

other animals for the period in respect of which the amount is received.

Such license shall be for the current half-year, and no longer.

Account Rules 55—57 refer to license forms.

*136. (127) Whenever the owner of any carriage, horse, Carriage, &c., liable to tax although the owner be absent. or other animal liable to pay the said tax is not resident within the limits of the Municipality to the Commissioners of which the tax is due, the person in whose immediate possession the carriage, horse, or other animal is for the time being kept shall take out a license for the same.

137. (128) Whoever keeps, or is in possession of, any carriage, horse, or other animal, without the license required by any of the three last preceding sections, shall be liable to a fine not exceeding three times the amount payable by him in respect of such license, exclusive of the amount so payable.

This section is practically unaltered.

138. (129) The Commissioners, at their discretion, may compound with livery stable-keepers. compound, for any period not exceeding one year, with livery stable-keepers and other persons keeping carriages or animals for hire, for a certain sum to be paid for the carriages or animals so kept by such person, in lieu of the tax at the rates specified in any order made by the Commissioners under sections one hundred and thirty-one and one hundred and thirty-two.

The numbers of the sections referred to are, of course, different, but otherwise no change has been made.

*139. (130) The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom, during the then current half-year, a license has been given, and of the carriages, horses, and other animals in respect of which they have paid the tax.

The form of register is prescribed by Rule 54 of the Account Rules.

*140. (131) The Commissioners, or any person authorized by them in that behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach-house, or any place wherein they may have reason to believe that there is any carriage, horse, or other animal liable to the tax, for which a license has not been duly taken out.

And the Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses, and other animals in respect of which such person is liable to be taxed.

141. (132) On proof being given to the satisfaction of the Commissioners that a carriage, horse, or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the Municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse, or other animal has not been kept or used in the Municipality bears to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such use of such carriage, horse, or other animal ceased, and, except for special cause shewn, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

The words "except for special cause shewn" are new: otherwise, the section is unaltered.

"*Has ceased to be kept or to be used.*" This must be read with section 131, and the meaning becomes obvious. The word "kept" refers to carriages, horses, &c., kept *within* the Municipality; and the word "used" to those kept *outside*. If the carriage, horse, &c., kept outside the Municipality ceases to be used inside, a refund may be claimed. If kept inside, no refund can be claimed, whether it is used or not. See note to section 131.

"*Within one month of the time when such use, &c.*" The word "use" here is probably meant to include keeping, and to have, therefore, a more general signification than in the former part of the section. For, it would appear to be just as necessary, that notice should be given of carriages, &c., having ceased to be kept within the Municipality as of

their having ceased to be *used* within it, and it is not probable, therefore, that any distinction is intended to be drawn between the two cases in this respect.

Of the Registration of Carts.

142. (133) The Commissioners at a meeting may make Registration and publish an order that every cart, number of carts. which is kept or habitually used within, or which is let for hire within or without the Municipality and habitually used within it, shall be registered by the Commissioners with the name and residence of the owner; and shall bear the number of registration in such manner as the said Commissioners shall direct:

Provided always, that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

This section shall not apply to—

(a) carts which are the property of the Government, or of the Commissioners;

(b) carts which are kept without the limits of the Municipality, and are only temporarily and casually used within such limits;

(c) Howrah or the Suburbs of Calcutta.

The second paragraph is new: otherwise, the section is practically unchanged. Some difficulty has been met with in construing this section from the fact, that the terms "habitually," "casually," and "temporarily" are all somewhat vague. Habitually means, according to Webster, "by habit, customarily, by frequent habit or use;" Casually means, "accidentally, fortuitously, without design, by chance;" Temporarily means, "for a time only, not perpetually."

The most reasonable interpretation to put upon the section would be to consider the word "habitually" as meaning "customarily," or "generally." If the cart is *generally* used within the Municipality, it would be liable to be registered; if *generally* used outside, it would not be so liable. There can be no doubt whatever that the practice which prevails in some Municipalities of exacting registration-fees from carts, which only come within the Municipality two or three times a week, is absolutely illegal. It has been reported by the Chairman of one Municipality that some officers have considered that a cart can be said to have been habitually used in a Municipality if it has been used twice a week. Such a view is obviously incorrect. It is to be feared that this section is sometimes misused.

*143. (134) The registration of carts under the last preceding section shall be made, and the numbers assigned yearly or half-yearly, upon such days as the Commissioners shall notify; and such fee as they shall, from time to time, fix and notify

not exceeding four rupees if the registration has effect for, a year, and not exceeding two rupees if the registration has effect for half a year, shall be paid for each registration.

Rules 58, 59, 60, and 62 of the Account Rules relate to fees for the registration of carts.

*144. (135) Any person becoming possessed of any cart which has not been registered for the then current period of registration, shall register the same within one month from the date on which he may have become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as shall bear the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person may have become possessed as aforesaid.

*145. (136) When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such last-mentioned registration.

146. (137) Whoever keeps, or is in possession of, a cart not duly registered as required by any of the three last preceding sections, shall be liable to a fine not exceeding three times the amount payable by him in respect of such registration, exclusive of the amount so payable; and whoever, being the owner or driver of any cart, shall fail to affix thereto the registration number as required by section one hundred and forty-two, shall be liable to a fine not exceeding five rupees.

Unaltered, save as regards the number of the section referred to.

147. (138) If any person owns or keeps any cart hereinbefore required to be registered without having caused the same to be registered, the Commissioners, or any person authorized by them in that behalf, may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods), together with the animals drawing the same; and

all police officers are required, on the application of the Commissioners or of any servant of the Commissioners duly authorized in that behalf, to assist in the said seizure.

After such seizure, the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell such vehicle and animals by auction at such place as they may state in the notice; and if any registration-fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

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:

Provided that if, at any time before the sale is concluded, the person whose cart has been seized shall tender to the Commissioners, or to the person authorized by them to sell the cart, the amount of all the expenses incurred, and the registration-fee payable by him, the Commissioners shall forthwith release the cart so seized.

Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any cart which has been seized under this section may be sold for the realization of any such fine.

Only the third clause of this section has been altered. Under the former section the surplus sale-proceeds were to be returned, if a demand was made within twelve months, and after that period were to be credited to the Municipal Fund. Under the present section they may be refunded at any time, subject to the ordinary law of limitation.

Of Tolls on Ferries.

148. (139) Existing public ferries. The Local Government may, with the consent of the Commissioners, make over to the Commissioners any existing public ferry within, or adjacent to, the limits of the Municipality, to be administered by them until the Local Government shall otherwise direct.

Every ferry, while so administered, shall be deemed to be a Municipal ferry, and the profits derivable therefrom

or such part of the profits as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

In the former section "such part of the profits as the Lieutenant-Governor shall order."

By section 4, of the Bengal Ferries Act, 1885, none of the provisions of that Act shall apply to any ferry deemed, or declared, to be a Municipal Ferry.

149. (140) The Commissioners may also, with the sanction of the Local Government, declare that any other ferry within, or adjacent to, the limits of the Municipality is a Municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the Municipal Fund :

Provided that due compensation shall be made by the Commissioners to any person for the loss which he may have sustained in consequence of such ferry being declared to be a Municipal ferry.

The amount of compensation due in such cases shall be ascertained and awarded by the Magistrate under the provisions of section four of Bengal Act I of 1866 (*to amend certain provisions of Regulation VI of 1819*), or any similar law for the time being in force.

Bengal Act I of 1866 was repealed by Bengal Act I of 1885. Section 17 of that Act is as follows :—

“17. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of, or a new public ferry or subsidiary ferry being established under section six or section eleven, shall be inquired into by the Magistrate of the District in which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear justly entitled thereto. Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profit.”

*150. (141) Every Municipal ferry shall be maintained by the Commissioners, and they shall do all things necessary to provide for the safety and convenience of travellers, and the safety of property to be conveyed on such ferry.

151. (142) When it has been determined to impose tolls on Municipal ferries, the Commissioners at a meeting shall make and publish an order specifying the ferries, and, with the sanction of the Commissioner of the Division, the rates at which such tolls shall be levied.

Such rates may from time to time be varied with the like sanction.

"Commissioner of the Division" substituted for "Lieutenant-Governor."

*152. (143) No person shall be liable to pay any toll for crossing any river or stream at or near a Municipal ferry, unless he avails himself of the means provided by the Commissioners for crossing such river or stream.

When person crossing river not liable to toll.

153. (144) Every lease of a ferry given by the Commissioners as hereinafter provided shall be liable to be cancelled at once, if it shall appear to the Commissioners at a meeting that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice, in writing, from the Commissioners.

On the cancelment of a lease, the Commissioners may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until they can make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances:

Provided that within a week of taking such possession, the Commissioners shall be bound to give notice to the said lessee of their intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

The only alteration is a verbal one at the end of the third para.

*154. (145) Any collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a Municipal ferry until the proper toll has been paid, and may require any person

Toll must be prepaid.

who refuses to pay the toll to leave the boat and to remove his goods from it.

Any person who refuses to leave a Municipal ferry-boat or to remove his goods therefrom when required to do so under this section,

Penalty.

shall be liable to a fine not exceeding ten rupees.

*155. (146) No person shall keep a ferry-boat for the purpose of plying for hire within a distance of two miles above or below any Municipal ferry without the previous sanction

of the Commissioners, if he plies within the limits of the Municipality,

of the Magistrate of the District, if without such limits, or of the Magistrate of the District and the Commissioners, if one of the two banks between which he plies is within, and the other bank is without, such limits.

This section shall not apply to any private ferry which may be in existence at the commencement of this Act.

A boatman or fisherman who, while employed in his ordinary avocations, consented to cross a passenger over a river, and received a gratuity for doing so, could not reasonably be held to have committed the offence contemplated by this and the following section. For the offence consists in *keeping a ferry-boat for the purpose of plying for hire*, and not in the casual and unpremeditated ferrying over of a passenger.

*156. (147) Whoever keeps a ferry-boat contrary to the provisions of the last preceding section, shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

Penalty.

"A further fine." A very common misapprehension with regard to sections which provide for daily fines is, that a Court has the power to pass a sentence directing that, in addition to any fine or other punishment then inflicted, the accused shall pay a daily fine as long as he perseveres in the offence. Such a sentence is, however, absolutely bad in law, and obviously so, as it inflicts a penalty for an offence before it is committed. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. *In re W. N. Loco*, 9 B. L. R., App., 35; 6 Cr. R., 25 W. R.; 31 Cr. R., 21 W. R.; and several other cases in the Weekly Reporter.

Of Tolls on Bridges and Roads.

157. (148) The Local Government may, with the consent of the Commissioners at a meeting, make over to the Commissioners any

Existing toll-bars.

existing toll-bar within the limits of the Municipality, to be administered by them until the Local Government shall otherwise direct; every toll-bar while so administered shall be deemed to be a Municipal toll-bar, and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

The words "at a meeting" are new. In the former section "such part thereof as the Lieutenant-Governor shall direct."

158. (149) The Commissioners at a meeting, with the Commissioners may sanction of the Local Government, establish toll-bar. may establish a toll-bar and levy tolls on any bridge or metalled road which they may have constructed after the commencement of this Act, or at any place within the Municipality adjacent to such bridge or metalled road at which tolls may conveniently be levied on vehicles and animals passing over such bridge or road; and the profits derivable therefrom shall be carried to the credit of the Municipal Fund:

Provided that no such toll-bar shall be established, or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge or road, and in maintaining such bridge or road in repair for the five years next after the construction thereof, together with interest on such expenses as hereinafter provided.

"Local Government," as usual, has been substituted for "Lieutenant-Governor;" otherwise the section is unaltered.

The continued levy of tolls at toll-bars established before the coming into force of the Act, appears to be legalized by section 2. See note to that section.

*159. (150) Whenever a toll-bar shall have been established and tolls shall be levied, as provided in the last preceding section, the Commissioners shall, at the end of each year, publish, by causing it to be posted up at their office, an abstract account shewing—

(1) the amount of expenses incurred in the construction of such bridge or road, and in the maintenance of the same;

(2) the amount of interest which has accrued thereon, at the annual rate of six per centum; and

(3) the amount which has been received from the profits of the said toll-bars since its establishment.

And as soon as such expenses and interest shall have been recovered as aforesaid, such toll-bars shall be removed, and tolls shall no longer be levied on such bridge or road.

160. (151) When it has been determined that tolls shall be levied on any such bridge or road, the Commissioners at a meeting shall make and publish an order with the sanction of the Commissioner of the Division, specifying the rates at which such tolls shall be levied.

Such rates may, from time to time, be varied with the like sanction.

"Commissioner of the Division" has been substituted for "Lieutenant-Governor."

* 161. (152) Any collector or lessee of tolls may refuse to allow any person to pass through any Municipal toll-bar until the proper toll has been paid.

* 162. (153) Whoever having driven any vehicle or animal (not exempted from toll) through a toll-gate, refuses to pay the toll, or, with intent to evade payment of the toll, fraudulently avoids passing through such toll-gate, shall be liable to a fine not exceeding fifty rupees.

163. (154) If the toll due on any vehicle or animal is not paid on demand, the person authorized to collect the same may seize such vehicle or animal, or any part of its burden of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners.

After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice; and if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property

seized for discharge of the toll and of all expenses occasioned by such non-payment, seizure, custody and sale.

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.

Provided that if, at any time before the sale has been concluded, the person whose property has been seized shall tender to the Commissioners, or to the officer appointed by them, to sell the property, the amount of all the expenses incurred and of the toll payable, the Commissioners shall forthwith release the property seized.

Notwithstanding anything contained in this section, the surplus of the sale-proceeds of any property seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any property which has been seized under this section may be sold for the realization of any such fine.

The third para formerly ran "any balance that may remain out of the proceeds of the sale shall be returned on demand, if made within twelve months, to the owner of the property, and if unclaimed after such period shall be credited to the Municipal Fund;" otherwise the section is unaltered.

The provision for refunds in question is now only subject to the ordinary law of limitation.

Of General Provisions relating to Tolls on Ferries and Roads.

* 164. (155) The Commissioners may grant a lease of Lease of ferry or any Municipal ferry or toll-bar for any period not exceeding three years.
toll-bar.

* 165. (156) A table of tolls legibly written in the Table of tolls to be vernacular of the district shall be hung up.
hung up

in some conspicuous position at each end of every Municipal ferry;

and in some conspicuous position near every Municipal toll-bar, so as to be easily read by all persons required to pay the toll.

* 166. (157) Whoever, being a toll-collector or lessee of a Municipal ferry or toll-bar, neglects to hang up a table of tolls as required by the last preceding section, shall be liable to a fine not
Penalty.

exceeding fifty rupees, and to a further fine, not exceeding ten rupees, for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

"A further fine." An order of a Court imposing a daily fine for such future time as an offence may be continued is null and void. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. For other references, see note to section 156.

*167. (158) The Commissioners, or the lessee of any Municipal ferry or toll-bar, may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the ordinary toll payable.

*168. (159) No tolls shall be paid for the passage of troops on the march, or of animals or vehicles employed in the transport of such troops;

or of military or Government stores, or the persons in charge of them;

or of military or police officers, or of any public or Municipal officer on duty, or of any person in their custody, or of any property belonging to them or in their custody, or of any vehicle or animal employed by such persons for the transport of such property;

or of conservancy carts or other vehicles or animals belonging to the Commissioners, or of the persons in charge of them;

or of any animals, whether belonging to Government or otherwise, which are attached to a regiment or a Military Department, and which pass through a toll-bar, provided that tolls shall be leviable for conveying such animals over a ferry.

And the Commissioners or their lessees shall not be bound to allow any person or thing not specified above to cross a ferry or to pass a toll-gate without payment of the prescribed toll.

But the Commissioners at a meeting may exempt any other class of persons or things from payment of the said toll: and in granting a lease of any ferry or toll-bar may stipulate that any Municipal servants and property and any other persons or things shall be allowed to pass without payment of the toll.

*169. (160) In all cases of resistance to the person authorized to collect tolls, police officers shall assist when required, and for that purpose shall have the same powers as they have in the exercise of their ordinary police duties.

*170. (161) Whoever, being authorized under this Act to collect tolls, demands or takes any higher tolls than the tolls authorized under this Act, shall be liable to a fine not exceeding fifty rupees, and in default of payment to one month's imprisonment.

The imprisonment must be simple. By section 67, Indian Penal Code, as amended by section 3, Act VIII of 1882, where an offence is punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple. The present offence is punishable with fine only, as imprisonment can only be awarded in default of payment. By section 4, Act V (B. C.) of 1867, the provisions of sections 63, 64, 65, 66, 67, 68, 69 and 70 of the Indian Penal Code apply to all fines imposed under any Act subsequently passed. Of these sections, sections 64 and 67 have been modified by Act VIII of 1882.

171. (162) If the Local Government has declared that the provisions of the Canals Act, 1864, or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a Municipality, it may, with the consent of the Commissioners, appoint the Commissioners to collect tolls in a navigable channel. or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a Municipality, it may, with the consent of the Commissioners, appoint the Commissioners to collect tolls, as provided in section eight of the said Act, until the Local Government shall otherwise direct; and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

In such case, the Commissioners shall exercise all the powers vested by such Act in the Collector.

"Or such part thereof as the Lieutenant-Governor may direct" in the former section.

Section 8 of the Canals Act [V (B. C.) of 1864] is as follows:—

"The Lieutenant-Governor of Bengal shall appoint such persons as he may think fit to collect tolls under this Act, and it shall be lawful for any person so appointed to farm out the collection of tolls to any other person with the sanction of the Government of Bengal, or to employ any other person in such collection. The person to whom the collection of tolls may be farmed out, or who may be employed in the collection of them, shall have power to collect, and be authorized to receive them in the like manner as any person appointed as aforesaid."

172. (163) The Local Government may, at any time, order that the Commissioners, or any persons authorized by them, shall cease to levy any tolls under the last preceding section, and may at any time withdraw such order.

The provision for the payment of reasonable compensation by the Commissioners to any farmer who had entered into a contract to collect tolls, and who might have suffered loss in consequence of an order passed under this section, has been omitted. Probably, it was considered to be unnecessary, as the right to compensation would be obvious.

PART V.

This Part corresponds with Part VI of the former Act.

MUNICIPAL REGULATIONS WHICH SHALL BE GENERALLY IN FORCE IN ALL MUNICIPALITIES.

General.

173. (177) The provisions of this Part shall be in force in every Municipality, unless otherwise direct.

174. (178) The Local Government may, at any time, make an order directing that all or any of the said provisions shall not be in force in any Municipality, or in any part thereof; and the provisions mentioned in such order shall cease to be in force in such Municipality, or part thereof, from the date specified in such order.

The Local Government may, at any time, cancel or modify any order made under this section.

"Local Government" has been substituted for "Lieutenant-Governor" in the corresponding section.

175. (179) Whenever it is provided in this Part or in Part VI that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers, of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a

notice to be served as provided in sections three hundred and fifty-six and three hundred and fifty-seven, on every owner or occupier who is required to execute such work or to do such thing; but, if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land, to execute such work or to do such thing within a specified time; and in such notification it shall not be necessary to name the owners or occupiers.

Every requisition as aforesaid shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition, or to prefer an objection against such requisition as provided in the next succeeding section, the Commissioners will enter upon the land and cause the required work to be executed, or the required thing to be done; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

*176. (180) 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.

Such an objection under Schedule II, No. 1 (a), Act VII of 1870, requires a one-anna stamp, as it relates to conservancy and improvement.

*177. (181) 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-Chair-

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

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

man 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.

*178. (182) The Chairman or Vice-Chairman, or the Chairman, &c., may make order after hearing objection. 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.

179. (182) If the person making such objection be orally. Order to be explained orally. sent 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 three hundred and fifty-six 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.

Practically unaltered.

*180. (184) 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 Power of Commissioners on failure of person to execute work.

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.

Provided the expenditure is reasonable and is proved to have been actually made by the Commissioners, a Civil Court will not interfere. Within reasonable limits the Municipality has discretion as to the manner in which the work should be carried out. The fact that the rates charged by the Municipality are higher than those which could be obtained by other persons will not of itself constitute a ground for interference on the part of a Civil Court.—*Jogesh Chunder Dutt, in re*, 285 C. R., 16 W. R., also unreported case quoted in note to section 209.

181. (185) Whenever any expenses incurred by the Commissioners may be apportioned among owners. 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.

“Such of the owners as are known” and “such of the occupiers as are known” have been substituted for “such owners” and “such occupiers” respectively.

182. (186) Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers. Apportionment among owners and occupiers. Owners and occupiers of any land, as provided in section one hundred and eighty, 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.

Practically unaltered.

183. (188) 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 requisition of the Commissioners, or are executed by 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.

Practically unaltered.

184. (189) 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 three hundred and sixty.

Practically unaltered. The manner provided in section 360 is "the manner provided in sections 120 to 129, both inclusive," that is to say, by the presentation, in the first instance, of a bill, to be followed, if necessary, by a notice of demand in the form marked (A) in the fourth Schedule, and finally by distress and sale of moveable property. Section 129 affords the alternative remedy of bringing a suit in a Civil Court.

185. (190) Where any damages or compensation, other than compensation payable under section thirty-five, 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.

Section 35 refers to compensation for land taken up under the Land Acquisition Act.

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

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

Establishments for removal of sewage. offensive matter, and rubbish.

“Sewage” in this section is new, and is defined to mean “nightsoil and other contents of privies, drains, and cesspools:” section 6, clause (17).

“Offensive matter” means dirt, dung, putrid or putrifying substances, and filth of any kind not included in the term “sewage:” section 6, clause (10).

“Rubbish” means broken brick, mortar, broken glass, kitchen or stable refuse, or refuse of any kind whatsoever not included in the term “offensive matter.”

187. (194) The Commissioners at a meeting may, from time to time, by an order published and prescribed in section three hundred and fifty-four, appoint the hours within which it shall be lawful to remove 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.

Hours and mode of removal of offensive matter.

Practically unaltered.

188. (195) 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.

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

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.

189. (196) The Commissioners at a meeting may, from time to time, by an order published as prescribed in section three hundred and fifty-four, 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.

No change has been made in this section except in the number of the section referred to. The following extract will be useful:—

§ The Hon'ble Mr. Reynolds objected to the amendment. He thought there was some misapprehension of the object and force of the section. The three cases for which the section provided were separate—*First*, there was the ordinary case in which house rubbish was placed in a convenient part of the road, and then removed in the ordinary duty of sanitation; *then*, there was the proviso for charging fees for the removal of trade rubbish; the *third* case was that in which rubbish was removed for the convenience of occupiers, not from the road, but from private premises. The word 'consent' did not apply to the charging of fees, but to the removal of the rubbish."

"The Hon'ble Mr. Dampier asked if the meaning was that the Commissioners and the owners of premises might enter into voluntary agreements for the removal of rubbish from the premises themselves, what was the use of stating in the law that they might do so?"

"The Hon'ble Advocate-General explained that the section empowered the Municipality to enter into this particular kind of contract."—*P. C., February 22, 1884.*

Non-compliance with an order issued under this section is punishable under section 216, clause (1).

"Rubbish" is defined in section 6, clause (14).

Drains, privies, &c., under control of Commissioners. 190. (199) All drains, privies and cesspools shall be subject to the inspection and control of the Commissioners.

Practically unaltered.

*191. (200) The Commissioners, or any officer authorized by them in that behalf, may inspect all privies, drains and cesspools 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 cesspools 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 cesspools; and the expenses thereby incurred shall be paid by the owner or occupier of such premises.

192. Whenever the Commissioners are satisfied that the existence of such privy, drain or cesspool is attended with risk of disease to the inhabitants of the neighbourhood, they may direct the use of such disinfectants or deodorants for such drains, privies, &c., as are in a noxious state. Commissioners may direct the use of such disinfectants or deodorants as they shall specify in such privy, drain or cesspool, 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 cesspool; or the Commissioners may, if they think fit, order that such expense shall be paid from the Municipal Fund.

This section is entirely new, and obviously very useful.

*193. (201) 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.

194. (202) The Commissioners may license such necessities for public accommodation as they from time to time may think proper.

Licensing of public necessities.

The penal provision at the end of the former section has been omitted, but is included in section 217, clause (2). *Under section 202, the Commissioners had the power of withdrawing the license. By section 278 the Magistrate, before whom the licensee is convicted, has the power of suspending the license for two months, and on a subsequent conviction the Commissioners may cancel it altogether. It must be remembered, however, that section 278, being part of Part VI, is only in force in Municipalities to which it has been expressly extended.

195. (204) 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

Power to require owners to clear noxious vegetation and to improve bad drainage.

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 :

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.

The provisions of the section regarding inequalities of surface are new. Non-compliance with a requisition issued under this section is an offence punishable under section 219. In default of compliance, the Commissioners can carry out the work themselves under section 180, and recover the costs from the persons to whom the requisition was addressed.

In *Browne v. Umesh Chunder Roy*, 213 C. R., 7 W. R., it was held that if the Commissioners have cleared away jungle, upon default after notice on the part of the owner or occupier, they are entitled to recover the expenses. They were not bound to visit the spot personally or hear evidence in order to satisfy themselves, in the first instance, that the jungle should be removed. They were justified in acting on the reports of their subordinates.

The wording of the section is peculiar. If by reason of thick or *noxious* vegetation or jungle, the land appears to afford facilities for the commission of a nuisance, the Commissioners may require, etc. There are, therefore, two conditions precedent necessary for the interference of the Commissioners: (1) the land must be covered by thick or *noxious* vegetation, and (2) such vegetation must afford facilities for the commission of a nuisance. Now, if the vegetation is *noxious*, by which term *noxious* to health appears to be meant, it constitutes a nuisance without the other condition, and there seems to be no reason why the Commissioners should not have the power to order its removal. Under section 73 of Act III of 1864, they had such power without the second condition referred to.

196. (206) All sewage, rubbish, and offensive matter collected by the Commissioners from roads, privies, sewers, cesspools, 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.

“Sewage” is added, otherwise the section is unchanged. “Sewage” is defined in section 6, clause (11), to mean nightsoil and other contents of privies, drains, and cesspools. “Rubbish” means broken brick,

mortar, broken glass, kitchen or stable refuse, or refuse of any kind whatsoever not included in the term "offensive matter:" section 6, clause (14).

*197. (207) 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.

In a suit for alleged damage done to the plaintiff's premises by excavations for drainage purposes, which the Justices were authorized to make by Act VI of 1863 (B. C.), it being shewn that the Justices had entrusted the execution of the work to skilled and competent contractors — Held the Justices were not liable. *Ullman and others v. The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

Of Bathing and Washing Places and Tanks.

*198. (208) 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.

199. (209) The Commissioners may, by order published at such places as they may think fit, set apart convenient tanks, 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 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 similarly make such order as they think fit with the private portion of any stream or channel used as a part of the public water-supply.

Disobedience of an order issued under this section is punishable by section 217, clause (4).

The last clause is new, and must obviously not be construed too literally. It is probably intended to have reference to the first clause of the

section only, and not to the second and third. Otherwise it would apparently authorize an unjustifiable interference with private rights. If the private portion of the stream or channel supplied drinking water to the public, it would obviously be justifiable, on sanitary grounds, to protect it from pollution under the first clause. But to set it apart for the purpose of bathing, or for washing animals or clothes, might, under certain circumstances, be a serious interference with private rights which the law could not possibly contemplate. Possibly, it is intended that the consent of the owners should be obtained before any such action is taken.

200. (211) The Commissioners may require the owners or occupiers, or the owners and 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 waste or stagnant water which may appear to be injurious to health or offensive to the neighbourhood :

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

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.

The words "or such longer period as the Commissioners may fix" and "water-course" have been inserted.

Neglect to comply with a requisition issued under this section is an offence punishable under section 219. The Commissioners may also proceed under section 180, and carry out the work themselves, recovering the costs from the person to whom the requisition was addressed.

Where a Municipality cleared out and re-excavated a tank, after default on the part of an owner to comply with a notice to carry out such work. *Held*, that the Municipality had a discretion as to how the work should be carried out, and that even though the rates charged by the Municipality were higher than those which could be obtained by other persons, there was no ground for the interference of the High Court.—*Jogesh Chunder Dutt, in re*, 285 C. R., 16 W. R. A similar decision in an unreported case is given in the note to section 209.

Under the former section the requisition had to be made at a meeting.

Of Obstructions and Encroachments on Roads.

201. (213) 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.

Power to close a road or part of a road for repairs, or 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 constructions, 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.

The second para. is new ; the remainder of the section being the same as before.

It will be observed that the section merely empowers the Commissioners to *temporarily* close a road for certain specified purposes. It gives them no power to permanently close or divert a public road. Such an act was held by the High Court to be illegal, in *Empress on the prosecution of Jadunath Ghose v. Brojonath Dey*, I. L. R., 2 Cal., 425.

The facts of the case quoted were briefly as follows:—Within the Municipality of Serampore, there was a lane through which the public had a right of way, and which ran through the garden of the defendant. After some litigation, the defendant applied to the Municipal Commissioners for permission to close the lane on such conditions as might appear to them to be reasonable. The Vice-Chairman passed an order on the petition, granting permission for the closing of the lane “on condition that the applicant make at his own expense a road ten feet wide round the south and north-west side of his garden” so as to afford thorough communication.

In deciding that this order was one which neither the Vice-Chairman nor the Commissioners had power to make, Markby, J., remarked, that the general sections of the Act (III of 1864) which vested public highways in the Commissioners, and which empowered them to hold properties moveable and immoveable, and to dispose of the same, must be considered to be controlled by the specific provisions which define their powers over such properties. For, if the mere fact of property being vested in the Commissioners gave them full power of dealing with it according to their discretion, the sections which define their power over such property would be meaningless.

“Road” is defined in section 6, clause (13). From the definition there given, it is obvious that the present section does not apply to private roads over which there is no public right of way.

202. (215) The Commissioners may issue a notice requiring any person to remove any wall, structure or encroachment in or on road, 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.

A notice was issued under section 215, Bengal Act V of 1876, requiring A to remove an alleged obstruction. The requisition was not complied with, and A was prosecuted for non-compliance therewith under section 216 before a Bench of Honorary Magistrates. Held. that the Court had power to enquire whether the alleged obstruction was in point of fact an obstruction or not.—*Municipal Committee of Dacca v. Someer*, I. L. R., 9 Cal., 38

Non-compliance with a requisition issued under this section is an offence punishable under section 218.

The Magistrate acting under this section, and the Commissioners carrying out his orders, are protected by Act XVIII of 1850. See section 205 of the present Act.

Encroaching upon a road, drain, sewer or aqueduct is an offence punishable under section 217. clause (5).

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

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

The Magistrate acting under this section, and the Commissioners carrying out his orders, are, under section 205, protected by Act XVIII of 1850.

Under the corresponding section, the surplus sale-proceeds, if unclaimed, could be credited to the Fund after the lapse of one year.

204. (218) 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 to be removed.

Projections from houses erected in future which may have been so erected or placed after the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the Municipality; or in case none of the said 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, 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 the 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.

Non-compliance with a requisition issued under this section is punishable under section 218.

The Magistrate and the Commissioners are protected by section.

The question has been raised under the corresponding section of the Calcutta Act (B. C. Act IV of 1876), as to whether the Court

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down and re-building of an old projection could be held to be the erection of a new projection. On a reference to the Advocate-General it was held, that if the old projection had been taken down with the obvious object of re-building it, and another of the same dimensions put up without undue delay, it could not be considered to be a new projection.

An application to a Magistrate by a Municipal officer requires no stamp-duty—Act VII of 1870, section 19, clause xviii.

205. (220) Every order made by the Magistrate under sections two hundred and two, two hundred and three, two hundred and four, or two hundred and thirty-three 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*).

Act XVIII of 1850 contains only one section; the whole Act is given below:

"An Act for the protection of Judicial Officers."

"For the greater protection of Magistrates and others acting judicially, it is enacted as follows:

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

As "the Magistrate" is no longer an ex-officio Commissioner, this section appears now to be hardly necessary. If necessary, it is not clear why the same protection is not extended to "the Magistrate" when acting under section 345.

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

The former section "shall make reasonable compensation;" the words "if any damage shall be thereby sustained" are new. No penalty has been laid down for disobe-

dience to a requisition issued under this section. Failure to comply with a requisition issued under section 221 of the former Act was, under section 223, punishable with a daily fine of Rs. 10. The only course open to the Commissioners if they wish to enforce this section, is to enact a by-law prescribing a penalty for non-compliance with a requisition made under it.

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 encumbrance 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.

This is new. No penalty is laid down in the Act for non-compliance with a requisition under this section. The Commissioners could, under section 180, make the removal themselves, and recover the costs from the owner.

*208. (222) 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.

Non-compliance with the requisition is punishable under section 218.

Of General Conservancy and Improvement.

209. (224) 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.

"Within seven days" has been substituted for "forthwith."

Section 219 provides a penalty for the neglect of an order passed under this section, and section 180 empowers the Commissioners in the case of such neglect, to execute the work themselves, the expenses being paid by the owners or occupiers.

The Municipal Commissioners of Howrah enclosed a tank, alleged to be dangerous to passengers, under section 76, Act III of 1864, and sued the owner for the costs incurred, amounting to Rs. 117-10. The Court

of first instance awarded Rs. 5000 on the ground that the Commissioners had put up a very expensive enclosure. On appeal to the High Court, a decree was granted for the full amount claimed, on the ground that the Commissioners must be authorized to execute the necessary repairs or protection in a sufficient and durable manner, and that provided the expense they undergo is made out and does not exceed the bounds of reason, they are entitled to recover.—*Unreported case.*

210. (226) If any house, wall, structure, or anything 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 occupiers of the land to which such house, wall or structure is affixed, within seven days to cause such repairs to be made to such house, wall or structure as they may consider necessary for the public safety, or to remove such house, wall, structure or thing affixed thereto.

“Within seven days” has been substituted for “forthwith” in the latter part of the section.

“Ruinous” is defined in Webster’s Dictionary: “(1) Fallen to ruin; entirely decayed; demolished; as an edifice, bridge or wall in a ruinous state. (2) Destructive, baneful, etc. (3) Composed of ruins; consisting in ruins; as a ruinous heap.”

The word is apparently used here in the sense of “likely to fall.” and in no other, as if the house, wall or structure, had already fallen down, there would be no necessity for taking measures for the protection of passengers or for the public safety. This, as already shewn, is, however, not its most ordinary meaning.

“Dangerous” in this section means dangerous to the public or passers-by, and not to the occupier of the house merely. It does not give the Commissioners any power of interfering when the state of the house is dangerous only to the occupiers.—(L. R.)

That the above interpretation is correct is tolerably clear from the context. The Commissioners can only require such repairs to be made as are necessary for the public safety. Where only the safety of the occupier is concerned, it consequently does not appear that they have any power to interfere.

It does not appear that the section is intended to give the Commissioners any power of interfering in the case of ruins which have already fallen and which are therefore not dangerous. Its meaning, however, is not very clear.

Section 219 provides a penalty for neglect of an order issued under this section.

*211. (228) 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 Power to enter upon possession of houses so repaired.

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 general provisions at the commencement of Part V provide for the procedure to be adopted by the Commissioners in the event of their orders not being complied with, and authorize them to carry out repairs themselves, if necessary. See sections 175 to 180.

The following will explain the object with which this section has been framed:—

“ His Honor the President said, that there were many houses in mofussil towns which were simply tumbling down on account of disputes amongst the owners. In fact, there was hardly a town in which one or more such houses were not to be met. As the Bill stood, the Commissioners must pull such houses down, because they were dangerous to the passers-by, whereas according to the intention of the Hon'ble Mover, these houses might be repaired and taken possession of by the Commissioners. In neither case did the shareholders get them. But was it better that the houses should be repaired and taken possession of by the Commissioners until the repayment of the expenses incurred, or that the houses should be pulled down ?”—*P. C., March, 1876.*

212. (229) The materials of anything which shall have been pulled down or removed under the provisions of section two hundred and ten, 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 provision for refund of the surplus sale-proceeds is now subject to the ordinary law of limitation.

213. (230) 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.

The words “ or the Magistrate of the District or of the Division,” contained in the corresponding section, have been omitted. The payment of rewards for destroying the dogs is provided for by the next section. Stray dogs are evidently noxious animals.

Commissioners may offer rewards for destruction of noxious animals.

214. (231) The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of a Municipality.

In the corresponding section "wild animals." The word "animal" includes every living creature, though the suggestion that has been made by more than one Municipality that the word "snakes" should be added in this section, shews that this fact is occasionally lost sight of.

215. (232) 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.

The penal clause at the end of the corresponding section has been omitted, but is reproduced in section 216.

Penalties.

216. (236) 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 one hundred and eighty-nine; or
 (2) destroys, pulls down, defaces, or alters any name or number put up by the Commissioners under the authority of section two hundred and fifteen,
 shall, for every such offence, be liable to a penalty not exceeding twenty rupees.

217. (198) 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, nightsoil 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) (202) keeps any public necessary without a license from the Commissioners under section one hundred and ninety-four; or
 Keeping unlicensed public necessary.

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

(3) (203) being the owner or occupier of any private drain, privy or cesspool, 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) (209 and 210) disobeys an order passed by the Commissioners under the provisions of section one hundred and ninety-nine; or

Disobeying order under section 199.

(5) (214) encroaches upon any road, drain, sewer, aqueduct, or watercourse, 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.

When the owner of certain land lived in another district, and was not proved to have suffered the land to be in a filthy state, and the Municipal Commissioners fined his Mukhtiar under section 67, Act III of 1864—*Held*, that the discretion which that section gave of proceeding against either the owner or the occupier had not been properly exercised. Proceedings quashed. *The Queen v. Dwarkanath Hazra (petitioner)*, 8 B. L. R., App., 9; 70 Cr. R., 16 W. R.

Generally, when there is an occupier, he, and not the owner, should be proceeded against for not keeping the land, etc., in a proper state.—See 45 Cr. R., 8 W. R.

218. (215, 218, & 222) 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 two hundred and two, two hundred and four, or two hundred and eight, shall be liable, for every such default, to a penalty not exceeding fifty rupees, and to a further penalty, not exceeding ten rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

The further penalty cannot be imposed with prospective effect. A sentence ordering an accused person to pay a daily fine as long as he shall persevere in committing an offence is absolutely bad in law. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41; *In re W. N. Love*, 9 B. L. R., App., 35; 6 Cr. R., 25 W. R.; 31 Cr. R., 21 W. R.

219. (204, 211, 224 & 226) 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 one hundred and ninety-five, two hundred, two hundred and nine, or two hundred and ten, 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.

“A further penalty.” See note to preceding section.

PART VI.

This Part corresponds with Part VII of the former Act.

OF SPECIAL REGULATIONS.

220. (233) No provision 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.

Circular No. 9T—M., dated 8th June 1886, of the Municipal Department, states that “the law officers of Government . . . hold that in a Municipality to which a particular part of the old Act was extended, the provisions of the corresponding part of the new Act must be held to be in force *in their entirety*, and that the mere fact of a particular part of Act III (B. C.) of 1884, containing some additional sections, or additions to sections, which do not occur in the corresponding part of the Act of 1876, does not necessitate the issue of fresh orders for putting in force the additional provisions in that Municipality When it is necessary, however, to introduce into a Municipality only a particular section of the new Act, which varies at all from the corresponding section of the old Act, or which may contain provisions not embodied in that Act, a fresh notification will always be issued on the subject.”

221. (234) 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 and order accordingly.

Government has been advised that there is no legal objection to extending part of section only to a Municipality. The term used in the above section is, it will be observed, "provision," and it is obvious that several provisions may be, and often are, included in the same section.—(L. R.)

222. (234) 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 three hundred and fifty-four.

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*.

Section 354 provides that orders, bye-laws, etc., shall be published by beat of drum and by copies being posted in public places, in addition to the copy to be affixed at the Commissioners' office as here provided.

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

Of Privies, Drains, and Excavations.

224. (235) The Commissioners may require owner or occupier to repair drain, &c. or occupiers, or the owners and occupiers of any land, within fifteen days to repair and make efficient any drain, privy or cesspool, or to remove any privy or close any cesspool which is situated on such land.

The words "or to remove any privy" are new. No penalty is laid down by the Act for non-compliance with a requisition under this section. It

is, of course, open to the Commissioners to enact a bye-law on the subject. Under section 180 they can execute the work themselves and recover the costs.

***225. (238)** 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.

Non-compliance with a requisition issued under this section is punishable under section 271. A breach of the rule laid down in the first part of the section is punishable under section 266. In default of obedience to the requisition, the Commissioners may carry out the work themselves under section 180 and recover the costs.

***226. (240)** 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.

***227. (242)** 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.

The Act does not contain any penal provision for default of compliance with a requisition issued under this section. Under section 180, however, the Commissioners, after such default, can execute the work themselves, and recover the costs from the owners or occupiers.

228. (243) 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.

Only verbal changes have been made in this section,

*229. (244) If any branch drain, privy or cesspool 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 cesspool, 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 cesspool 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 cesspool was improperly constructed, re-built or unstopped.

230. (246) No person shall, without the written permission of the Commissioners, construct or keep any latrine, urinal, cesspool, 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, cesspool, house-drain or other receptacle so situated exists, or may hereafter be constructed, to remove the same within eight days.

The offence described in the first portion of the section is punishable under section 270, clause (3). Neglect of a requisition made under the latter portion of the section is punishable under section 271.

In the former section "entitled to use." The word entitled has been omitted, as it imposed upon the Commissioners the *onus* of proving a right of *user*. The words "or watercourse" are new.

*231. (247) 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.

The offence described in the first part of the section is punishable under section 270, clause (3). Neglect of the requisition is punishable under section 271.

232. (249). 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 cesspools, tanks or pits without special permission previously obtained from them.

If any such excavation, cesspool, 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, cesspool, tank or pit is made, within two weeks, to fill up such excavation.

Breach of the prohibitory order is punishable under section 270, clause (4), and neglect of the requisition referred to in the latter part of the section, by section 271.

No suit will lie against the Commissioners for damage alleged to arise from a refusal to permit the excavation of a tank. *Bhyrub Chunder Banerjee v. Makgill*, 215 C. R., 17 W. R.

The power of prohibiting excavation for the purpose of taking out stone is new, and has been conferred with special reference to Darjeeling.

The last clause allows two weeks instead of eight days as in the corresponding section.

Of Obstructions and Encroachments on Roads.

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

Notice in writing shall be given to the owner or occupier of such house, requiring him to remove or alter the said

projection, encroachment or obstruction, or to show cause before the Commissioners why he should not be required so to do; and if such owner or occupier shall fail to comply with such requisition within thirty days of the receipt of the same, or if after such owner or occupier shall have shewn cause against being required to remove or alter the said projection, encroachment or obstruction, the Commissioners shall make an absolute order directing such removal or alteration; and if such owner or occupier shall fail to comply with such order within fifteen days of the date of the same, the Magistrate may, on the application of the Commissioners, order such projection, encroachment or obstruction to be removed or altered; and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction.

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

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

Practically no change has been made by this section.

An order made by the Magistrate under this section is made in the discharge of his judicial duty, and both he and the Commissioners are protected by Act XVIII of 1850. See section 205 of the present Act.

"The Magistrate" is defined in section 6, clause (8).

The ruling in *Hanumaya v. Roupell*, I. L. R., 8 Mad., 64, has an important bearing on this section. By section 139 of Madras Act III of 1871, the Commissioners are empowered to remove any obstruction or encroachment erected before the introduction of the Act, upon payment of compensation. Where certain projections were proved to have been in existence forty or fifty years at least—*Held*, that the *onus* lay upon the Commissioners to prove that the land upon which the *projections* had been built formed part of the road, and that they were not constituent parts of the houses. In the absence of such proof the action of the Commissioners in removing the projections was illegal.

234. (253) The Commissioners may grant permission to any person, for such period as they may think fit, to deposit any movable 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.

The words "for such period as they may think fit" are new. The acts referred to for which permission may be granted, must obviously be of a very temporary nature, and the words "for such period as they may think fit" must be understood in a very restricted sense.

The fact that such person undertakes to erect and light such fences does not relieve the Commissioners from the legal liability for any damages, which may result from his neglect to do so in an efficient manner.—*The Corporation of the Town of Calcutta (defendant) v. Anderson (plaintiff)*, I. L. R., 10 Cal., 445.

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

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.

A breach of this section is punishable under section 273, clause (1).

Of Building Regulations.

236. (256)* The Commissioners at a meeting may direct that, within certain limits to be fixed by them, the external roofs and walls of huts or other buildings which may be erected, or the roofs or walls of which may be renewed or repaired, shall not be made of grass, leaves, mats, or other inflammable materials.

The question has more than once arisen as to how an order duly passed under this section can be legally enforced. The Berhampore Municipality published an order under the corresponding section of the former Act, and one Tara Chand Matwar or Tara Chand Kowr, who had failed to comply with the order, was prosecuted and convicted under sec-

tion 188 of the Penal Code. The decision of the High Court in appeal is given in full below, the case being apparently an unreported one:—

In the High Court of Judicature at Fort William in Bengal, the 2nd June 1882.

Criminal Jurisdiction.

PRESENT :

The Hon'ble A. WILSON, }
The Hon'ble W. MACPHERSON, } Two of the Judges of the Court.

In the matter of Tara Charan Matwar or Tara Chand Kowr, Petitioner,
versus
The Crown *Opposite party.*

"This conviction must be set aside. Several points have been argued, but it is enough for the purpose of disposing of this matter to deal with one, and it is this: It appears to us clear that the case does not fall within section 188 of the Penal Code, the section under which the conviction has been made. That section says—'Whoever knowing that by an order, promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury to any persons lawfully employed, be punished' in the manner provided. In the present case, the Magistrate has found that the accused person has disobeyed an order lawfully promulgated, but there is no finding by the Magistrate, and we certainly cannot ourselves conclude that the disobedience caused, or tended to cause, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury to any persons lawfully employed. For that reason alone the conviction cannot stand, and must be set aside."

"We are not setting aside the conviction on any technical ground, for there is nothing to shew that the conviction would have been any better under any other section of any other Act than under this. If the Municipality wish to enforce their bye-laws, their proper course is to frame a scale of penalties under the Municipal Act, and obtain the necessary sanction."

It has been doubted whether an order passed under this section can be held to be an order promulgated by a public servant. Although a Municipal Commissioner is, under section 21 of the Indian Penal Code, a public servant, it has been held to be very doubtful whether the Commissioners in their corporate capacity constitute a public servant. In *Empress v. The Municipal Corporation of Calcutta*, I. L. R., 3 Cal., 758, WHITE, J., remarked: "I think it is open to much doubt whether the Corporation as distinct from its individual members, is a public servant at all, as these words are defined by the 21st section of the Indian Penal Code." *Smble.*, that this opinion has not been adopted in subsequent cases. Apparently the safest way of proceeding in the matter is by enacting a bye-law prescribing a penalty for the breach of an order passed under the section. This can be done under section 350.

In a more recent case decided on the 22nd August 1884—*In the matter of Kharak Chander Pal (petitioner) v. Tarak Chunder Grewja, Municipal Overseer (opposite party)*, I. L. R., 10 Cal., 1030—arising out of precisely similar circumstances, the decision of the Court makes no reference to either of the points above mentioned. The accused who had

disobeyed an order passed under section 256 of the former Act was acquitted on the sole ground that the Magistrate who tried the case was present as the Chairman of the Municipal Commissioners at the time the order was passed. Compare note to section 355.

It is not obvious why the section should empower the Commissioners to pass an order which has no effect, unless a bye-law is made to enforce it. Obviously the simpler method would have been to empower the Commissioners to pass a bye-law on the subject. This plan was adopted in Act III of 1864, section 63 of which provided, that "it shall be lawful for the Commissioners at a meeting, by a bye-law to be made in manner hereinafter provided, to direct that, &c." Section 207 of the Bill of 1872 was to the same effect.

The Howrah Municipal Commissioners made such a bye-law with regard to the corresponding section (section 63) of Act III of 1864 (B.C.) On a prosecution under this section the accused was acquitted, on the ground that only part of, and not the whole roof, had been renewed. The High Court held that the acquittal was wrong, and that to renew any portion of the roof with inflammable material was a breach of the bye-law in question.—70 Cr. R., 24 W. R.

237. Before beginning to build or rebuild any house,

Notice to be given to Commissioners by persons intending to build or rebuild any house, not being a hut.

not being a hut, the person intending to build or rebuild any such house shall give notice thereof in writing 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.

This section is new. Compare section 241.

A structure with *kutchu-pucca* walls must, probably, be considered not to be a hut. See note to section 245.

238. Within fourteen days after the receipt of the notice

Commissioners may refuse sanction to the building of a house not to be provided with drainage and latrine accommodation.

mentioned in the last preceding section, the Commissioners may refuse to sanction the building of the house, unless it be shewn to their satisfaction that proper provision is, or can be, made, for drainage and latrine accommodation within the holding or in the neighbourhood thereof.

This is also new. "We have introduced in Part VI two new sections giving special power to the Commissioners to refuse sanction to the erection of new houses, or to the occupation of new houses which are not certified to be properly drained. It has been represented to us that such regulations are urgently required in Darjeeling." *Rep. S. C.* The other section referred to is section 242.

Compare section 241.

239. (257) The Commissioners may also, if they see fit, call for a plan of the width of foundation walls and the level of the lowest floor.

Commissioners may within fourteen days after the receipt of the notice mentioned in section two hundred and thirty-seven, require the person giving such notice to submit to them a plan showing the width of the foundation walls and the level of the lowest floor of such house by reference to some level ascertained under the direction of the Commissioners, and the Commissioners may direct that such house shall not be begun to be built without their sanction.

Compare section 241.

240. (258 & 260) Within fourteen days after receiving the plan mentioned in the last preceding section, the Commissioners shall either signify their approval of the proposed levels and width of the foundation walls, or shall fix other levels and width of foundation walls in lieu thereof. If within fourteen days after receiving the plan as aforesaid, the Commissioners fail to signify their approval or disapproval of the levels and width of foundation walls shown in such plan, or to fix other levels and width of foundation walls, the person giving notice may, unless sanction has been refused under section two hundred and thirty-eight, proceed to build or rebuild the house in accordance with the levels and width of foundation walls shown in the plan:

On failure of Commissioners to signify approval or disapproval of the plan within fourteen days, the house may be built in the manner laid out in the plan.

Provided that the house be otherwise built or rebuilt in accordance with the provisions of this Act.

See next section.

Commissioners may cause house built without notice, &c., or contrary to provisions of Act, to be altered or demolished as they shall see fit.

241. (259) If any house is built, or begun to be built, without notice as required by section two hundred and thirty-seven;

or if such house is built, or begun to be built after refusal of and without sanction under section two hundred and thirty-eight;

or if, when a plan has been required under section two hundred and thirty-nine, the house is built or begun to be built

before such plan has been approved, or before the expiration of fourteen days after the submission of such plan ;

or if, after the Commissioners have directed that the house be not begun to be built without their sanction, the said house is built or begun to be built without such sanction ;

or if, when levels and width of foundation walls have been fixed by the Commissioners, the house is built or begun to be built in accordance with levels and foundation walls other than those fixed ;

or if the house is built, or begun to be built, in any other respect contrary to the provisions of this Act,

the Commissioners may cause such house to be altered or demolished as they shall see fit.

242. The Commissioners may prohibit the owner of any

New house to be approved before occupation. new house to let the same for occupation, until the drainage and latrine accommodation of such house shall have been inspected and approved by the Municipal Officers appointed for the purpose.

This is new. A breach of an order issued under this section is punishable under section 273, clause (1).

See note to section 238.

243. (261) It shall not be lawful for any person to erect

Erection of new huts to be under the control of the Commissioners. 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 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 and between each line, 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.

A breach of the provision of this section is punishable under section 267. For note on the meaning of the word "hut," see section 245.

The prohibition of the enlargement of any existing hut, without notice, is new.

"Between each line." In the former section "between every two lines." The alteration is not an improvement. The word "between" indicates position in relation to two objects and not with reference to a

single one, and is therefore incorrectly used here. The section, as it now stands, apparently assumes that a line of huts means a double row of huts, and enacts that there must be a free passage in the middle of such double row. The word "between" is apparently used in the sense of "in the middle of," a use of the term which is not correct unless two objects are referred to. But it is not apparent why a line of huts should be supposed to mean a double row of huts. The more natural and obvious signification would appear to be a single row of huts, and the words "between each line" in that case are clearly inapplicable.

*244. (262) 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.

Disobedience to a requisition issued under this section is punishable under section 267. The Commissioners may also proceed under section 180, and remove the huts or sheds themselves, recovering the costs from the persons upon whom the requisition may have been served.

Of Sanitary Measures with regard to Blocks of Huts.

*245. (264) 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.

In an unreported case—*Gobind Lall Seal and others v. The Honrahs Municipality*, decided on the 15th January 1884, Mr. Justice O'Kinealy made the following remarks with regard to the interpretation to be placed on this section:—

"The question in this case appears to me to be simply a question of construction.—that is to say, the construction to be put upon the report submitted by two Medical Officers to the Corporation authorities under

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

"Now, on turning to the medical certificate, we find nothing of the kind. It runs as follows: 'We, the undersigned Medical Officers, have the honor to report that, at the request of the Municipal Commissioners, we have carefully inspected the blocks of huts situated within the localities specified below, and we are of opinion that the huts are so crowded together and so irregularly situated that there is risk of disease to the inhabitants, and there are no means for effectually scavengering the localities, and there is a want of drainage. We have specified below, in detail, what improvements we consider to be necessary in the way of making roads and drains and removing huts.' The crowding of huts is a matter which gives jurisdiction to the Commissioners under section 264. Irregular building does not. So, looking at the certificates, we must read it to be that, so far as the huts are crowded together, there is risk of disease. Further than this we cannot go, for it certainly does not state that insufficiency of scavengering or the want of drainage is attended with any risk whatever. The order cannot go beyond the certificate. I think, therefore, that so much of the order as refers to the crowding of the huts and the removal of them is good, while the latter portion, which refers to the insufficiency of scavengering and want of drainage, is bad."

The question has been raised as to the meaning of the word *hut*. The term is defined in Webster's Dictionary as "a small house, hovel or cabin; a mean lodge or dwelling; a cottage. It is particularly applied to log houses erected for troops in winter." There can be no doubt that the term is not intended, in the present Act, to refer to *pucca* houses however small, but merely to the ordinary mud or bamboo and mat habitations of the poorer classes. It has been held that it does not include a structure with *kutch-pucca* walls.

"A suit was instituted by one Okhil Chunder Dhang of Bajulparah, in the Moonsif's Court, to restrain the Commissioners from carrying out bustee improvements on a piece of land which he alleged was in his *morossee* tenancy, on the grounds that the structure ordered to be removed was not a hut, because it had *kutch-pucca* walls. The case was decreed in favor of the plaintiff. As the point involved was a very important one, and as the judgment of the Moonsif appeared to be doubtful, an appeal was filed in the Court of the Judge of Hooghly."—*Report of the Howrah Municipality for 1882-83*. On appeal the judgment of the Moonsif was upheld by the Judge.

246. (265) On receipt of the said report, the Commis-

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

sioners at a meeting may require the owners or occupiers of the huts, or at the option of the Commissioners, the owner of the land on which such huts are built, to carry out and execute, within a reasonable

time, to be fixed by the Commissioners for such purpose, all or any of the works specified in the aforesaid report or any portion thereof respectively, and if such owner, owners, or occupiers shall fail to comply with such requisition, the Commissioners themselves may execute all or any of such works.

The latter part of the section empowering the Commissioners to execute the works themselves is new.

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

*248. (267) If any of the said huts be pulled down, the Commissioners shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or, if the owner be unknown, or the title disputed, shall be held in deposit by the Commissioners, until the person interested therein shall obtain the order of a Civil Court of competent jurisdiction for the payment of the same.

a) of the Regulation of the Sale of Food, Drink, and Drugs.

P *249. (271) Every owner, or occupier, or farmer, of any place for the sale of meat, poultry, fish, or vegetables, or of any slaughterhouse, within the limits of a Municipality, shall cause such drains to be made therein as shall be considered sufficient by the Commissioners, and (if required so to do by the Commissioners) shall cause all the floors and drains to be paved with stone or burnt brick, and shall also cause a supply of water to be provided, sufficient for keeping such place or slaughterhouse in a clean and wholesome state.

Non-compliance with the orders issued by the Commissioners under this section is punishable under section 268.

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

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

A written application to a Magistrate by a Municipal Officer is exempted from stamp-duty—Act VII of 1870, section 19, clause (18).

251. "No person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser under a penalty not exceeding one hundred rupees: Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say—

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

(2) Where the food is unavoidably mixed with some extraneous matter in the process of collection or preparation.

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

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

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

No proceedings to be had without leave of the Commissioners.

"B. The Commissioners, or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any market, building, shop, stall or place used for the sale or storage of articles intended for food, or as a slaughterhouse, and may examine any such articles which may be therein, and if, upon examination, such articles, or any of them, appear to be unfit for food, may seize the same."

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

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

The original section has been altered, and the additional sections A, B, C, and D added by B. C. Act III of 1886.

Selling, or exposing for sale, any food or drink, knowing the same to be noxious, is an offence punishable under section 273, Indian Penal Code, with rigorous imprisonment for six months, and fine of Rs. 1,000.

Adulterating food or drink intended for sale, so as to render it noxious, is punishable to the same extent under section 272, Indian Penal Code.

252. No shop or place shall be kept for the retail sale of drugs recognized by the British Pharmacopœia, not being also articles of ordinary domestic consumption,

Registry of shops for sale of European drugs.

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

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

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

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

This section is taken *verbatim* from the Calcutta Municipal Consolidation Act Amendment Act, 1881, section 23. Using such a shop or place without its being registered is an offence punishable under section 275. Breach of the provisions of the second clause with regard to the compounding, etc., of drugs is punishable under section 276.

253. The Commissioners, or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any place kept for the sale of drugs, or in which drugs are sold, and if they have reason to suspect that any drug in the said place is adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, may remove the same on giving a receipt therefor, specifying