precedent to any conviction, is strictly and properly carried out." 11 C. W. N. 508 (511).

Requisition duly made—means the second notice served under this section. Such a notice is compulsory if the municipality contemplate to proceed to do the work under the next succeeding section, *Jagadis Chandra* v. *Sreenath*, 2 C.W. N. clxxxvii (notes). Cf. *Emperor* v. *Nadirsha*, I. L. R. 29 Bom. 35. See also *Poorna Chand Bural* v. *Corporation of Calcutta*, I. L. R. 33 Cal. 699. cited under sec. 246.

The time allowed in the notice under this section shall not be less than the shortest time which might have been mentioned in the first notice (see sec. 178).

Power of Commissioners on failure of person to execute work

180. If the person or persons required to execute the work or to do the thing fail, within the time specified in any requisition as aforesaid, to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners, or any person authorized by them in that behalf, may, after giving forty-eight hours' notice of their intention by a notification to be posted up on or near the spot, enter upon the land and perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

Necessary acts.—"As to all such matters the municipality have a discretion both as to the objects upon which they should do so. Under the law the Municipal Commissioners had authority to enter into the premises and to do all acts that they should think necessary. Thus a very wide discretion was given to the Municipal Commissioners."—*In the matter of Joges Chundra Dutta*, 16 W. R. 285. When a municipality, legally proceeding under the Act, decide that certain works are *necessary*, that conclusion in the absence of *mala fides*, fraud or considerations of that nature, can not be questioned by the Civil Court, *Duke* v. *Rameswar Maliah*, I L. R. 23 Cal. 811, 3 C. W. N. 508.

Expenses thereby incurred.—Civil Courts cannot examine the charges made by the Commissioners. All that can be done is to enquire if the sums sued for have actually been expended by the Commissioners and the person or persons sued against are the owner or occupier or both. The mere fact that the rates charged by the municipality are higher than those which could be obtained by other persons is no ground for interference, *Joges Chunder Dutta*, 16 W. R. 285 (286).

In the unreported case of the *Chairman of the Howrah Municipality* v. *Kristo Dhon Kurr*, the plaintiff claimed Rs. 170-10-0, being the amount of costs incurred for fencing a tank near a highway. The lower Court awarded a modified decree for Rs. 30 only, on the ground that the Commissioners put up a very expensive enclosure. *Held* (*per* L. Jackson, J.) that it being the duty of the Commissioners to execute such works for public safety they must be authorized to do them in a sufficient and durable manner. They cannot be required to execute such works in a manner suited to the circumstances of the owner or occupier. They must do their work in such substantial manner as, they think, is necessary for the safety and protection of the public, and provided the expense that they undergo to do that is made out, and does not exceed the bounds of reason, I think they are entitled to recover it, and the Court of Small Causes is not authorized to substitute for the costs actually incurred an estimate of its own as to what those costs might have been if the work had been done differently. The Commissioners are entitled to claim the amount of actual expense incurred by them which expense is not shown to be unreasonable, regard being had to the nature of the work done." *Rule No. 891 of 1874.* See also 7 W. R. 213.

Recovery thereof.—As to recovery of expenses incurred see notes to sec. 175.

The pendency of a civil action by a person who contests his liability will not bar the realization of the expense by distress warrant (see proviso, sec. 184).

If the Commissioners execute any work under the provisions of sec. 200, they may recoup themselves the expenses of the work

by taking possession of the property in which the work is done (last para. sec. 200. When the Commissioners execute any repairs under sec. 210, they may retain possession of the house so repaired until the sum expended by them on the repairs be paid to them (see sec. 211)

Commissioners may apportion expenses among owners.

181. Whenever any expenses incurred by the Commissioners are to be paid by the owners of any land as provided in the last preceding section, the Commissioners may, if there be more than one owner, apportion the said expenses among such of the owners as are known in such manner as to the Commissioners may seem fit.

And whenever any such expenses are to be paid by the occupiers of any land, as provided in the last preceding section, the Commissioners may, if there be more than one occupier, apportion the said expenses among such of the occupiers as are known in such manner as to the Commissioners may seem fit.

Owner.—For the definition of this term see sec. 6 cl. (11.)

Apportionment among owners and occupiers.

182. Whenever any expenses incurred by the Commissioners are to be paid by the the owners and occupiers of any land, as provided in section 180, the Commissioners may apportion the said expenses among the said owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit.

Occupier may recover cost of works executed at his expense from owner.

183. Whenever any works or any alterations and improvements of which the Commissioners are authorized by this Part or Part VI to require the execution, are executed by the occupier on the requsition of the Commissioners, and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners shall certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any Court of competent jurisdiction.

Liability to pay expenses or fees may be contested in Civil Court.

184. Any owner or occupier of land may contest his liability to pay any expenses or fees under this Part or Part VI, or may contest the amount which he has been called upon to pay, in a Civil Court of competent jurisdiction:

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 360.

See notes to sec. 180

Damages and compensation how to be determined.

185. Where any damages or compensation, other than compensation payable under section 35, are by this Act directed to be paid by the Commissioners, the amount, and, if necessary, the apportionment of the same, shall in case of dispute, be ascertained and

determined by a Civil Court of competent jurisdiction.

Sec. 35 refers to compensation under the Land Acquisition Act.

A Civil Court of competent jurisdiction.—Whether this includes a court of appeal and whether this section gives the right of appeal against the decision of a court of first instance are matters of doubt of *Chunilal* v. *The Ahmedabad Municipality*, I. L. R. 36 Bom. 17.

Of Sewage, Offensive Matter, Rubbish, Privies and Drains.

186. The Commissioners shall provide all establishments, cattle, carts and implements required by them for the removal of sewage, offensive matter and rubbish.

Establishments for removal of sewage, offensive matter and rubbish.

Change.

The words " by them " have been added by sec. 53 of Beng. Act IV of 1894.

Notes.

For the definitions of " Sewage, " " Offensive matter " and " Rubbish " see sec. 6 cls. (17), (10) and (14) respectively.

Shall provide.—Where the owner of a shellac factory discharged the offensive flowage of his factory into a *kutcha* municipal drain, intended for the mere drainage of surface water and not carrying off such stuff, and on being sued for nuisance sought to shift the responsibility on the municipality, it was *held* that a private person cannot claim a right to foul an ordinary drain by discharging into it what it was not intended to carry off, and then throw on the municipality an obligation to alter the drain in order to remedy the nuisance that he has produced; nor can

be say that other persons must meanwhile put up with such nuisance. *Galstaun* v *Doonia Lal Seal*, I. L. R. 32 Cal. 697 (706).

Hours and mode of removal of offensive matter

187. The Commissioners at a meeting may, from time to time, by an order published as prescribed in section 354, appoint the hours within which it shall be lawful to remove sewage and offensive matter and the manner in which the same shall be removed, and may provide places convenient for the deposit thereof, and may require the occupiers of houses to cause the same to be deposited daily, or at other stated intervals, in such places, and may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so in accordance with this Act.

The words "sewage and" have been added by sec. 51 of Beng. Act IV of 1894.

Note.

"**Offensive matter**" and "**Sewage.**"—For definitions of these terms see section 6, cls (10) and (17) respectively.

Mehters must give one month's notice if they leave the service of the Commissioners.

188 Whenever such order shall have been published, no mehter or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.

Any mehter or other such person who, after the said publication, withdraws from his duties without

giving such notice as aforesaid, shall be liable to rigorous imprisonment for a term not exceeding one month, and shall forfeit all salary which may be due to him.

Commissioners may appoint hours for placing rubbish on public road

189. The Commissioners at a meeting may, from time to time, by an order published as prescribed in section 354, appoint the hours within which only every occupier of any house or land may place rubbish on the public road adjacent to his house or land in order that such rubbish may be removed by the Commissioners; and the Commissioners may charge such fees as they may think fit in respect of the removal of such rubbish, with the consent of the occupier of any house or land, from such house or land or in respect of the removal from such public road of any rubbish which has accumulated in the exercise of a trade or business.

Consent—does not apply to the charging of fees but to the removal of the rubbish from house or land. The section empowers the Commissioners to enter into this particular kind of contract.

For definition of "Rubbish" see sec. 6 cl. (14.)

Dust-bin—*Cf. Hansraj* v. *Karachi Municipality* (1 Sindh L. R. 228) as to power of municipality to place dust-bin at particular sites.

As to penalty for non-compliance see sec. 216 cl. (*i*).

Drains, privies and cess-pools under control of Commissioners.

190. All drains, privies and cesspools shall be subject to the inspection and control of the Commissioners.

See notes to sec. 30.

Inspection of drains, privies and cess-pools.

191. The Commissioners, or any officer authorized by them in that behalf, may inspect all privies, drains and cess-pools at any time between sunrise and sunset, after six hours' notice in writing to the occupier of any premises in which such privies, drains or cess-pools are situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of preventing or removing any nuisance arising from such privies, drains or cess-pools; and expenses therby incurred shall be paid by the owner or occupier of such premises.

The expenses may be recovered by distress warrant or by civil suit. See notes to sec. 180

Commissioners may direct the use of disinfectants or deodorants for such drains, privies, &c., as are in a noxious state.

192. Whenever the Commissioners are satisfied that the existence of such privy, drain or cess-pool is attended with risk of disease to the inhabitants of the neighbourhood, they may direct the use of such disinfectants or deodorants as they shall specify in such privy, drain or cess-pool, in such quantities or for such time as they shall think fit. The Commissioners shall, if necessary, themselves supply such disinfectants or deodorants for such use at cost price, and the expense thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of such privy, drain or cess-pool; or the Commissioners may, if they think fit, order that such expense shall be paid from the municipal fund.

193. The Commissioners may provide and maintain, in sufficient numbers and in proper situations, common privies and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed.

Common privies.

194. The Commissioners may license such necessaries for public accommodation as they from time to time may think proper.

Licensing of public necessaries.

As to the Commissioners' power of suspending licenses see sec. 278. Sec. 217 cl. (2) provides penalty for failing to take license under this section.

195. Whenever any land being private property, or within any private enclosure, appears to the Commissioners, by reason of thick or noxious vegetation or jungle, or inequalities of surface, to afford facilities for the commission of a nuisance, or by want of drainage to be in a state injurious to health or offensive to the neighbourhood, the Commissioners may require the owners or occupiers, or the owners and occupiers, of such land, within fifteen days, to clear and remove such vegetation, or level such surface or drain such land:

Power to require owner to clear noxious vegetation and to improve bad drainage

Provided that, if for the purpose of effecting any drainage under this section, it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay

compensation to any other person, the Commissioners shall provide such land and pay such compensation.

Notes.

Appears to the Commissioners.—*Cf. Emperor* v. *Raja Bahadur Shiv Lal Moti Lal* (I. L. R. 34 Bom. 346, 12 Bom. L. R. 126) in which it was held by the Bombay High Court that non-compliance with a notice, validly issued, made the offence complete, that the only condition precedent to the valid issue of a notice was that it should appear to the Commissioners and not to the Magistrate, that the premises were in the condition specified in the section and that the Magistrate was wrong in acquitting the accused on the sole ground that the premises did not appear to him to be in such a condition as to justify the issue of the notice.

Remedies open to the Commissioners.—If the person, called upon under this section, fails to comply with the requisition the Commissioners may either prosecute him under sec. 219 or execute the works under sec. 180. The Commissioners are entitled to recover the expenses for clearing such jungle.

May require to drain land.—*Cf Emperor* v. *Nadirsha* (I. L. R. 29 Bom. 35) as to the legality or otherwise of such requisition.

Procedure to be followed.—In the case of *Lord H. Ulick Browne, Chairman of the Kishnagore Municipality* v. *Umes Chundra Rai*, 7. W. R. 213, Peacock C. J. was pleased to observe that in as much as the Commissioners are empowered to appoint subordinate officers and servants, they are to be assisted in causing all noxious vegetation which grows in the town to be cleared. They are not bound like a judicial officer to summon each individual, and to sit and hear evidence on both sides in the presence of the parties concerned; nor are they bound to go to each particular spot of land personally and individually to ascertain, by evidence or upon their own view whether the jungle is such as will require their interference.

196. All sewage, rubbish and offensive matter collected by the Commissioners from roads, privies, sewers, pools and other places, shall be the property of the Commissioners, who shall have power to sell or otherwise dispose of the same; and the money arising from the sale thereof shall be carried to the credit of the municipal fund.

All rubbish collected to be the property of Municipal Commissioners

The terms 'sewage,' 'rubbish' and 'offensive matter' are defined in sec. 6, cls. (17). (14) and (10) respectively.

197. All existing public sewers, drains and other conservancy works shall be under the direction and control of the Commissioners, who shall have power to construct any further works of that nature which they may consider necessary.

Sewers, drains, &c., under control of the Commissioners.

Of Bathing and Washing Places and Tanks.

198. All streams, channels, water-courses, tanks, reservoirs, springs and wells, not being private property, shall, for the purposes of this Act, be under the direction and control of the Commissioners.

All public streams, &c., to be under direction and control of the Commissioners.

199. The Commissioners may, by order published at such places as they may think fit, set apart convenient wells, tanks, or parts of rivers, streams or channels, not being private property for the supply of water for drinking and for culinary purposes; and may prohibit therein all bathing, washing of

Commissioners may make provision for drinking water, bathing places, &c

clothes and animals, or other acts calculated to pollute the water set apart for the purposes aforesaid;

and may similarly set apart a sufficient number of the same for the purpose of bathing;

and a sufficient number for washing animals and clothes, or for any other purpose connected with the health, cleanliness or comfort of the inhabitants.

The Commissioners may by an order published at such places as they may think fit, prohibit in the private portion of any stream or channel used as a part of the public water-supply, bathing, washing of clothes or animals or any act likely to pollute the water in the public portion of such stream or channel.

Changes.

By sec 55 of Beng. Act IV of 1894 the word 'wells' has been added and the last paragraph has been substituted for "the Commissioners may similarly take such order as they think fit with the private portion of any stream or channel used as a part of the public water-supply."

Note.

For penalty see sec. 217, cl. (4).

Prohibition by Commissioners of use of unwholesome water

199A. If the Chief Civil Medical Officer of the district certifies that the water in any well, tank, or other place situated within a municipality is likely, if used for drinking, to engender or cause the spread of any dangerous disease, Commissioners may, by public notice, prohibit the removal or use of such water for drinking during a period to be specified in such order.

This section is new and added by sec. 56 of Beng. Act IV of 1894.

Note

For penalty see sec. 217, cl. (4).

Power to require unwholesome tanks or private premises to be cleansed or drained

200. (*1*) The Commissioners may require the owner or occupier of any land within eight days, or such longer period as the Commissioners may fix, either to re-excavate or fill up with suitable material, at his option, or to cleanse any well, water-course, private tank or pool therein, and to drain off and remove any waste or stagnant water which may appear to be injurious to health or offensive to the neighbourhood :

Provided that if, for the purpose of effecting any drainage under this section, it shall be necessary to acquire any land not being the property of the person who is required to drain his land or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

Commissioners may retain possession of tank or pool until expenses for re-excavation, &c, are realized

(*2*) If under section 180 the Commissioners execute the work of such re-excavation or filling up with suitable material, they may retain possession of the tank or pool, or the site of such tank or pool and turn the same to profitable account until the expenses thereby incurred shall have been realized.

Changes.

By sec. 57 of Beng. Act IV of 1894 sub-sec. (1) has been substituted for the "The Commissioners may require the owners or occupiers of any land, within eight days, or such longer period as the Commissioners may fix, to cleanse any water-course, private tank, or pool therein and to drain off and remove any water or stagnant water which may appear to be injurious to health or offensive to the neighbourhood" and sub-sec. (2) has been added.

Note.

For penalty for non-compliance see sec. 219.

Of Obstructions and Encroachments on Roads.

Power to close a road or part of a road for repairs or other public purpose.

201. The Commissioners may close temporarily any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other public purpose:

Provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.

Whenever, owing to such repairs or construction, or from any other cause, any road or part of a road shall be in a state which is dangerous to passengers, the Commissioners shall cause sufficient barriers or fences to be erected for the security of life and property, and shall cause such barriers or fences to be sufficiently lighted from sunset to sunrise.

Notes.

Road.—For the definition of—see sec. 6 cl. (13); compare sec. 30 and notes.

Close temporarily.—The Commissioners may, for the purpose of making, repairing or closing highways or for other purposes provided in this section, temporarily close them but they cannot stop up or divert them altogether, *Jadu Nath Ghose* v. *Brojo Nath De*, I. L. R. 2 Cal. 425.

Liability of Commissioners.—This section imposes upon the Commissioners certain duties which must be performed for the safety of passengers. In the case of *The Corporation of Calcutta* v. *Anderson*, (I. L. R. 10 Cal. 455) the High Court *held* that a corporation, having statutory obligation imposed upon them to repair and maintain the roads, are liable for a breach of their statutory 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.

Removal of future obstructions or encroachments in or on road

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.

Proceedings before the Magistrate.—It is submitted that proceedings before the Magistrate under this and sections 203, 204 and 233 are not prosecutions for any offence under the Act and the bar of limitation under section 353 is not applicable to such proceedings.—Cf. *Corporation of Calcutta* v. *Keshub Chunder Sen* (8 C. W. N 142), *Chuni Lal Dutt* v. *Corporation of Calcutta* (11 C. W. N 30, Cr. L. J. 408) and *Sarat Chandra Mukerji* v. *Corporation of Calcutta* (14 C. W. N. 591.)

May.—Cf. *Abdul Samad* v *The Corporation of Calcutta* (I. L. R. 33 Cal. 287, 3 C. L J. 90) for construction of the discretion meant by the use of the word.

Notice.—The notice, contemplated by this section, should be served upon the person, who may have erected the encroachment, and on failure to comply with the requisition of the notice he alone is liable to prosecution under sec. 218. So where a person was prosecuted for failing to comply with a notice under this section, and the accused repeatedly asked that the requisition should be served upon his lessee of the land who had erected the encroachment and the Magistrate also found that encroachment had been erected by the lessee, the conviction was set aside as bad, *Shama Bibee* v *Jadab Chandra*. 2 C. L. J. 226, Cr. L. J. 613.

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.

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 and *Mewasonar* v. *Emperor*, 15 C. W. N., 111 (notes). See also the unreported case of *the Chairman of the Municipal Commissioners of Howrah* v. *Haripada Dutt* (Appl. from Applte. decree No. 2699 of 1913) noted under section 30. See notes to sec. 217

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.

Where, upon proceedings were taken under section for the removal of an encroachment, there was a suit for injunction to restrain such proceedings and it was proved that the obstruction had existed for at least 50 years, it was *held* that the suit could not be dismissed on the supposition that the municipality might proceed under sec. 233. The relief, granted to plf. in that suit, was, however, safe-guarded in such a way as not to interfere with any possible right the municipality might otherwise have. *Jenkins* C. J. was pleased to observe, "we are only concerned with the action of the municipality under sec. 202, and, the decree we therefore pass is that the municipality be restrained from removing the platform under section 202 or otherwise taking action under that section."—*Gopal* v. *Chairman of Santipur*, 10 C. L. J. 613; 2 Ind. Cas. 512.

Compare *Dakore Municipality* v. *Travedi Anupram* (I. L. R. 38 Bom. 15) in which it has been held, under the similar provisions of the Bombay District Municipal Act, that it mattered not whether an encroachment had been in existence for 12 years

or more. The Municipality might, on proof that the encroachment was an obstruction to the safe and convenient passage along a street, by a written notice require its removal, if it had been put up after the place had become a Municipal District.

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

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.

Procedure when person who erected obstruction cannot be found.

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.

Proceeding before the Magistrate.—See notes to sec. 202.

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.

Projections from houses erected in future to be removed.

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 such house which may have been so erected or placed after the date on which the District Muni-

cipal 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 Madras (*Mothe Atchagya Garu* v. *The Municipal Council of Ellore*, 7 M L. T 66, 4 Ind Cas. 828) a pandal

erected in front of a building in a public street was held to be a "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. See also *Ghasi Ram* v. *King Emperor* (45 P. R. 1905 Cr.) in which it was held that the public were entitled to the whole breadth of a street to the last inch. *Cf Alopi Din* v. *Municipal Board of Allahabad* (4 A. L. J. 8, A. W. N. 1907, 27) in which a notice requiring the removal of a construction not projecting into any street was held to be invalid

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

Proceedings before the Magistrate.—See notes to sec. 202.

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 Cal. 160, 1. C. W. N. 660. See also *Kala Govind* v. *Municipality of Thana*, I. L. R. 23 Bom 248, and *Lutchmi Narayana* v. *The Municipal Council of Trichinopoly*, 7 M. L. T. 154, 5 Ind. Cas. 916 Cf. sec. 206.

See notes to sec. 202 and sec. 205.

Penalty for non-compliance, see sec. 218

Cf. Corporation of Calcutta v. *Imadul Huq.* (I. L. R. 34 Cal. 844), decided under the Calcutta Municipal Act, where a verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain running between the street and the front of the house was held to be a projection, encroachment or obstruction over or on a public street removeable under section 341 of the Act.

Road, aqueduct, drain and sewer.—These expressions should be kept in view in requiring removal of projections, &c., under this section. *Municipal Committee of Delhi* v. *Deui Sahai* (62 P. R. 1907) in which it was observed that an encroachment upon municipal property, not being street, drain, sewer or aqueduct would not come within the purview of section 95 (*b*) of the Punjab Municipal Act (XX of 1891) which is similar to this section.

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

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 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 order 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 14 W. R. 414 and 12 W. R. 160 did not apply. This decision was upheld in appeal. *See Ujul Mayee 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

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

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 and 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.

See notes to sec. 204.

Penalty for non-compliance, see sec. 218.

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

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.

Penalty for non-compliance, see sec. 218.

Commissioners may require landholders to trim hedges, &c.

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 to 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.

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 Bally Municipality*, I. L. R. 17 Cal. 634.

Penalty for non-compliance, see. sec. 218.

Of General conservancy and Improvement.

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

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.

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). Where the only evidence was that a tank was *inconvenient* to passengers owing to want of repairs and protection an evidence of its being dangerous was wholly wanting, the High Court (Ghose & Hill JJ.) *held*, that a conviction upon such evidence

was bad, *Saroda Prosad Pall* v. *Queen-Empress* (No. 330331-1895, decided on 15th November, 1895 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. Joges Chandra Dutta* 16 W. R, 285 and the unreported case, *Chairman of the Howrah Municipality* v. *Kristo Dhon Kurr* cited under sec. 180.

Fencing of buildings in a dangerous state.

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.

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 or the owners and occu-

piers 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)., Cf. *Corporation of Calcutta* v. *Monmotha* (21 C. L. J. 467) as to liability of the owner of the land to comply with the requisition of this nature.

Deemed by the Commissioners.—

Dangerous.—"This section vests the Commissioners with discretion of deciding whether a building is dangerous," *Harendra Nath* v. *The Chairman of Birnagar* (1 C. L. J. 51.—Cf. *The Lalbhai* v. *Municipal Commissioner of Bombay*, (I. L. R. 33 Bom. 334, 10 Bom. L. R. 821, 3 Ind. Cas. 361) in which the expression has been explained and the procedure to be followed, in a case coming under the corresponding section of the City of Bombay Municipal authorities and the limits within which the jurisdiction of the Civil Court is to be exercised, have been discussed at length.

Inmates.—The commissioners can interfere to protect the inmates of a building against the consequences at their own apathy or neglect. This power, however, should not be misused to the annoyance at individuals. *See Govt. Cir. No. 34M dated 27th August 1894.*

Take down, secure or repair.—Cf. *Hazuri Mal* v. *King-Emperor*, (18 P. R. 1898 Cr.) in which it has been *held* by the Punjab Chief Court (*per* Chatterjee J.) under the similar provision of the Punjab Act that a notice, requiring of a ruinous shed without the option to repair it, is defective and illegal, and non-compliance with it is no offence.

A notice issued by the Vice-Chairman under this section, in the absence of proof of delegation of powers under sec. 45, is invalid, *Harendra Nath* v. *The Chairman of Birnagar Municipality*, 1. C. L. J. 51

Joint conviction—of owner and occupier under a similar section of the Calcutta Municipal Act was held illegal, *Beirab Kolay* v. *The Corporation*, 14 C. W. N. 911.

Commissioners may require owners to pull down ruins.

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 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 1894.

Notes.

Owner.—Defined in sec. 6, cl. (11).

For penalty see sec. 219.

No time has been fixed for the requisition.

Power to enter upon possession of houses so repaired

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.

Sale of materials of houses, &c., pulled down.

212. The materials of anything which shall have been pulled down or removed under the provisions of sections 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.

Stray dogs to be killed at certain appointed periods.

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.

Commissioners may offer rewards for destruction of noxious animals.

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

Name of roads and numbers of houses.

215. The Commissioners at a 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*. See notes to sec. 30.

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. *Mukunda 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 and sec. 386 of the Criminal Procedure Code Process fees ordered 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—

Offences under sections 189 and 215

(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

(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—

Occupier not removing filth, &c

(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

(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, fence, rail, post or other obstruction,

Erecting obstruction.

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

Change.

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

Notes.

Offensive matter.—See sec. 6, cl. (10).

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

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

Clause (5).—The term 'Road' here is not limited to roads vested in the Municipal Commissioners. A person was charged at the instance of a municipality under the 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 Chandra Ghose* v. *Bally Municipality*, I. L. R. 17 Cal. 634. See also *Mewa Sonar* v. *Emperor*, 15 C. W. N 111 (notes) and the case of *the Chairman of the Municipal Commissioners of Howrah* v. *Haripada Dutt* noted under section 30.

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.*

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

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 ten rupees, and to a further penalty, not exceeding fifty 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.

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*, I. L. R. 9 Cal. 68.

In the unreported case of *The Kotchandpore 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. See *Shama Bibee* v *Jadub Chunder*, 2 C. L. J. 226 cited under sec. 202.

Second prosecution before conviction in first, bad—In the case of *the Corporation of the Town of Calcutta* v. *Matu Bewah* (I. 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 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; 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. Love* 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 Subarban Municipality* v. *Aneesuddin Meah*, 20 W. R., 64 C. R. See also *Queen* v. *Tarini Charan Bose*, 21 W. R., 31 C. R., *Kristo Dhone Dutta* v. *The Chairman of the Subarban Municipality*, 25 W. R., 6 C. R., *Nilmoni Ghatak* v. *Emperor*, I. L. R. 37 Cal. 671, *the unreported cases of Mutty Lall Bose* (Revision No. 645. April 20, 1872), and *Raja Fanindra Deb Raikata of Jalpaiguri* (*Amrita Bazar Patrika*, *November 27, 1894*).

Procedure for infliction of daily fine.—In a similar case in Bombay (In *re Limbaji 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 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 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. *Mahendra Nath Mozumdar*, I. L. R 27 Cal. 565, *Emperor* v. *Wazir Ahmad*, I. L. R. 24 All. 309, and *Mahadeo Parsad* v. *Municipal Board, Lucknow*, 11 O. C. 122, 7 Cr. L. J. 454. See also *King-Emperor* v. *Po Nau* (4 L. B. R. 44, 6 Cr. L. J 281) in which it was held that the Magistrate had no authority to inflict a fine contingent on future events. If the offence continues a fresh prosecution ought to be instituted. It has, however, been held by the Allahabad High Court that after a conviction, the person convicted cannot be permitted to challenge the correctness of that conviction as often as he is prosecuted for continued disobedience, *Sital Prasad* v. *Municipal Board of Cawnpore*, I. L. R. 36 All, 430.

The law does not allow a daily fine to be imposed in anticipation of an offence being committed, *Harendra Nath*

v. *The Chairman of Birnagore Municipality*, 1 C. L. J. 51.

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, *Luti Singh* v *The Behar Municipality*, 1 C. W. N. 492.

Disobeying requisition under sections 195, 200, 209, 210 or 210A

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

Change.

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

Notes

Sec. 195—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.

Requisition.—When the notice by which a requisition is made is invalid, a conviction for failure to comply with it is bad,

Harendro Nath v. *The Chairman of Birnagore Municipality*, 1 C. L. J. 51.

Procedure &c.—See notes under *Penalties p. 228*.

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.

Operation of Parts VI, VII, VIII IX and X

220. No provisions contained in this Part, or in Parts VII, VIII, IX or X, shall apply to any municipality, unless and until it has been expressly extended thereto by the Local Government in the manner provided by the next succeeding section:

Saving clause.

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, XI 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.

Change.

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

Notes.

In order that any of the provisions of this part of the Act may apply to any municipality, it must be expressly extended to such municipality in the manner provided by the next succeeding section and it must be shown that there has been such an extension, *Gopal* v. *Chairman of Santipur*, 10 C. L. J. 613. See, however, paragraph 28 of *Govt Cir. No 34M, dated 27-8,-1894*, where it has been said as follows, "the addition (of the proviso) to section 220 should be noted. It is now formally declared by law that wherever the whole of the provisions of any one of the Parts VII, VIII or IX of the Act of 1876 were in force when Act III of 1884 became law, the whole of each of the corresponding Parts VI, XI or X of this Act shall be considered to have been in force. This provision was necessary in order to remove doubt as to the continued application of these parts. Where only a portion of the provisions of any one of Parts VII, VIII and IX of the Act of 1876 was in force when Act III (B. C.) became law, its continuance was secured by the provision of section 1 of Act III of 1884, as further explained by the additions made to section 2 by the present amending Act IV of 1894. The result is that all notifications or orders passed, and all rules made under Act V of 1876, are still in force, unless expressly rescinded even although the number of the parts or sections quoted in them may have been altered."

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

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.

And the Local Government may thereupon make an order accordingly.

Publication of order

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 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.

Local Government may cancel or modify order.

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.

Of a Survey.

Survey of a municipality.

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.

Change.

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

Notes

For the Calcutta Survey Act, 1887, see *App*

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

Of Privies, Drains and Excavations.

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

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.

Efficient.—This, when applied to a drain, means efficient for the purpose of drainage and does not include a case, where

there is no insufficiency in draining, but the drain itself should be removed on other grounds.

This section does not give any power to remove a drain, *Gopal Misser* v. *Chairman of Gaya*, 20 C. L. J. 138.

It was further held in this case that none of the sections, 190, 226, 229 and 270 cl. (2) gives power to a municipality to require the removal of a (*nali*) drain on the roof of a building, not being a branch drain nor a drain leading to a public sewer; and an order made by a municipality for the removal of such a drain was held to be *ultra vires*.

Penalty for non-compliance, see sec. 271.

This section contemplates a case of mere 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 *Kissori Lall Sen*, 1 C. W. N., *p.* ccxliv (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 purpose 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 *Rameswar Maliah*, I L. R. 26 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. 236, 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. (l).

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

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

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;

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

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

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.

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

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

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 matter within fifty feet of any public tank or watercourse, 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.

Water-course—does not include wells [see *para* 6, *B. Govt. Mun.* No. 2514 *and Cir No 31, Octr* 1913, Govt. Cir Vol. III *p.* 1039].

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

Construction of privy.

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.

Power to prohibit excavations.

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.

Them—Upon a grammatical construction of the first paragraph of this section, the word *them* at the end of it would mean "the Commissioners at a meeting". This seems to be due to oversight in drafting; for it does not appear to be the intention of the legislature to reserve such details to be dealt with by the Commissioners in meeting. Moreover a glance at clause (4) of section 270 will show that the permission is to emanate from the Commissioners and not the Commissioners in meeting.

penalty—for making excavations without permission is provided in cl. (4) sec. 270

No penalty for failure to comply with a notice to fill up an unauthorised excavation is provided in the Act.

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.

Removal of existing projection from houses.

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, 1863, 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).

Proceedings before the Magistrate.—See notes to sec. 202.

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 *pial* 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 *pial* 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 See, however, *Mothe Atchayya Garu* v. *The Municipal Council of Ellore* (7 M. L. T. 66, 4 Ind. Cas. 828) where it was held that the remedy of a person, required to remove a projection, is to recover compensation; a suit for an injunction will not lie. See also *Emperor* v. *Nanna Mal*, I. L. R. 35 All. 375, where it has been held that it is not necessary for the municipality to mention in the notice the amount of compensation or its willingness to pay the same, and a settlement of the question of compensation was not a condition precedent to the giving of notice.

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

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:

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. Cal. 445.

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

Hoards to be set up during repairs.

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 con-

dition, 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:

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.

Roofs and external walls not to be made of inflammable materials

236. The Commissioners at a meeting may, by an order published in the manner prescribed in section 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 renewed or repaired shall not be made of grass, leaves, mats or other 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.

External roofs, &c.—In the case of the *Public Prosecutor* v. *Narayanswamy* (2 M. L. T. 499, Cr. L. J. 219) decided under

the corresponding section of the Madras Act, it was *held* that the construction, the section operates only when the roofs, &c, are constructed outside the house, *i.e.*, externally, was erroneous.

For penalty see 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, 1882*; *Empress* v. *The Calcutta Corporation*, I. 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 —*Howrah Municipality* v. *Montani Bewah*, 24 W. R. 70 C R.

Notice of erecting a house not being a hut

237. (1) Every person who intends to erect or re-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 intends to make in respect of drainage and latrine accommodation, 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 directions which

the Commissioners may deem fit to issue in accordance with the rules, if any, made under section 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, 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 character, 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. 68 of Beng Act IV of 1894 for the old secs. 237 to 241.

Notes.

Erect or re-erect.—See secs. 238 and 240 and notes thereunder.

House and Hut.—See sec. 6, cl. (4) and notes thereunder.

House not being a hut.—A detached wall does not come under the category of. *Corporation of Calcutta* v. *Jogeswar Laha*, 8 C. W. N. 487. See also the elaborate judgment in the case of *Corporation of Calcutta* v. *Benay Krisna Bose*, 7 Ind. Cas. 890, 12 C. L. J. 476.

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.

Subject to written directions.—Cf. *Tribhovan* v. *Ahmedabad Municipality*, (I. L. R. 27 Bom. 221) where a bye-law, regulating construction of projecting balconies over private streets was upheld as legal as not being contradictory to general law.

Railway buildings.—In paragraph 14 of Government of India, Public Works Department letter No. 20R.—T., dated 7th January, 1901, which was circulated under Public Works Department endorsement No. 21R.—T. of same date, it was stated that the Government Buildings Act. 1899 (IV of 1899), applied to Railways, and that when Railways proposed to undertake any works on their land they should give, due notice thereof to the municipality within whose jurisdiction the land lay, so as to give them the opportunity, with the permission of the Local Government previously obtained and subject to any restrictions or conditions which might, by general or special order, be imposed by the Local Government, to inspect the land, plans and buildings proposed to be erected inside the railway boundary within municipal limits and submit objections or suggestions.

2. The Government of India are now advised that in view of section 7 of the Indian Railways Act, 1890 (IX of 1890), the Government Buildings Act, 1899 (IV of 1899), has no application to Railways. In these circumstances, I am to request that paragraph 14 of the Government of India letter No. 20R.—T., of 7th January 1901, may be considered as cancelled.

3. I am however, to add that it will usually be expedient to give municipal authorities reasonable notice of any works which it is proposed to undertake on railway land within municipal limits. Water supply, drainage, etc., have to be arranged for in most cases, and Railway administrations would run the risk of a good deal of inconvenience if they always insisted on their strict legal rights. I am accordingly to say that the Go-

vernment of India desire that reasonable notice may always be given to municipalities of all works which it is proposed to construct within municipal limits.—*India Govt. Cir. No.* 4170, *May* 26, 1906.

Government buildings.—The powers of municipal authorities to interfere with the erection, and re-erection of Government buildings have been defined by the Government Buildings Act (India Act IV of 1899), the material portions of which are as follows :—

3. Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any public purpose which is the property, or in the occupation, of the Government, or which is to be erected on land which is the property, or in the occupation, of the Government :

Provided that, where the erection, re-erection, construction or material structural alteration of any such building as aforesaid (not being a building connected with Imperial defence, or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret) is contemplated, reasonable notice of the proposed work shall be given to the municipal authority before it is commenced.

4 (1) In the case of any such building as is mentioned in the last preceding section (not being a building connected with Imperial defence or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret), the municipal authority, or any person authorized by it in this behalf, may, with the permission of Local Government previously obtained, but not otherwise, and subject to any restriction or condition which may, by general or special order, be imposed by the Local Government, inspect the land and building and all plans connected with its erection, re-erection, construction or material structural alteration, as the case may

be, and may submit to the Local Government a statement in writing of any objections or suggestions which such municipal authority may deem fit to make with reference to such erection, re-erection or material structural alteration.

(2) Every objection submitted as aforesaid shall be considered by the Local Government, which shall, after such investigation (if any) as it shall think advisable, pass orders thereon, and the building referred to therein shall be erected, re-erected, constructed or altered as the case may be, in accordance with such orders:

Provided that, if the Local Government overrules or disregards any such objection or suggestion as aforesaid, it shall give its reasons for so doing in writing.

(3) Every order passed by the Local Government under this section shall be subject to revision by the Governor-General in Council, but not otherwise, and the decision of the Governor-General in Council thereon shall be final.

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

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.

(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 Cal. 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 case of *Emperor* v. *Mathura Prosad* (I. L. R. 29 Cal. 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 Hight 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 Govt. Circular, App.

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.—*Bhabani 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. Sub-section (4) section 92 of the Punjab Municipal Act (India Act XX of 1891) substantially follows the wording of sub-section (1) of this section; but there the expression "*within a reasonable time*," is used instead of the fixed period of "*fifteen days*."

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 no preclude him from raising objection at the trial.—*Sewnandan 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. Act 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.—*Tullaram* v. *The Corporation of Calcutta*, I. L. R. 30 Cal. 317.

Sanction available for one year only.

239. Every sanction for the erection or re-erection of any house, not being a hut, which 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.

In *Mahamad Yasin* v. *The Municipal Committee, Lahore*, (9 P. R. 1905, P. L. R. 1905) decided under sub-sec. (6) sec. 92 of the Punjab Municipal Act (India Act XX of 1891), which is an exact counterpart of this section, a party, erecting a building under a sanction more than one year old was prevented from going on with the building. He, thereupon, instituted a suit for injunction to restrain the municipality from interfering with the building. It was *held* by the Chief Court that the sanction had abated and the plaintiff was not entitled to build.

Where a person obtains, from a municipal committee, the necessary sanction for building under section 92 of the (Punjab Municipalities) Act, the sanction does not make it obligatory on him to complete the building within a year of his obtaining sanction nor even to have commenced each separate part of the building within that time. He is bound only to commence some portion of the building within the period of one year from the date of sanction, and there cannot be any rule or provision of

law requiring that the building must be completed within any partibular, or a reasonable time, *Banwari Lal* v. *King-Emperor*, 61 P. R. 1905 (cr.), 41 P. L. R. 1906, 3 Cr. L J. 344.

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 *Rev. H. Uffmann* (*unreported*), *Bengalee, June 27, 1900. Cf. Kamta Nath* v. *The Municipal Board of Allahabad*, I. L. R. 28 All. 199, *Emperor* v. *Nanabhoy*, 9 B. L. R 932, 6 Cr. L. J. 236 and *Basant Ram* v. *King Emperor*, (13 P. R. 1907 (cr.), 6 Cr. L. J. 342) *re* :erection of a partition wall affecting the interests of the public.

See also notes under sec. 238.

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 scavengering, 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.

See Emperor v. *Rustomji* (9 Bom. L. R 363, 5 Cr. L J. 338) in which it has been held that provisions such as these are intended in the interests of public health, and the Court ought to so construe them as to advance that object, and that it is not permissible to create a *casus omissus* by interpretation save in some case of strong necessity. *Cf.* In re *Ali Mahomed*, 9 Bom L. R. 737, Cr. L. J. 80.

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

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

Sub.sec. (4).—The provisions of this section are suitable only to large municipalities which include many masonry buildings. The provisions of this section are therefore expressly exempted from the operation of the general rule.—*See Govt. cir. No. 34 M. d., 27-8-1894, para 30.*

Commissioners may prohibit letting of unstable or ill-drained house

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 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-section (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.

Notes.

No such order shall be liable to be called in question otherwise than by such appeal.—The language of section 147 sub-section (1) of the Burma Municipal Act (Burma Act III of 1902) is exactly the same. The following ruling of the Burma Chief Court on this point is therefore of importance:—"That the words should not be interpreted as preventing an accused person from challenging an order as *ultra vires* by way of defence to a criminal charge, that the portion of the order prohibiting the use of the house until such time as the municipal committee is satisfied that it is fit for human habitation is *ultra vires*, that section 130 (here section 242) does not make the committee the judge of the question whether the house has been made fit for habitation and that it is a question of fact to be decided by the

Magistrate, if the committee see fit to prosecute."—*Bratto* v. *Rangoon Municipal Committee*, 4 L. B. R. 144, 7 Cr. L. J. 441.

But *Cf. Abdus Samad* v. *Chairman, Murat* (I. L. R. 36 All. 329), in which it has been held under the sister section of the U. P. Municipalities Act, that if an "order of refusal is made and the applicant feels himself aggrieved at what the Municipal Board has done, an appeal is provided by the section, which further provides that save by such appeal the order shall not be liable to be called in question. It is quite clear, therefore, that his remedy was by way of an appeal, and he is not entitled to maintain a suit for injunction to restrain the board from interfering with his building."

Sub-sec. (1) cl. (b).—See *Chhote* v. *Municipal Board of Lucknow* (9 O. C. 29, 3 Cr. L. J. 205) in which it was held under the similar provision of the N. W. P. and Oudh Municipalities Act that an accused person is not prohibited from challenging the validity of the notice where the Boards' order was wholly *ultra vires*. See also *Emperor* v. *Piari Lal*, I. L. R. 36 All. 185.

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

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

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.

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.* Crl. Appl. No. 1507 of 1902 (unreported). This unreported case was followed in the case of *Chairman, Howrah* v *Golapi.* (10 C. L. J. 16) where it was held that this section forbade the erection of huts without a month's notice to the Commissioners and if any one erected a hut without such notice, he was liable to punishment under the first portion of section 267.

Hut—as to the meaning of, see sec. 6, cl. (4)

For penalty for infringement see sec. 267 and notes thereunder.

Power to direct removal of huts built without notice.

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 and for execution of the works see sec. 180 and notes.

Instead of prosecuting a party, who has built a hut without notice, under the first portion of section 267, the Commissioners, may, if they like, take action under this section, but they are not bound to do so. But if they do, and the party fails to comply with their requisition, the punishment provided for in the second portion of section 267 will apply, *Chairman, Howrah* v. *Golapi*, 10 C. L. J. 16.

Of Sanitary Measures with regard to Blocks of Huts.

Power of commissioners as to inspection 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 scavengering, 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 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.

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

Blocks of Huts and Bustee.—Sections 245 to 248 of the Bengal Municipal Act III of 1884 B.C. have the same object as

sections 400 to 419 of the Calcutta Municipal Act III of 1899, *viz.*, the improvement of *Bustees*. A Bustee is defined in the latter Act but not in the former. Nevertheless, I think "Blocks of huts" in the heading may be taken to mean what is ordinarily called *Bustee*, *i.e.*, an area containing land mainly occupied by or for the purposes of any collection of huts. It will be noticed that whereas the Calcutta Municipal Act lays down a *minimum* (though not the *maximum*) area which can be treated as a *Bustee* for the purposes of that Act, there is no such limitation on the ordinary use of the word *Bustee*, and in my opinion no such limitation *as to area* can be imported into the Bengal Municipal Act. Nor does such an area cease to be a *Bustee* because some portion of the area is occupied by buildings. All land in a Bustee need not be bustee land. Compare the definition of *bustee land* in the Calcutta Municipal Act. In the light of the above, the huts or rows of huts, though they are not all structurally connected, but are separated by tanks, *dobas* and even buildings, may properly be called a bustee or "blocks of huts" in the ordinary acceptation of those words—if the whole of that area can be correctly said to be an area containing land mainly occupied by or for the purposes of any collection of huts.

The Bengal General Clauses Act, Section 14, provides that words in the singular shall include the plural, and *vice versa*. The words "any block of huts" in Section 245 mean therefore "any block or blocks of huts". Separate huts or separate conglomerations of huts collected together in an area, though not structurally connected, are therefore included in the words "any block of huts".

The Municipal Commissioners have, in my opinion, authority to deal with several such areas of huts in one scheme and by one resolution—even if some of them are separated by masonry buildings, tanks and open lands—if (*a*) they are duly satisfied that those blocks of huts are for the reasons laid down in section 245 attended with risk of disease to the inhabitants of the locality comprised in those areas and (*b*) the report of the two Medical Officers appointed under the section justifies action being

taken under section 245 with regard to the whole of such area.—*Opinion of Sir S. P. Sinha, Advocate-General, given to the Howrah Municipality on the 2nd April 1916.*

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 Maliah*, I. L. R. 26 Cal. 811, 3 C. W. N. 508.

Statutory powers vested in a public body for the furtherance of the interests of sanitation and public health ought to be construed liberally and not in a narrow sense by the courts.

Section not applicable to masonry structure.—The Howrah Municipality referred the question of *Bustee* 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 Commissioners of the Burdwan Division expressed its views as follows:—

"The ruling of the Judge of Hoogly that the provision 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 *ullra 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 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.

[See the case of *Abinash Chandra* v. *The Corporation*, (12 C. W. N. 72) deciding a question of this nature.]

The question about huts referred to in paragraph 8 of Mr. Carstair's 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 hard-ship of making poor hut-owners remove their huts wthout 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 Ghose* v. *Duke*, Spl Appl. No. 1105 of 1900, (unreported).

Drains—in this section include *pucca* drains. The commissioners may therefore require the construction of pucca drains.—*Opinion of the Legal Remembrancer, Hon'ble Mr. E. P. Chapman (Letter No. 1929—25th August 1911 to Commissioner, Burdwan Division.)*

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

246. On receipt of the said report, the Commissioners 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.

Also compare *Ratnendra Lal Mitra* v. *Corporation of Calcutta* I. L. R. 41 Cal. 104, 17 C. W. N. 1084.

It was held in a case under the Calcutta Municipal Act (Beng. Act III of 1899), that direction given in a notice under sec. 408 of the Act to the owners of property, during the pendency of litigation in respect of that property, could not be said to be lawfully given, if it was not open to the owners at that time either individually or collectively to alter the property by carrying out the improvements mentioned in the notice, *Poorna Chand Baral* v. *Corporation of Calcutta*, I. L. R. 33 Cal. 699.