The words "mistake" and "oversight" would appear to refer to mistake or oversight as to some existing fact, and not to errors of judgment. For instance, if two buildings were comprised in the same holding, and the assessor, unaware of this fact, and under the impression that one of them was comprised in some other holding, only valued one of them, the holding would have been insufficiently valued *by mistake*. If the assessor overlooked the existence of one of the buildings—as in the case of a range of stables in a remote part of a compound—the holding would be insufficiently valued *by oversight*. But in the case of a wrong valuation of the holding, simply from defective judgment on the part of the assessor, it does not appear that the Commissioners have any power of interference.

The following has an important bearing upon this section:

"The Hon'ble Baboo Kristodás Pal moved the insertion of the following words at the end of paragraph 7: 'A notice shall be served upon the owner or occupier of every holding which may be so assessed, or the assessment of which might be fixed at a higher sum than was prevailing at the time being.'

"He thought that in every case where an assessment was increased or newly made, notice should be served on the owner or occupier. That was not clear from this or any subsequent section, and he therefore proposed the amendment.

The Hon'ble Mr. Dampier said he thought the Hon'ble Member would withdraw his amendment if he looked at sections 104 and 106. Anybody who had an assessment imposed upon him for the first time, or whose assessment was enhanced in any manner whatever, might appeal according to the procedure laid down for the review of assessments. Now, when was this appeal to be made? Section 106 said within one of two periods, whichever should last expire—either within one month from the publication of the assessment-list (which would not apply to a single assessment made within the year), or within fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made; so that, practically, there were fifteen days given to apply for a review whenever an assessment was altered."—(*P. C., March* 2, 1876.)

Power to revise assessment list.

*109. (100) The Commissioners may, at any time, substitute for any name mentioned in the valuation and rating-list, the name of any person to whom any holding mentioned therein shall have been transferred.

Such person shall be liable to pay the rate payable on such holding from the first day of the quarter next after the date of the transfer.

Remission or refund on account of vacant holding.

*110. (101) When any holding has been vacant for sixty or more consecutive days during any year, the Commissioners shall remit, and, if the rate has been paid, shall refund, one-half of so much of the rate of that year as may be proportionate to the number of days the said holding has remained unoccupied:

Provided that the owner of such holding, or his agent, has given to the Commissioners notice on writing of the vacancy thereof, and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners.

The amount of tax to be remitted or refunded shall be calculated from the date of the delivery of such notice.

The proviso at the end of the second paragraph is taken from section 82 of the Calcutta Municipal Act. Its object is obvious.

The Hon'ble Mr. Reynolds said: "He would take this opportunity of mentioning that a representation had been made by the Deputy Commissioner of Darjeeling with reference to the necessity for a definition of a vacant holding. The Deputy Commissioner said, it was a common thing for an unoccupied house in Darjeeling to be kept more or less furnished, and to be left in charge of a chowkidar or caretaker, and it was a question whether, as long as the owner received no rent, the holding should be treated as a vacant holding. Mr. Reynolds did not think that the holding should, under such circumstances, be considered a vacant holding, and he had not therefore brought forward any proposal for defining a vacant holding."—(*P. C., February 20th*, 1884.)

The law is clear that a holding under the circumstances stated cannot be held to be vacant; and has been thus stated: Lush, J., says (*R.* v. *St. Pancras*, 2 Q. B. D., 581): The owner of a vacant house is in possession, and may maintain trespass aginst any one who invades it; but so long as he leaves it vacant he is not rateable for it as an occupier. If, however, he furnishes it, and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in the year';—if the owner did not keep the furniture in the house he would have to keep it somewhere else, and he may, therefore, be regarded as making use of the house, at least as a warehouse for the furniture. Slight as such user may be, it is enough when added to legal possession to constitute occupation.

"In *Staley* v. *Castleton*, 33 L. J., M. C., 178; 5 B. & S., 505, the owner of a cotton mill which, through a temporary scarcity of cotton, was not kept at work, was held to be in rateable occupation, on the ground that he was using the mill as a warehouse for the machinery that was in it. In such cases the amount of the assessment should, of course, be calculated with reference to the nature of the occupation. A building found to be occupied as a warehouse should be assessed at its value as a warehouse and not at what its value would be if used as a dwelling-house or for any other purpose."—*Rosher on Rating*, 60.

Penalty.

*111. (102) Whoever, being the owner of any holding for which a remission or refund of the rate has been made under the last preceding section, fails to give notice of the re-occupation of such holding within ten days of such re-occupation, shall be liable to a fine not exceeding three times the amount of rate payable quarterly on such holding.

Of general provisions relating to the tax on persons and the rate on holdings, and to the recovery of the same.

Appointment of assessor of Municipal taxes.

"111A. If at any time it appears to the Local Government, on the report of the Commissioner of the Division, that the assessment in any Municipality is insufficient or inequitable, and if the Commissioners have not appointed an assessor under section forty-six, the Local

Government may, by an order in writing, require the Commissioners of such Municipality to revise and amend such assessment, or to show cause against such order within a time to be specified therein ; and if the Commissioners fail to comply with such order or if, in the opinion of the Local Government, the revised and amended assessment is insufficient or inequitable, the Local Government may, by an order in writing, require the Commissioners to appoint an assessor of Municipal taxes for such Municipality, within a time and for a period to be specified in such order, and such assessor shall exercise all the powers of assessment except under sections one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen, vested by this Act in the Commissioners. Such order shall fix the pay of the assessor and the cost of his establishment, and such pay and cost shall be paid monthly by the Commissioners."

Publication of notice of assessments.

112. (103) When the assessment-list of the tax upon persons, or the valuation and rating-list of the rate on the annual value of holdings, shall have been prepared or revised, the Chairman shall sign the same, and shall cause it to be deposited in the office of the Commissioners, and shall cause the notice in Form (A) or the notice in Form (B) of the Third Schedule (as the case may be) to be published in the manner prescribed by section three hundred and fifty-four.

Application for review.

*113. (104) Any person who is dissatisfied with the amount assessed upon him, or with the valuation or rating of any holding,

or who disputes his occupation of any holding, or his liability to be assessed or rated,

may apply to the Commissioners to review the amount of assessment, valuation, or rating, or to exempt him from the assessment or rate.

"When an assessor has been appointed under section one hundred and eleven A, notice of every such application shall be given by the Commissioners to the assessor."

Such an application does not require any stamp (Act VII of 1870, section 19, clause 21).

It is most important that applications under this section should be promptly inquired into and decided.

A form of petition is suggested by Rule 19, Appendix A, of the Account Rules.

"The word liability in the second paragraph of section 113 of Bengal Act III of 1889 means liability apart from the question of occupation, and must be taken to refer to the liability to assessment or rating of a person who is the occupier of a holding.—*Dwarka Nath Dutt* v. *Addya Sundari Mitra and others*, I. L. R., 21 Calc., 319.

Procedure upon review.

* 114. (105) Every application presented under the last preceding section shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the "Commissioners at a meeting." The Commissioners so appointed, after "taking such evidence and" making such inquiries as they may deem necessary, may pass such order as they shall think fit in respect of such application.

The decision of such Commissioners or of a majority thereof, in such cases shall be final.

"*Shall be final*," "final that is to say, as between the applicant and the Commissioners, no further appeal being allowed to the entire body of Commissioners, or to any other authority. It is not contended that this clause, if it stood alone, would bar the interference of the Court."—I. L. R., 21 Calc., 319.

The Commissioners should be appointed directly after the completion of a new assessment.

Limitation of time for application of review.

115. (106) Unless good cause shall be shown to the satisfaction of such Commissioners for extending the time allowed, and save as is otherwise expressly provided in this Act, no such application shall be received after the expiration of one month from the date of publication of the notice required by section one hundred and twelve relating to the list containing the assessment, valuation, or rating in respect of which the application is made, or after the expiration of fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire.

Assessment to be questioned only under Act.

* 116. (107) No objection shall be taken to any assessment or rating in any other manner than in this Act is provided.

The word "nor shall the liability of any person to be assessed or rated be questioned" have been omitted by the amending Act after the words "rating" and also the words "or by any other authority" after the word manner. The alterations have been made with reference to the decision in *Dwarka Nath Dutt* v. *Adya Sundar Mitra and others*, I. L. R., 21 Calc., 319, in which case it was held that the section has no application to a dispute as to whether a person assessed to a tax does or does not occupy a holding; and a suit brought to set aside an assessment on the ground that the person assessed does not occupy a holding, is not therefore barred. The object

of the alterations is to make the meaning of the section more clearly in accordance with the view of the High Court. The following discussion took place in Council in regard to this amendment :—

The Hon'ble Maulvi Serajul Islam Khan Bahadur moved that after section 42 of the Bill, the following new section be added :—

"42A. In section 116 of the Act, the words 'nor shall the liability of any person to be assessed or rated be questioned,' and the words 'or by any other authority' shall be omitted."

He said :—

"I may remind the Council that this matter has been the subject of much discussion in the High Court as well as in the subordinate Courts. There have been many cases under this section, but unfortunately the decisions have not all been uniform. I need not, however, take up the time of the Council by referring to all the conflicting rulings on the point. It will perhaps be sufficient if I refer to the latest case under this section, which is reported in the current number of the Indian Law Reports, Calcutta Series, page 519, in which the Chairman of the Barisal Municipality was plaintiff and Addya Sundari Mitra, defendant. In all the cases which have been brought under this section, it has always been contended on behalf of the Municipality that section 116 is a bar to the entertainment of any suit against the Municipal Commissioners, and that the words are wide enough to bar any suit. The words of the section are :—'No objection shall be taken to any assessment or rating, nor shall the liability of any person to be assessed or rated be questioned, in any other matter or by any other authority than in this Act is provided.' The contention on behalf of the Municipal Commissioners is, that this section is a bar to the entertainment of any suit. On the other hand, it is maintained by the parties aggrieved, that it could not have been the intention of the Legislature to deprive the people of all remedy against any arbitrary action of Municipal Commissioners which is without jurisdiction and void. The rulings of the Courts have, as I have said, been inconsistent. In some cases it has been decided that these words are a bar to any suit; in others it has been held that they are not. In the last case which came up in the High Court before the Chief Justice and Mr. Justice Beverley, after hearing Counsel, the learned Judges say :—'That being so, it is unnecessary to go into the legal question whether section 116 is sufficiently strong in its terms to bar the interference of Courts of Justice in cases in which Municipal Commissioners may have exceeded their powers under the Act, or acted illegally or without jurisdiction' So that the question is left undecided. The effect of this decision being to leave the law in an undecided state, I think it is the duty of the Legislature to intervene and make the matter clear, and therefore I propose to omit the words set out in my amendment. The result will be that, as far as the question of the amount of assessment or rating is concerned, the adjudication of the Commissioners will be final: but if there be any question as to the liability to assessment, or questions which go to the root of the matter, persons aggrieved should have some remedy. I, therefore hope the Council will see its way to accept my amendment."

The Hon'ble Mr. Allen said :—"I think there can be no objection to this amendment being accepted. As I understand section 116 of the Act, the powers of the Commissioners being powers given by the law can only last as long as they keep within the limits which the law lays down for the exercise of those powers; and it is not, and never was, and never could be intended that the Commissioners should lay hold of a man who was walking through the Municipality, levy an assessment upon him and then plead that this man had no redress in a Civil Court. In fact the amendment does not, to my mind, in any way alter the actual state of the law as it at present exists, and therefore there can be no objection to the amendment being accepted, and I understand that the hon'ble member in charge of the Bill is prepared to accept it."

The Hon'ble Mr. Ghose said :—"The case of the Barisal Municipality is a forcible illustration of the necessity of efficient judicial check upon the action of such Municipalities as may be tempted to spread the net of taxation beyond the limits of the law. I only regret that, instead of deciding the wider question, namely, whether any words in the section could possibly take away the jurisdiction of the Courts when the action of a Municipality is shown to be utterly

illegal and *ultra vires*, the learned Judges should have preferred to base their judgment on what with the utmost deference appears to me to be a narrow and doubtful ground, because, although in an earlier section a dispute regarding occupation is declared to be a ground on which an appeal may be preferred to the Commissioners, and those words are not to be found in section 116, still it does seem to me that the words 'liability to be assessed' are wide enough to cover every imaginable question, be it a dispute as to occupation or anything else. But be that as it may, if the Council accepts this amendment, it will be a great improvement, and will place the law on a clear and intelligible footing. Municipal authorities and the general public will know their rights, and the Courts will be able to decide questions which may come before them without any difficulty."

The Hon'ble Sir Charles Paul said:—"I think this amendment should be accepted. The meaning of section 116 is quite plain, that an assessment or rating made upon persons who are within the jurisdiction of the Commissioners should not be open to objection. It was never intended that any person outside the Municipality could by force be brought within the Municipality and rated. That was the view which the Chief Justice took in the last case The amendment now proposed will make that clear."—(*P. C., April* 21*st* 1894.)

In *Bates* v *Municipal Commissioners for the Town of Bellary*, 7 Mad. H. C. R., 249, and *Leman* v. *Damodariya*. I. L. R., 1 Mad., 158, it was held that a similar provision in Madras Act III of 1871 was not a bar to a suit to recover money wrongfully levied as a tax, because such so called tax had no legal existence. For the provision to apply at all, there must be a legally sanctioned tax in force at the period at which the duties are to be performed by the tax-payer. Compare *Nundo Lal Bose* v. *Corporation of Calcutta*, I. L. R., 11 Calc., 275. In *Manessur Dass* v. *The Collector and Municipal Commissioners of Chupra*., I. L. R., 1 Calc., 409, it was somewhat too broadly and unreservedly ruled that the decision of the Commissioner on a rate appeal is absolutely final. *Semble* that it will be absolutely final when the Commissioners have acted in good faith and in accordance with the directions of the Act, but not otherwise.

Office hours for payment of taxes.

117. (108) By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business.

Tax payable in advance.

118. (109) The amount due by any person on account of the tax on persons, or the rate on holdings, shall be deemed to be the amount entered in the lists, the notice relating to which is published under section one hundred and twelve, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due.

Every instalment of such tax or rate shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

*119. (110) For all sums paid on account of any tax or rate under this Act, a receipt stating the amount and the tax or rate on account of which it is paid, shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts.

Receipts to be given.

The form of the receipt is prescribed by Rule 27, Appendix A, of the Account Rules.

A receipt for Municipal rates or taxes for an amount exceeding Rs. 20 requires a receipt stamp.—*In re Karachi Municipality*, I. L. R., 12 Bom., 103.

120. (111) At any time within six months after any sum has become due on account of any tax or rate, the Commissioners shall cause to be presented to the person liable to the payment thereof a bill for the said sum, which shall contain a statement of the period and of the tax or rate on account of which the charge is made.

Bill and notice of demand to be presented.

If the amount mentioned in such bill be not paid on presentation thereof, a notice of demand in the form marked (A) in the fourth Schedule, with copy of the bill appended thereto, shall be served on the person liable to pay the same, and such notice of demand may be served at any subsequent time :

Provided that no charge shall be made in respect of the service of such notice.

Such notice shall be signed by the Chairman or an officer authorized in that behalf, and shall be served by a person authorized to receive payment.

Practically unaltered. It is obvious that the bill must be presented within six months of the amount falling due, but that if this has been duly performed, the notice of demand can (subject to the ordinary law of limitation) be served at any subsequent period. If due cause is not shown within fifteen days for the non-payment of the amount, and if it be not paid, the Commissioners can distrain under the provisions of the next section.

If the bill has not been presented within six months, the Municipality can only recover by a regular suit under section 129.

See Account Rules, Appendix A.

121. (112) If any person, after service upon him of such bill and notice, shall not, within fifteen days of the service of such notice, or from the date of any order made on an application for review under section one hundred and fourteen, pay the sum due, either to the Commissioners at their

If not paid in fifteen days process of distress may issue.

office, or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs on the scale shewn in the table of fees marked (B) in the fourth Schedule, may, at any time within three months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any moveable property belonging to the defaulter, except ploughs, plough cattle, tools, or implements of agriculture or trade, wherever found, or of any moveable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect to which such defaulter is liable to such tax or rate :

"Provided that when the holding in respect of which the default is committed is a place of business, and the moveable property distrained is shown to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released :

"Provided also that if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same."

No. M $\frac{6B}{1}$ 4, dated Calcutta, the 11th September 1889.

"I am directed to acknowledge the receipt of your letter No. 306 M, dated the 25th July 1889, submitting for the orders of Government the question whether counterfoils of Municipal house-rate bills may be destroyed after audit by the local auditor of the accounts to which they relate.

"2. In reply, I am desired to say that, as cases not unfrequently occur in which tax-collectors are prosecuted for embezzlement the original entry made by the tax-collector, showing the date on which he received money, may prove of importance as evidence. The counterfoils referred to should therefore be preserved for three years and then destroyed."

Distress how to be made.

122. (113) Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the form marked (C) in the fourth Schedule.

Distress shall be made by actual seizure of moveable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

Such officer shall make an inventory of all moveable property seized under the warrant, and shall give not less than ten days' previous notice of the sale, and of the time and place thereof by beat of drum, in the Municipality or Ward in which the property is situated, and by serving on the defaulter a notice in the form marked (D) in the fourth Schedule :

Provided that, if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.

Under the former section perishable property could only be sold with the consent of the defaulter, after the expiry of twenty-four hours from the seizure.

Huts are not moveable property within the meaning of this section. For a hut is a house [section 6, clause (4)], and a house is immoveable property [section 6, clause (5)]. The fact that the hut may, according to the custom of the country, be removeable by the tenant, does not make it moveable property. See *Mattu Miah* v. *Nand Rani*, 8 B. L. R., 517, where the question as to what constitutes moveable and immoveable property is discussed very thoroughly.

The door of a house is not moveable property and cannot be attached as such. —*Queen-Empress* v. *Shaik Ibrahim*, I. L. R., 13 Mad., 518.

Officer may break open door.

*123. (114) The officer charged with the execution of the warrant may, under the special order of the Commissioners, between sunrise and sunset, break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any moveable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that he shall not enter or break open the door of any room appropriated for the zanana, or residence of women, which, by the usage of the country, is considered private, except after three hours' notice and opportunity given for the retirement of the women.

Sale how to be conducted.

124. (115) If the sum due be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Commissioners, the moveable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

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.

Return of sales.

The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the form marked (E) in the fourth Schedule.

Certain persons prohibited from purchasing at sales.

*125. (116) All officers and servants of the Commissioners, and all chaukidars, constables, and other officers of police are prohibited from purchasing any property at any such sale.

Penalty.

"Whoever (not being a public servant within the meaning of section twenty-one of the Indian Penal Code) contravenes the provisions of this section shall be punished with simple imprisonment for a term which may extend to two months, or with fine, or with both."

In the case of public servants such an act, in face of the prohibition here enacted, would be punishable under section 169, Indian Penal Code, with simple imprisonment for two years and fine. Constables and other officers of police are of course public servants. What classes of Municipal subordinates can be held to be public servants is a somewhat doubtful question. There is no doubt that, under clause (10) of section 21, Municipal assessors and tax-collectors are public servants. Other Municipal subordinates whose duty it is to receive or expend money would also come within the terms of the clause in question. It is doubtful whether any other classes of Municipal servants would be considered to be public servants. Labourers and menial servants generally certainly would not. Such persons when employed by Government have been held not to be public servants.—*Queen* v. *Nachimattu and others*, I. L. R., 7 Mad., 18.

Commissioners to keep account of distresses and sales.

*126. (117) The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes under this Act.

Sale of property beyond limits of Municipality.

127. (118) If no sufficient "moveable property" belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the Municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his Court for the distress and sale of any "moveable" property or effects belonging to the defaulter within any other part of

the jurisdiction of the Magistrate, or for the distress and sale of any "moveable" property belonging to the defaulter within the jurisdiction of any other Magistrate "exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal," and such other Magistrate shall endorse the warrant so issued, and cause it to be executed, and the amount if levied, to be remitted to the Magistrate issuing the warrant who shall remit the same to the Commissioners.

An application filed by a Municipal officer in a Criminal Court requires no stamp—Act VII of 1870, section 19, clause (18). "The Magistrate" is defined in section 6, clause (8), as the district or subdivisional Magistrate or any Subordinate Magistrate to whom the District Magistrate may have made over any duties under this Act.

Distress or sale not unlawful for want of form.

*128. (119) No distress or sale made under this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any error, defect, or want of form in the bill, notice, summons, warrant of distress, inventory, or other proceeding relating thereto.

The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect the demand where the directions of the Act have been substantially complied with, the Commissioners being protected by this section against such mistakes. (See *Gopee Krishen Gosain* v. *W. H. Ryland*, 9 W. R., C. R., 562.)

Commissioners may bring suit instead of distraining or on failure of distress.

*129. (120) Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

Irrecoverable taxes.

*130. (121) The Commissioners may order to be struck off the books the amount of any tax or rate which may appear to them to be irrecoverable.

It is most important that this should be done regularly and promptly.

Of the Tax on Carriages, Horses, and other Animals.

Tax on carriages, horses, and other animals.

131. (122) When it has been determined that a tax on carriages, horses, and other animals specified in the fifth Schedule shall be imposed, the Commissioners at a meeting

shall make an order that every carriage, horse, and every other animal of the kind specified in the said Schedule, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the Municipality, and is used in the ordinary course of business within it, shall pay the tax, and shall cause such order to be published in the manner prescribed by section three hundred and fifty-four.

Such order shall be published at least one month before the beginning of the half-year in which such tax shall first take effect; and shall specify at what rates, not exceeding the rates given in the said Schedule, such tax shall be levied.

But such tax shall not be imposed on—

(*a*) horses or ponies belonging to officers doing regimental duty, at the rate of one animal for each officer;

(*b*) animals exempt from any Municipal tax under section twenty-five of the Indian Volunteers' Act, 1869;

(*c*) carriages or animals belonging to Government, or to the Commissioners, or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers;

(*d*) animals used by, or exclusively for the purposes of, any regiment;

(*e*) horses or ponies used by police-officers, at the rate of not more than one for each officer;

(*f*) carriages the wheels of which do not exceed twenty-four inches in diameter;

(*g*) carriages or animals kept for sale by any *bonâ-fide* dealer in such carriages or animals, and not used for any other purpose.

This section is practically unaltered except that the exemption of animals under eleven hands in height has been omitted. On this point the Select Committee remarked in their Preliminary Report as follows:—

"We have struck out the exemption of animals under eleven hands in height. It has been represented to us that the effect of this exemption is, that ponies under eleven hands are commonly employed in order to avoid taxation in drawing heavy carriages and that much cruelty to animals is the result."

Section 25 of the Indian Volunteers' Act (Act XX of 1869) is as follows:—

"Every mounted officer, and every mounted orderly of a corps of Volunteers, and every member of such corps, while he belongs to a troop of cavalry in such corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any municipal or other tax imposed upon horses."

It will be observed that carriages which are kept within the limits of a Municipality are liable to pay the tax, whether used or not. On a reference from

the Dacca Municipality, an opinion to that effect was given by the Legal Remembrancer, who has also held that a carriage so damaged as to be unfit for use is not liable to the tax. For the definition of a carriage is a vehicle used for the conveyance of human beings, etc., and if it is unfit for use, it obviously cannot convey human beings.

"Habitually used within." The word "habitually" here probably means "usually," "generally." See note to section 142.

Tax so fixed to continue in force until altered.

*132. (123) Any order of the Commissioners imposing a tax under the last preceding section shall continue in force until rescinded, and the tax shall be levied at the rates specified in the order published as aforesaid; unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

Licenses how to be obtained.

133. (124) In any Municipality in which a tax has been imposed under section one hundred and thirty-one, the owner of every carriage, horse, and other animal specified in the said Schedule shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages, horses, and other animals liable to the tax, for which he is bound to take out a license.

Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses, and other animals specified in such statement, according to the rates specified in any order for the time being in force under the two last preceding sections.

* Rules 60 and 61 of the Account Rules refer to this section.

Proportionate tax on carriages, &c., acquired during half-year.

134. (125) If any person acquires possession, at any time after the commencement of any half-year, of any carriage, horse, or other animal specified in the Schedule, in respect of which no license has been given for such half-year, he shall forward a statement as above required within one month of the date on which he may have acquired possession thereof, and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears

to the half-year ; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

On payment of tax Commissioners to give a license.

*135. (126) On receiving the amount of the tax due as aforesaid, the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a license for the several carriages, horses, and 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 Rule 62 refers to license forms.

Carriage, &c., liable to tax although the owner be absent.

*136. (127) Whenever the owner of any carriage, horse, 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.

Penalty.

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.

Commissioners may compound with livery stable-keepers.

138. (129) The Commissioners, at their discretion, may compound, for any period not exceeding one year, with livery stable-keepers and other persons keeping carriages of animals for hire, for a certain sum to be paid for the carriages or animals so kept by such persons, 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.

List of persons licensed to be prepared.

*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 60 of the Account Rules.

Power to inspect stable, &c., and to summon persons liable to the payment of the tax.

*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.

Refund of tax in certain cases.

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 word "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.

"141A. Nothing in sections one hundred and thirty-one to one hundred and forty-one shall be deemed to authorise the levy of more than one fee for the same period in respect of any carriage, horse, or other animal which is kept or used in more than one Municipality.

Prohibition of double fee for carriages.

"141B. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business, within the meaning of section one hundred and thirty-one if it is used on business on an average thrice a week."

Of the Registration of Carts.

142. (133) The Commissioners at a meeting may make and publish an order that every cart, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the Municipality and is used in the ordinary course of business 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:

Registration and number of carts.

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.

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.

Fee for registration.

*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 63 and 64 of the Account Rules relate to fees for the registration of carts.

Proportionate payment of fee.

*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.

Transfer of ownership.

*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.

Penalty.

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.

Seizure and sale of unregistered cart.

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.

Prohibition of double fee for registration of carts.

"147A. Nothing in sections one hundred and forty-two to one hundred and forty-seven shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one Municipality.

"When carts not kept within any Municipality are so used in more than one Municipality, the Local Government, on the application of the Commissioners of any such Municipality, may, if it thinks fit, apportion between all such Municipalities the registration fees paid under this Act in respect of such carts.

"Where a cart is registered under this Act in more than one Municipality, the Commissioners of the Municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other Municipality.

"147B. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 142 and 147A if it is used on an average twice a week."

Of Tolls on Ferries.

Existing public ferries.

148. (139) 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:

Other ferries may be declared to be Municipal.

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 6 or section 11, 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."

Claims for compensation, and what amount to be awarded.

*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.

Duties of Commissioners in regard to such ferries.

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.

Rate of tolls to be established and published.

"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 byt he 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.

Cancellation of ferry lease, &c.

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

Toll must be prepaid.

Any person who refuses to leave a Municipal ferry-boat or to remove his goods therefrom when required to do so under this section, shall be liable to a fine not exceeding ten rupees.

Penalty.

*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

Keeping of unauthorized ferry.

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. Love*, 9 B. L. R., App., 35; 25 W. R., Cr. R., 6; 21 W. R., Cr. R., 31; 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-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

Existing toll-bars.

between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

Commissioners may establish toll-bar.

158. (149) The Commissioners at a meeting, with the sanction of the Local Government, 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.

* 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.

Commissioners to publish expenses, &c., of toll-bars.

*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 showing—

(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 due thereon, at the annual rate of six per centum ; and

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

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

Rates of tolls to be established and published.

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.

Power of Collector or lessee in case of refusal to pay toll.

*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.

Penalty for refusing to pay or avoiding payment of toll.

*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.

In case of non-payment of toll, vehicle, &c., may be seized and sold.

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.

Lease of ferry or toll-bar.

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

Table of tolls to be hung up.

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

Penalty.

*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 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.

Composition in respect of toll.

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

Exemptions.

*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.

Police-officers to assist.

*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.

Penalty for taking unauthorized tolls.

* 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, 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.

Commissioners may be appointed to collect tolls in a navigable channel.

"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 person authorized by them, shall cease to levy any tolls under the last preceding section, and may at any time withdraw such order.

Local Government may order Commissioners to cease levying tolls.

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 and until the Local Government shall otherwise direct.

Operation of this Part.

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.

Local Government may order provisions of this Part to be not in force in any Municipality.

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

Procedure when owners or occupiers required to execute works by Commissioners.

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

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

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 III, No. 1 (*a*), Act VII of 1870, requires one-anna stamp, as it relates to conservancy and improvements.

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

*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-Chairman shall certify that such cost will not exceed three hundred rupees in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman :

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

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

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

than the shortest time which might have been mentioned under this Act in the original requisition.

Order to be explained orally.

179. (182) If the person making such objection be present at the Office of the Commissioners, the said order shall be explained to him orally; and if such order cannot be so explained, notice of such order shall be served as provided in section 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.

Power of Commissioners on failure of person to execute work.

*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 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*, 16 W. R., C. R., 285, also unreported case quoted in note to section 209.

Commissioners may apportion expenses among owners.

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

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

"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.

Apportionment among owners and occupiers.

182. (186) Whenever any expenses incurred by the Commissioners are to be paid by the 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.

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

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.

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

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.

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:

Damages and compensation how to be determined.

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 "by them" for the removal of sewage, offensive matter and rubbish.

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

"Sewage" is defined to mean "nightsoil and other contents of privies, drains and cess-pools:" 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 as prescribed in section three hundred and fifty-four, appoint the hours within which it shall be lawful to remove "sewage and" offensive matter and the manner in which the same shall be removed, and may provide places convenient for the deposit thereof, and may require the occupiers of houses to cause the same to be deposited daily, or at other stated intervals, in such places, and may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so in accordance with this Act.

Hours and mode of removal of offensive matter.

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.

Commissioners may appoint hours for placing rubbish on public road.

The following extracts refer to this section:—

"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 cess-pools shall be subject to the inspection and control of the Commissioners.

The term "drain" is not defined in the Act. In the Public Health Act 1875, it is defined as follows:—

"'Drain' means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cess-pool or other like receptacle for drainage or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed."

The term, as used in the present Act, has evidently a wider meaning and would include drains for carrying off surface-water, at the sides of roads, or otherwise.

Inspection of drains, privies, and cess-pool.

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

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

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

Disinfectants or deodorants.—The use of disinfectants or deodorants is a very inadequate substitute for proper cleansing and the removal of offensive matter.

"A great variety of disinfectants have at different times been manufactured, some of them gaseous, some fluid, some solid; and the effect, more or less, of all of them, when properly used, is to destroy odour, either by bringing about

a chemical change in the odorous particles, or by arresting the putrefaction of substances giving rice to odours. Certain of them appear to act in both ways.

"The first question which arises out of this fact—the destruction of smell—is, to what extent (if any) would disinfectants be useful in protecting the public health, when applied to the destruction of odours proceeding from decomposing substances.

"In replying to this question, it is necessary to state that smell proceeding from decomposing matters is intended by nature as a warning against danger: that the true use of the warning is not merely to destroy the smell and leave the substance, but either to remove the offending matter to a distance from human dwellings, or to get away from it. It has never been shewn that organic matter after being deodorized, has ceased to be dangerous; while, on the other hand, it is known that the generation of diseases has been promoted by the effluvia from organized matter in a state of decomposition while the effluvia were little, if at all, appreciable to the sense of smell.

"Disinfectants, as a means of preserving health, are of doubtful efficacy, and their use for such purpose should not be sanctioned.

"This being our opinion, it remains for us to consider whether disinfectants can be used with safety for merely temporary purposes. No disinfectant can compensate for the necessity of frequent removal of the matter; hence, if it were proposed to use any disinfectant merely to render frequent cleansing and removal less necessary than it would be if the offensive smell were allowed to remain, we recommend that no disinfectants be used, but that cleansing at short intervals be imperative."—*Memorandum by the Barrack and Hospital Commission*, 1865.)

"In dwelling-places have within them any odour of drainage, particular examination should be made (1) whether the filth which house-drains are meant to carry away is retained in or near the premises in ill-made drains or sewers, or cess-pools, or perhaps is leaking from house drains within the house; and (2) whether, inside the house, the inlets of drains and sinks are properly trapped; and (3) whether the drains and sewers are properly ventilated outside the house . . . . . of a cess-pool, the only true disinfection is to abolish it. In country places where proper drainage is not provided, the nuisance of open privies may be best avoided by the use of the so-called earth closet.

"If a sewer is much complained of, as stinking into the public way, generally the presumption is, that from original ill-construction or some other cause, it does not properly fulfil its object, but has filth accumulated and stagnant in it: and such a sewer, besides occasioning nuisance in the public way, may be the source of serious danger to the inhabitants of houses which drain into it. It is most important that all sewers should be well ventilated at points where these effluvia will be least injurious; and ordinary drainpipes may be used to conduct the effluvia to a distance.

"For artificial disinfection on a large scale—*the agents which most commonly prove useful* are—quick-lime, chloride of lime, carbolic acid, sulphate of iron, perchloride of iron, and chloride of manganese. The following are also efficient disinfectants, but, as being dearer, are less suited for large operations; sulphate of zinc, chloride of zinc, chloride of soda, and permanganate of potash. In certain cases, chlorine gas, or nitrous acid gas, or sulphurous acid gas, may advantageously be used; and, in certain other cases, powdered charcoal or fresh dry earth.

"*Quick-lime* ought to have been recently burnt, and may be used either in the form of dry powder, or stirred up with about ten times its bulk of water as milk of lime. *Chloride of lime* is best used with water and thoroughly mixed with it, in the proportion of a pound to the gallon or, of the solution as commonly sold, about two pints may be mixed with a gallon of water. *Carbolic acid* (in the fluid form in which it is commonly sold) should be dissolved in about eighty times its volume of water, with which it must be mixed by strong shaking in a closed vessel. *Sulphate of iron* should be dissolved in ten times its weight of water, a solution which is best effected by employing hot water and stirring. Of *perchloride of iron* and *chloride of manganese*, the common concentrated solutions may be used diluted with ten or twelve times their bulk of water. *Sulphate of zinc* should be dissolved in about ten times its weight of warm water. Of

chloride of zinc, the common concentrated solution may be diluted with eight or ten times its bulk of water. Of *chloride of soda*, the common solution may be used like that of chloride of lime. Of *permanganate of potash*, an ounce may be dissolved in a gallon of water.

"All disinfectants must be used in *quantities proportionate* to the amount of matter of surface to be disinfected. When the matters requiring to be disinfected have an offensive smell, the disinfectants should be used until this smell has entirely ceased; and as often as the smell recurs the disinfectant must again be used."—(*Memorandum of John Simon, Esq., F. R. S., Medical Officer of the Privy Council, dated July* 1866.)

Common privies.

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

This section corresponds with section 39 of the Public Health Act. It has been more than once held that the latter section does not preclude a Court from granting an injunction against an urban authority when the situation of a public urinal would render it a nuisance.—*Vernon* v. *Vestry of St. James's Westminster*, 42 L. J. (N. S.), 82.

Licensing of public necessaries.

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

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.

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

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 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.

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*, 7 W. R., C. R., 213, 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.

All rubbish collected to be the property of Municipal Commissioners.

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

" 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 cess-pools. " 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).

The word " sewer " comes from the word "sew," *i. e.*, to drain, and has a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals. In the common sense of the term it means a large and generally, though not always, underground passage for fluid and feculent matter from a house or houses to some other locality ; but it does not comprise a cess-pool for the sake of retaining the sewage, whether as a simple deposit or to be converted into manure or other useful purpose.—*Sutton* v. *Mayor of Norwich*, 27 L. J., Ch., 742.

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

*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 con-

struct 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.

An action may be maintained against a local authority for not keeping a sewer properly cleansed, whereby it becomes choked up, and the overflow of foul water runs into private premises.—*Meek* v. *Whitechapel*, 2 F. & F., 144.

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.

All public streams, &c., to be under 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 "wells," 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;

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

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

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

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

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

No. 443T—M. dated Darjeeling, the 18th June 1892.

"I am directed to acknowledge the receipt of your letter No. 1049J., dated 9th May 1892, submitting for orders a copy of a letter from the Magistrate of Backergunge, and of its enclosure from the Chairman, Barisal Municipality, in which the question is raised whether it is the duty of the Police or of the Municipality to guard from pollution tanks specially reserved for drinking purposes.

It appears that under the orders of the Magistrate a special police guard was placed on two such reserved tanks in the Barisal Municipality; but the Inspector-General of Police having objected to this arrangement, the Chairman submits the question for an authoritative decision of Government."

2. "In reply, I am directed to say that the law on the subject appears to be correctly stated in paragraph 3 of your letter. By section 198 of Bengal Act III of 1884, all streams, tanks, &c. (within Municipal limits), not being private property, are placed for the purposes of the Act under the 'direction and control of the Commissioners,' who are further empowered, under section 199, to 'set apart convenient, tanks, &c., for the supply of water for drinking and for culinary purposes,' any disobedience of an order passed under section 199 being made punishable with fine under section 217 (4). It is, however, obvious that the duty of placing a special guard upon every reserved tank cannot be imposed upon the town police, their present strength being, as a rule, only just sufficient for the performance of beat duty by night and such day duty as is absolutely necessary for the watch and ward of the town. In these circumstances, I am directed to say that, although under section 34 of Act V of 1865 and section 365 of the Bengal Municipal Act, it is the duty of the police to arrest persons polluting reserved tanks in their presence, the cost of maintaining a special guard over the tanks for the prevention of such offences must be a charge on the Municipality, and cannot be accepted by the State."

3. "I am to request that you will be so good as to communicate these orders to all the Municipalities in your division."

Prohibition by Commissioners of use of unwholesome water.

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

Disobedience of such a prohibition is punishable under section 217, clause (4.)

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

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

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

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

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

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. The provisions of sections 175—185 apply to any order issued under this section.

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*, 16 W. R., C. L., 285. A similar decision in an unreported case is given in the note to section 209.

The discretion as to the necessity of calling upon the owner either to re-excavate, or fill up or cleanse any tank under this section appears to be conferred on the Commissioners and the ruling in the *Municipal Commissioners of Madras* v. *Pathasaradi and others*, I. L. R., 11 Mad., 391, appears applicable. In that case it was held that in a suit by the Municipal Commissioners to recover from the defendants the cost of draining and cleansing a tank, it was not open to the defendants to prove that the tank was not likely to prove injurious to the health of the neighbourhood.

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.

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 fact 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.

Removal of future obstructions or encroachments in or on road.

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

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

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).

The provisions of sections 175—184 apply to any order issued under this section.

Procedure when person who erected obstruction cannot be found.

203. (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.

Projections from houses erected in future to be removed.

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 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 the next section.

The question has been raised under the corresponding section (208) of the Calcutta Act (B. C. Act IV of 1876), as to whether the taking 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 rebuilding 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.

The provisions of sections 175—184 apply to any order issued under this section. *Held* that the eaves of certain buildings which projected into a public road constituted an obstruction within the meaning of section 195 of Acts III of 1872 and IV of 1878. The question to be decided was not whether there was a practical inconvenience to public traffic on the street. When an Act gives power to a Municipality or Corporation for the public benefit, a more liberal construction should be given to it than when powers are to be exercised for private gain or other advantage.—*Ollivant* v. *Rahimtula Nur Mahomed*, I. L. R., 12 Bom., 474.

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

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 necessarily 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.

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

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 such house if any damage shall be thereby sustained.

Disobedience to a requisition issued under this section is punishable under section 218. The provisions of sections 175—185 apply to any order issued under this section.

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

207. Whenever any private house, wall, or other erection, or any tree, shall fall down and obstruct any public drain or encumber any public highway, the Commissioners may remove such obstruction or

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.

Disobedience to a requisition issued under this section is punishable by section 218. The provisions of sections 175—184 apply.

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

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

Disobedience to such an order is punishable under section 218. The provisions of sections 175—184 apply to any order issued under this section.

Of General Conservancy and Improvement.

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

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 provisions of sections 175—184 apply to any such order.

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. 30 only, 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.*

Fencing of buildings in a dangerous state.

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

This section is based on section 75 of the Towns Improvement Clauses Act (10 and 11 Vict., c. 4). The former section while professing to deal with buildings "in any way dangerous" only provided a remedy in cases where the state of the building caused danger to the passers-by. Section 242 confers on the Commissioners the power of prohibiting the letting of an unstable house.

The provisions of sections 175—184 apply to any order issued under this section. Disobedience is punishable under section 219.

Commissioners may require owners to pull down ruins.

"210A. Whenever it appears to the Commissioners that any building, by reason of being unsecured and untenanted, or by reason of having fallen into ruins, affords facilities for the commission of a nuisance or for the harbouring of snakes or other noxious animals, the Commissioners may require the owner of such building or the owner of the land to which such building is attached, to properly secure the same, or to remove or level such ruins, as the case may require."

The provisions of sections 175 — 184 apply to any order issued under this section. Neglect to comply with the requisition is punishable under section 219.

Power to enter upon possession of houses so repaired.

*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 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 "one hundred and seventy-five" and 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.

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

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.

Stray dogs to be killed at certain appointed periods.

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.

Names of roads and numbers of houses.

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.

This section is taken from section 64 of the Towns Improvements Clauses Act (10 and 11 Vict., c. 34).

Penalties.

Offences under sections 189 and 215.

216. (236) Any person who, in any Municipality—

(1) places, or allows his servants to place, rubbish on a public road at other than the times appointed by the Commissioners under the provisions of section one hundred and eighty-nine; or

(2) destroys, pulls down, deface, 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.

It does not appear that any distinction is to be drawn between the term "penalty" in this and the following sections, and the term "fine." "There is no distinction between the terms 'penalty' as used in the Bombay District Municipal Act (VI of 1873) and the word 'fine' as used in section 64 of the Indian Penal Code (XLV of 1860), imprisonment can, therefore, be awarded in default of any penalty inflicted under section 84 of the Municipal Act."—*In re Lakmia*, I. L. R., 18 Bom., 400.

Occupier not removing filth, &c.

217. (198) Any person who, in any Municipality—

(1) being the occupier of a house in or near a public road, keeps, or allows to be kept, for more than twenty-four hours, or for more than such shorter time as may be prescribed by a bye-law, otherwise than in some proper

receptacle, any dirt, dung, bones, ashes, 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

Keeping unlicensed public necessary.

(2) (202) keeps any public necessary without a license from the Commissioners under section one hundred and ninety-four ; or having a license for a public necessary, suffers such necessary to be in a filthy or noxious state, or neglects to employ proper means for cleansing the same ; or

Not keeping private drain, &c., in proper order.

(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

Disobeying order under section 199.

(4) (209 and 210) disobeys an order passed by the Commissioners under the provisions of "section one hundred and ninety-nine or one hundred and ninety-nine A ;" or

Erecting obstruction.

(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,

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 Muktiar 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. *Dwarka Nath Hazrah (Petitioner)*, 8 B. L. R., App., 9 ; 16 W. R., Cr. R., 70.

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 *Queen* v. *Brojo Lall Mitter*, 8 W. R., Cr. R., 45. See also *Queen* v. *Parbutty Charan Sirkar*, 3 W. R., Cr. R., 57.

The term road in clause 5 of section 217 of Bengal Act III of 1889 is not limited to roads vested in the Municipal Commissioners.

A person was charged at the instance of a Municipality under that clause with obstructing a path through his paddy-field by erecting a fence at either end of it. It was found that the public had a right of way over the path, and the lower Courts convicted the accused under that clause. In revision it was contended that the conviction was bad, as the clause could only refer to a road which had been vested in the Municipal Commissioners.

Held, for the above reasons, that the conviction was right and must be upheld.—*Ram Chundra Ghose* v. *The Bally Municipality*, I. L. R., 17 Cal., 684.

Disobeying requisition under sections 202, 204 or 208.

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, "two hundred and six, two hundred and seven," 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; 25 W. R., Cr. R., 6; 21 W. R., Cr. R., 31.

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

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 section one hundred and ninety-five, two hundred, two hundred and nine, two hundred and ten, "or two hundred and ten A," 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.

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

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.

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

Saving clause.

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."

The addition to the section has been made to clear up doubts which have been expressed as to the correctness of the above view.

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.

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

And the Local Government may thereupon make an order accordingly.

Government has been advised that there is no legal objection to extending part of a 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

Publication of order.

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.

Local Government may cancel or modify orders.

Of a Survey.

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

Survey of a municipality.

Of Privies, Drains, and Excavations.

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

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

The provisions of sections 175—184 apply to any order issued under this section. Neglect to carry out an order issued under this section is now punishable under section 271.

Privies must be properly enclosed.

*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.

The provisions of sections 175—184 apply to any order issued under the section.

Unauthorized drains leading into public sewers may be demolished.

*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.

The provisions of sections 181—184 apply to such expenses.

Commissioners may require owner to drain land.

*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 provisions of sections 175—184 apply to an order issued under this section.

Disobedience of an order issued under this section is now punishable under section 271.

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

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.

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

*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 un-stops 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.

The provisions of sections 181—184 will apply to such expenses.

No latrine to be constructed within fifty feet of a tank.

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.
The provisions of sections 175—184 apply to such a requisition.

Construction of privy.

*231. (247) No person shall, without the written permission of the Commissioners, construct a privy with a door or trapdoor 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.
The provisions of sections 175—184 apply to such a requisition.

Power to prohibit excavations.

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, cess-pool, 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.
The provisions of section 175—184 apply to such a requisition.
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.

Removal of existing projection from houses.

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.

The provisions of sections 175—185 are applicable to 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.

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

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

Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences

to protect the public from injury, danger or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.

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.

Hoards to be set up during repairs.

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

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.

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

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

Disobedience to an order issued under this section is now punishable under section 270, clause (5).

"237. (1) Every person who intends to erect or re-erect any house, not being a hut, shall give notice in writing of his intention to the Commissioners, and shall accompany such notice with a general description of the building which he intends to erect, and of the provision he intends to make in respect of drainage and latrine accommodation, and the Commissioners may, within six weeks after the receipt of such notice, either refuse to sanction the said building or may sanction the said building either absolutely or subject to any written directions which the Commissioners may deem fit to issue in accordance with the rules, if any, made under section two hundred and forty-one :

Notice of erecting a house not being a hut.

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

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

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

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

(2) Should the Commissioners neglect or omit for six weeks after the receipt of a valid notice under the last pre-

ceding section to make and deliver to the person who has given such notice any order in respect thereof, they shall be deemed to have sanctioned the proposed house absolutely:

Provided that no rule under section two hundred and forty-one and no legal order shall be held to have been contravened by anything done in accordance with plans and specifications forwarded to the Commissioners under section two hundred and thirty-seven and not objected to by them."

Sanction available for one year only.

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

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

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

(*a*) any material alteration or enlargement of any building;

(*b*) such alterations of the internal arrangements of a house as affect an alteration of its drainage or sanitary arrangements, or affect its stability."

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

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

(*a*) the materials and method of construction to be used for external and party walls, roofs, floors, fire-places and chimneys;

(*b*) the provision, position and ventilation of drains, privies and cess-pools ;

(*c*) the free passage or way in front of the house ;

(*d*) the space to be left about the house to secure free circulation of air and facilitate scavengering, and for the prevention of fire ;

(*e*) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on ;

(*f*) the level and width of the foundation, the level of the lowest floor and the stability of the structure ;

(*g*) the number and height of the storeys of which the house may consist ;

(*h*) the means to be provided for egress from the house in case of fire ;

(*i*) the line of frontage with neighbouring houses if the house abuts on a street.

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

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

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

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

"242. The Commissioners may prohibit the owner of any house, not being a hut, from letting it for occupation, if in their opinion it is unstable, or if the drainage or latrine accommodation of such house is in their opinion defective, until its stability shall have been secured or such defects in drainage or latrine accommodation shall have been made good to their satisfaction."

The power of prohibiting the letting of an unstable house is new. Disobedience to a prohibition issued under this section is punishable under section 273, clause (1).