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

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

"*Within one month of the time when such use, &c.*" The word "use" here is probably meant to include keeping, and to have, therefore, a more general signification than in the former part of the section. For it would appear to be just as necessary that notice should be given of carriages, &c., having ceased to be *kept* within the Municipality as of their having ceased to be *used* within it, and it is not probable, therefore, that any distinction is intended to be drawn between the two cases in this respect.

Prohibition of double fee for carriages.

"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."

"141B. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business within the meaning of section 131, if it is used on business on an average thrice a week."

Of the Registration of Carts.

Registration and number 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:

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 was met with in construing this section, while the term used in the first clause was "habitually" which, like "casually" and "temporarily," is 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. This view was adopted by the ruling of the High Court in *Legal Remembrancer* v. *Syama Charan Ghose* (I. L. R., XXIII Cal., 52), where the Court laid down that the word "habitually" implies some degree of frequency, and that in order that a cart may be said to be "habitually used" within the limits of any Municipality, it must be used within the limits of that Municipality oftener than it is not, regard being had to the total extent of use within and without the Municipality.

to which in due course of business it is or might reasonably be put. The result was the change in the law by Act II of 1896 (B. C.)

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 86 and 87 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.

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 and of the Commissioners, or of any servant of the Commissioners duly authorized in that behalf, to assist in the said seizure.

Seizure and sale of unregistered cart.

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.

"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.

Prohibition of double fee for registration of carts.

When 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.

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.

Existing public ferries.

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.

The Government of India has laid down the following principles limiting and regulating the rights of a Municipality in a ferry made over to it:—

(i) A Municipality is not entitled to any compensation for diminution in its receipts from a ferry by reason of a Railway having started an out-agency, bridge or ferry near it. In the case of local traffic being

thus diverted to the Railway agency where the Municipality had already made sufficient and satisfactory arrangements for it, the best arrangement would be to make over the receipts for such traffic to the Municipality, the Railway receiving a reasonable return for the service rendered.

(ii) Revenues of public ferries are, however, part of the general revenues, and it is therefore in the discretion of Government at any time to make new arrangements for the service of the ferry, either with a Railway Company or otherwise.

(iii) No local authorities, whether Municipalities or District Boards, have any proprietary rights in any tolls or ferries which are made over to them, conditionally or unconditionally. They merely work the ferries and take the tolls in pursuance of arrangements which the Government is at any time at liberty to vary or determine. (Govt. letter No. 480 M., dated 17th November 1897, to Commissioner, Presidency.)

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.

This section should not be resorted to order to take possession of a private ferry, not for the purpose of making it a public ferry, but for the purpose of enabling the Government or Municipality, to acquire it at a lower rate of compensation than that to which the owner would be entitled under the Land Acquisition Act, *e.g.*, if it were intended to build a bridge or drain a Khal. To do so would, the Advocate-General has given his opinion, be a fraud on the Ferry Act.

(B. Govt. Munl. Dept. 22851 S. C., d. 18th July 1900 to Board.)

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

Claims for compensation, and what amount to be awarded.

thus diverted to the Railway agency where the Municipality had already made sufficient and satisfactory arrangements for it, the best arrangement would be to make over the receipts for such traffic to the Municipality, the Railway receiving a reasonable return for the service rendered.

(ii) Revenues of public ferries are, however, part of the general revenues, and it is therefore in the discretion of Government at any time to make new arrangements for the service of the ferry, either with a Railway Company or otherwise.

(iii) No local authorities, whether Municipalities or District Boards, have any proprietary rights in any tolls or ferries which are made over to them, conditionally or unconditionally. They merely work the ferries and take the tolls in pursuance of arrangements which the Government is at any time at liberty to vary or determine. (Govt. letter No. 480 M., dated 17th November 1897, to Commissioner, Presidency.)

Other ferries may be declared to be Municipal.

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

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

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

This section should not be resorted to order to take possession of a private ferry, not for the purpose of making it a public ferry, but for the purpose of enabling the Government or Municipality, to acquire it at a lower rate of compensation than that to which the owner would be entitled under the Land Acquisition Act, *e.g.*, if it were intended to build a bridge or drain a Khal. To do so would, the Advocate-General has given his opinion, be a fraud on the Ferry Act.

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Claims for compensation, and what amount to be awarded.

"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 profits."

Duties of Commissioners in regard to such ferries.

*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.

Rate of tolls to be established and published.

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 Commissioners of the Division, the rates at which such tolls shall be levied.

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

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

When person crossing river not liable to toll.

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

Cancellation of ferry lease, &c.

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

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

make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances:

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

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

*154. (145) Any Collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a Municipal ferry until the proper toll has been paid, and may require any person 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 of the Commissioners, if he plies within the limits of the Municipality,

Keeping of unauthorized ferry.

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 consist in *keeping a ferry-boat for the purpose of plying for hire*, and not in the casual and unpremeditated ferrying over of a passenger.

Still less can a person be convicted of an offence under this section for merely crossing the bar of a khal leading into the limits of a Municipal ferry. A ferry lessee has no authority to demand tolls from persons who are merely passengers in an unlicensed boat. The remedy is against the person who keeps the boat. (*Govt. of Bengal* v. *Enayet Ali*—I. L. R., XXVII Cal., 317.)

*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; 6 Cr. R., 25 W. R.; 31 Cr. R., 21 W. R.; and several other cases in the Weekly Reporter.

Of Tolls on Bridges and Roads.

157. (148) The Local Government may, with the consent of the Commissioners at a meeting, make over to the Commissioners any existing toll-bar within the limits of the Municipality, to be administered by them until the Local Government shall otherwise direct; every toll-bar, while so administered shall be deemed to be a Municipal toll-bar, and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

Existing toll-bars.

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:

Commissioners may establish toll-bar.

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 shewing—

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

(2) the amount of interest which has accrued 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.

*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.

Penalty for refusing to pay or avoiding payment of toll.

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.

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

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.

Arrears of rents on account of ferries managed by Municipalities can be realized as public demands under the Public Demands Recovery Act (I of 1895) if a clause to this effect be inserted in the lease.

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 to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the ordinary toll payable.

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

Exemptions.

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 things not specified above to cross a ferry or to pass a toll-gate without payment of the prescribed toll.

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

*169. (160) In all cases of resistance to the person authorize 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.

Police-officers to assist.

*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.

Penalty for taking unauthorized tolls.

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 provision 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.

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

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 Commissioner to collect tolls, as provided in section eight of the said Act, until the Local Government shall otherwise direct; and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

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

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

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

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

Local Government may order Commissioners to cease levying tolls.

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.

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.

Operation of this Part.

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

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

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

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

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

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

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

"*Sections* 175 *to* 182 *do not apply in the case of any notice issued under any of the clauses enacted by Act I* (*B. C.*) *of* 1900, *the Darjeeling Municipal Act, or under any rule or bye-law made under any such clause* (*Act I* (*B. C.*) *of* 1900, *section* 6)."

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

*176. (180) Any person who is required by a requisition as aforesaid to execute any work or to do anything, may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notification containing the requisition; or, if the time within which he is required to comply with the requisition be less than five days, then within such less time.

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

Such an objection under Schedule II, No. 1 (*a*), Act VII of 1870, requires 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 objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required; whereupon such person shall be relieved of all further liability and obligation, in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work, or do such thing, and shall exercise all powers necessary therefor.

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

*178. (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*, 285 C. R., 16 W. R., 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.

"182*A*. (1) *When the Commissioners, by written notice, make any requisition or order under any of the clauses enacted by the Darjeeling Municipal Act*, 1900, *or under any rule or bye-law made under any such clause, a reasonable period shall be prescribed in such notice for carrying such requisition or order into effect.*

Time for complying with requisition or order. and power to enforce requisition or order in default of person directed.

(2) *If any such requisition or order or any portion thereof is not complied with within the period so prescribed or any further period allowed by them, the Commissioners may take such measures, or cause such work to be executed or such things to be done, as may, in their opinion, be necessary for giving due effect to such requisition or order; and the expenses thereof shall be paid by the person or by any one of the persons to whom such requisition or order was addressed.*

(3) *The Commissioners may take any measure, execute any work, or cause anything to be done under this section whether or not the person who has failed to comply with the requisition or order is liable to punishment or has been prosecuted or sentenced to any punishment for such failure.*

"182 *B*. (1) *Any person on whom a notice under section 210B, section 210C, section 244V or section 248A is served may, at any time before the expiration of the period or further period prescribed under section 182A for carrying into effect the requisition or order made by the notice, appear before the Commissioners and show cause why such requisition or order should not be complied with.*

Right to show cause against certain requisitions or orders.

(2) *If cause is shown as aforesaid by any such person, the Commissioners shall, after hearing him, either cancel the notice or confirm the same, subject to such modifications (if any) as they may think fit.*"

[*Section 7, Act I of* 1900.]

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

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

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.

Damages and compensation how to be determined.

185. (190) Where any damages or compensation, other than compensation payable under section thirty-five, are by this Act directed to be paid by the Commissioners, the amount, and, if necessary, the apportionment of the same, shall, in case of dispute, be ascertained and determined by a Civil Court of competent jurisdiction.

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

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

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

186. (193) The Commissioners shall provide all establishments, cattle, carts, and implements required "by them" for the 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."

In Darjeeling for "after six hours' notice in writing," the words "without giving notice" have been substituted by section 8, Act I of 1900.

Hours and mode of removal of 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.

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

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.

Any mehter or other such person who, after the said publication, withdraws from his duties without giving such notice as aforesaid, shall be liable to rigorous imprisonment for a term not exceeding one month, and shall forfeit all salary which may be due to him.

Commissioners may appoint hours for placing rubbish on public road.

189. (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.

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-pools.

*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 he 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 rise 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 disinfectants 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.)

"If 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 drain-pipes 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—quicklime, chloride of line, 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.

"*Quicklime* 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 or surface to be disinfected. When the matters requiring to 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.)

In case of plague, Government has now prescribed phenyl and a proportion of two parts hydrochloric acid and of perchloride of mercury to from 500 to 1000 of water.

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

Common privies.

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 nusance.—*Vernon* v. *Vestry of St. James's, Westminister*, 42 L. J. (N. S.), 82.

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

Licensing of public necessaries.

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

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

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

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

the Commissioners shall provide such land and pay such compensation.

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 person to whom the requisition was addressed.

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

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

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.

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

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

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 engender 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).

"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, watercourse, private tank or pool therein, and to drain off and remove any waste or stagnant water which may appear to be injurious to health or offensive to the neighbourhood:

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

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

"(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*, 285 C. R., 16 W. R. 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 Commisioners 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.

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

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:

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

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

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

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

The use of barbed wire fencing alongside public roads and paths, and in enclosing public gardens being considered dangerous to the public, Government has directed that it be wholly discontinued on Government property, and requested that Municipalities may be informed that its use is disapproved of by Government and should be discouraged as much as possible. (Circular No. 3 T—M, dated 21st October, 1899.)

In Darjeeling for the words "any road" and "any part of a road" whenever they occur, the words "any public road" and "any part of public road" have been substituted by section 9, Act I of 1900.

(The following special provisions for Darjeeling follow under section 10, Act I of 1900).

Absolute closing of Public road.

"201*A*. (1) *If it appears to the Commissioners that any public road or part thereof*—

(*a*) *threatens the stability or security of any hillside or bank or any immoveable property thereon, or*

(*b*) *in consequence of its condition or its situation with reference to any adjacent hillside or bank, cannot be efficiently maintained or repaired except at a cost which, in their opinion, is unreasonable, the Commissioners may, by public notice, declare such road or part to be absolutely closed :*

Provided that the Commissioners shall, before declaring any public road or part thereof to be closed, be bound to provide other reasonably sufficient means of access to holdings adjacent to such road or part if no such means of access already exist.

(2) *From the date of any notice published under sub-section* (1) *in respect of any public road or part thereof, the Commissioners shall not be bound to maintain or repair such road or part ; and the site thereof may be disposed of or otherwise dealt with in any manner the Commissioners may think fit.*

Provided that, if the Commissioners determine to sell or to let on lease or otherwise transfer any part of such site which is adjacent to any private land or building, the owner of such land or building shall have a prior right to buy or take on lease such part at a reasonable rate.

Control over private roads and bridges.

"201*B*. *All private roads and bridges shall be subject to the inspection and control of the Commissioners.*

Control over construction or alteration of private road or bridge.

"201*C*. (1) *Every person who intends to construct, re-construct or alter a private road or bridge shall send to the Commissioners an application for permission to execute the work.*

(2) *Every such application shall be accompanied by the documents or particulars prescribed in this behalf in Schedule A.*

(3) *Every person applying for permission to construct, re-construct or alter a private road must further mark out on the ground the alignment of the road for inspection by the Commissioners or an officer authorised by them in that behalf.*

(4) *The permission referred to in sub-section* (1) *may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in the said Schedule A.*

(5) *No work referred to in sub-section* (1) *shall be commenced without the written permission of the Commissioners.*

Re-construction, etc., of private road or bridge.

"201*D*. *If it appears to the Commissioners that any private road or bridge is so situated or is in such a condition as to threaten the stability or security of any hillside or bank or any immoveable property thereon, they may, by written notice, require the owner*—

(*a*) *to re-construct, re-grade, divert, alter or repair such road or bridge, or*

(b) *to make a revetment or retaining-wall on either side or both sides of such road, or*

(c) *to take such other order with such road or bridge as may be specified in the notice.*

Provision or enlargement of waterway on private road.

"201*E*. *If it appears to the Commissioners that waterway ought to be provided on any private road, or that the waterway provided on any private road ought to be enlarged, they may, by written notice, require the owner of the road—*

(a) *to provide and maintain waterway, or*

(b) *to enlarge the existing waterway, as the case may require.*

Rules as to construction, etc., of private roads and bridges.

"201*F*. *Whenever any private road or bridge is to be constructed, re-constructed, re-graded, diverted, altered or repaired, and whenever waterway for any private road is to be provided or enlarged, in pursuance of section 201C, section 201D or section 201E, the work shall be executed in accordance with the rules contained in Schedule A, so far as they are applicable to the particular case.*

Power to close private road.

"201*G*. *If it appears to the Commissioners that the existence of any private road threatens the stability or security of any hillside or bank or any immoveable property thereon, they may, by written notice, require the owner to close the road and to take such order with the site thereof as they may consider necessary for the stability or security of such hillside, bank or property and as may be prescribed in the notice:*

Provided that no notice shall be issued under this section in respect of any private road which constitutes the only approach to a building, unless, in the opinion of the Commissioners, another road affording a suitable approach to the building can be constructed at reasonable expense."

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 150. See section 205 of the present Act.

Encroaching upon a road, drain, sewer or acqueduct 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.

In an unreported case (*Stalkartt* v. *Chairman of the Howrah Municipality*) the High Court granted a rule on the ground that the Magistrate's order for removal should be a judicial one, *i.e.*, passed after enquiry and notice to the person concerned—but eventually refused to interfere with the order on hearing it had already been carried out.

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 acqueduct, 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.

[This view has since been confirmed by the High Court Ruling in *Eshan Chandra Mittra* v. *Banka Behary Pal*, I. L. R., XXV Cal., 160.]

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.

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*).

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

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.

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.

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

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

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.

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

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

In Darjeeling this section is replaced by the following (section 11, Act 1 of 1960).

"207. (1) *Whenever any building, wall, revetment or other erection, or any part thereof, or any stone, tree, soil or débris from private premises, falls down and obstructs any public road or drain, the Commissioners may cause the obstruction to be removed.*

Removal of materials falling upon or into public road or drain.

(2) *All stone and trees so removed shall be separately heaped near the spot, and a notice shall be affixed in the vicinity calling upon the persons from whose premises the stone or trees or any of the same has or have fallen to take away the same.*

(3) *If, in the course of removing any obstruction under sub-section (1), it be found necessary to break up or blast any stone or to cut up any tree, the work shall be executed by the Commissioners; and, if any persons desire, in pursuance of a notice affixed under sub-section (2), to take away any stone or tree which has been so dealt with, they must first pay to the Commissioners the expenses incurred by them under this sub-section.*

(4) *If such stone or trees be not taken away by the said persons within seventy-two hours after the affixing of the said notice, or within any further period allowed by the Commissioners, the same shall become the property of the Commissioners.*

"207A. *If it appears to the Commissioners that any débris which has fallen upon or into any private road or drain ought to be removed, they may—*

Removal of *débris* falling upon or into private road or drain.

(a) *cause such débris to be removed, at the expense of the owner of the road or drain, or*

(b) *by written notice require the said owner to remove the débris.*"

See note to section 201.

"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."

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

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.

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.

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

"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 authorised 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.*

See note to section 201.

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 & 11 Vict., cap. 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.

See note to section 201.

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.

[*Sections added in Darjeeling by section* 12, *Act I of* 1900.]

Powers where buildings, &c., threaten the stability of other immoveable property.

"210*B*. *If it appears to the Commissioners that any building or portion of a building, or anything affixed to a building, or any wall or structure on any land, is in such a condition as to threaten the stability or security of any hillside or bank or any immoveable property thereon,*

the Commissioners may, by written notice, require the owner of such building or land,—

(*a*) *to take down such building, or portion, thing, wall or structure and remove the materials, or*

(*b*) *to secure or repair such building, portion, thing, wall or structure, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice, and*

(*c*) *in case* (*a*), *also to take such order with the site of such building, wall, or structure, for ensuring the stability or security of any hillside or bank or any immoveable property thereon, as may be prescribed in the notice.*

Powers where hillside or bank threatens the safety of buildings.

"210*C*. *If it appears to the Commissioners that the condition or situation of any hillside or bank, being private property, is such as to threaten the safety of any building, and that the safety of such building cannot be ensured by taking action under section* 248*A*, *and also that such building threatens the safety of some other building, they may, by written notice, require the owner of such first-mentioned building—*

(*a*) *to take down the building and remove the materials, or*

(*b*) *to secure the building, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice,*

and may also, by written notice, require the owner of such other building to secure the same, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice."

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?"—(*B. C., March*, 1876.)

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

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.

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.

Stray dogs to be killed at certain appointed periods.

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 orders.

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., cap. 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, defaces, or alters any name or number put up by the Commissioners under the authority of section two hundred and fifteen,

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

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 cess-pool, 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. *Dwarkanath Hazrah* (*petitioner*), 8 B. L. R., App., 9; 70 Cr. R., 16 W. R.

Generally, when there is an occupier, he, and not the owner, should be proceeded against for not keeping the land, etc., in a proper state.—See *Queen* v. *Brojo Lall Mitter*, 45 Cr. R., 8 W. R. *See* also *Queen* v. *Parbutty Charan Sircar*, 57 Cr. R., 3 W. R.

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 Chunder Ghose* v. *The Bally Municipality*, I. L. R., 17 Cal., 684.

Disobeying requisition under sections 202, 204 or 208.

218. (215, 218 and 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 ; 6 Cr. R., 25 W. R., 31 Cr. R., 21 W. R.

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

219. (204, 211, 224 and 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 preceeding 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.

"*Provided also that the provisions enacted by the Darjeeling Municipal Act, 1900, shall take effect in the Darjeeling Municipality without being expressly extended thereto.*" (Act I (B.C.) of 1900, section 13).

See note to section 320 (*post.*)

Circular No. 9 T.—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 donot 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.)

Publication of order.

222. (234) Every such order shall be published in the *Calcutta Gazette*, and the Commissioners shall, within fifteen days of such publication, cause a copy of the same, with a translation thereof into the vernacular of the district, to be posted up at their office, with a notice of the date on which such order shall take effect, and shall cause the same to be published as prescribed in section three hundred and fifty-four.

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

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

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

Local Government may cancel or modify order.

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

Of a Survey.

Survey of a municipality.

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

The Act will be found in Appendix (post.)

Of Privies, Drains, and Excavations.

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

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 drains, privy or cess-pool, or to remove any

privy or close any cess-pool which is situated on such land.

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.

An order to remove a privy under this section if made in accordance with the provisions of the law cannot be disputed in the Civil Court, the Municipality being the sole judges of its necessity (*F. W. Duke* v. *Rameswar Malia*, I. L. R., XXVI Calc., 811).

In Darjeeling, section 14, Act I of 1900, inserts the following after section 224.

Power to define limits of *jhoras*, &c.

224A. *The Local Government may, by notification in the Calcutta Gazette, define, for the purposes of this Act, the limits of any* jhora, *watercourse, channel or natural drainage line.*

Control over construction or alteration of private drains.

"224*B*. (1) *Every person who intends to construct, re-construct, alter, stop-up or obstruct any private drain shall send to the Commissioners an application for permission to execute the work.*

(2) *Every such application shall be accompanied by a general description of the drain.*

(3) *The permission referred to in sub-section* (1) *may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in Schedule B.*

(4) *No work referred to in sub-section* (1) *shall be commenced without the written permission of the Commissioners.*

Re-construction, repair, etc., of private drains.

"224*C*. *The Commissioners may, by written notice, require the owner of any building or land—*

(*a*) *to re-construct, enlarge, extend, alter, repair, make efficient, stop-up or remove any drain belonging to such building or land, or*

(*b*) *to alter the inclination or direction of any such drain, or*

(*c*) *to provide moveable coverings or gratings for any such drain, of such nature as may be specified in the notice, or*

(*d*) *to carry any such drain to such point of outlet or of junction with some other drain as may be specified in the notice.*"

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 this 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.

Substitution of new sections for sections 227 and 228.

For section 227 and 228 the following shall be substituted, in Darjeeling.

"227. *If any building or land is not drained to the satisfaction of the Commissioners, they may, by written notice, require the owner to provide a drain therefor, at such inclination, and to such point of outlet or of junction with some other drain, as may be specified in the notice.*

Power to require provision of private drain.

"228. (1) *If it appears to the Commissioners that any buildings or lands belonging to different owners can be drained, or the drainage thereof improved, more economically or advantageously in combination than separately, the Commissioners may cause such buildings or lands to be drained, or the drainage thereof to be improved, in such manner as they may consider suitable.*

Private drainage in combination.

(2) *The Commissioners may cause any drain which has been provided or improved under sub-section* (1) *to be maintained or repaired in such manner as they may consider suitable.*

(3) *All expenses incurred under sub-section* (1) *or sub-section* (2) *in connection with the drainage of any buildings or lands shall be paid by the owners of such buildings or lands, in proportion to the benefits derived by them respectively.*

(4) *The said proportion shall be determined by the Commissioners.*

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

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

"229*A*. *Whenever any private drain is to be constructed, re-constructed, enlarged, extended, altered, repaired or otherwise dealt with in pursuance of section 224B, section 224C, section 227 or section 228, the work shall be executed in accordance with the rules contained in schedule B, so far as they are applicable to the particular case.* [Darjeeling Act I (B. C.) of 1900:—(6)].

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, cess-pool, house-drain, or other receptacle, for sewage or other offensive matter, within fifty feet of any public tank or watercourse or a tank or watercourse which the inhabitants of any locality use.

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

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 trap-door opening on to any road or drain. The Commissioners may require any owner or occupier upon whose land any such privy exists to remove the same within eight days.

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

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 cess-pools, tanks or pits without special permission previously obtained from them.

If any such excavation, cess-pool, tank or pit is made after the issue and publication of such order, without such special permission, the Commissioners may require the owners and occupiers of the land on which such excavation, cess-pool, tank or pit is made, within two weeks, to fill up such excavation.

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 sections 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 Bancrjee* 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 section 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.

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.

Roofs and external walls not be made of 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."

Now that the period of limitation for suits for the recovery of public streets or roads by local authorities has been extended to 30 years by Act XI. of 1900, these petitions should be preserved for ever. (B. Govt. Cir. 33M., dated 22nd December 1900 to Commissioners.)

By Act IV of 1899 (which will be found *post*) all Government buildings, including buildings occupied by Government for the public service, whether existing or designed, are exempt from the operation of these Regulations. In the case of buildings connected with imperial defence or whose plan or construction Government considers should be kept confidential, the exemption is absolute. In other cases a procedure is provided whereby the plans may be examined by the Commissioners and their criticism or objections be considered by Government.

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

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

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

Provided that no rule under section 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."

As amended by Act II of 1896. Before this the High Court had held (*Chandra Kumar Dey* v. *Ganesh Das Agarwallah*, I. L. R. XXV, Cal., 419) "that to commence building without orders or permission did not necessarily contravene the law, but merely incurred the risk of disapproval and of the act being treated as one of contravention." The matter has now been cleared up.

See note to section 273 (1).

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 or 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, fireplaces 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).

Appeals from orders of Commissioners.

"242A. (1) Any person aggrieved—

(*a*) by the prohibition by the Commissioners under section two hundred and thirty-seven of the erection or re-erection of a house, not being a hut, or

(*b*) by a notice from the Commissioners under section two hundred and thirty-eight or sub-section (3) of section two hundred and forty-one requiring the alteration or demolition of a building, or

(*c*) by any order made by the Commissioners under the powers conferred upon them by section two hundred and forty-two, may appeal within thirty days from the date of such prohibition, notice or order, to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

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

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

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

243. (261) It shall not be lawful for any person to erect a hut, or any range or block of huts or sheds, or to add any hut or shed to any range or block already existing, or to enlarge any existing hut, without "one month's" previous notice to the Commissioners; and the Commissioners may require such huts or sheds to be built so that they may stand in regular lines, with a free passage or way in front of "each line" and between "every two lines" of such width as they may think proper for ventilation and to facilitate scavengering, and with such number of privies and with such means of drainage, as to

them may seem necessary, and at such a level as will admit of such drainage, and with a plinth at least two feet above the level of the nearest street.

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

The provisions of section 175—184 apply to any requisition issued by the Commissioners under this section.

Power to direct removal of huts built without notice.

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

Disobedience to a requisition issued under this section is punishable under section 267. The Commissioners may also proceed under section 180, and remove the huts or sheds themselves, recovering the costs from the persons upon whom the requisition may have been served. The provisions of sections 175—184 are applicable to any requisition issued under this section.

Institution of new sections 236 to 244.

In Darjeeling for sections 236 *to* 244 *of the said Act and the heading prefixed thereto the following are substituted, namely, by section* 17, *Act I of* 1900.

"*Building Regulations.*

Prohibition of inflammable materials for roofs or external walls.

"236. (1) *Except with the previous written permission of the Commissioners, external roofs or walls of buildings shall not, after the commencement of the Darjeeling Municipal Act,* 1900, *be made of grass, leaves, mats, canvas, shingles or other inflammable material.*

(2) *The Commissioners may, by written notice, require the owner of any building situated in or near a road and contiguous to or adjoining any other building, and having, at the commencement of the Darjeeling Municipal Act,* 1900, *an external roof or wall made of any such inflammable material as aforesaid, to remove or alter such roof or wall.*

(3) *Sub-sections* (1) *and* (2) *shall not apply to any garden-hut, orchid-house, fernery or other similar structure within a compound, unless in any particular case the Commissioners consider any such structure to be dangerous.*

Use of building-sites, and erection, re-erection and material alteration of buildings.

"237. *After the commencement of the Darjeeling Municipal Act,* 1900, *no land shall be used as a site for the erection, re-erection or material alteration of a building, and no building shall be erected, re-erected or materially altered otherwise than in accordance with the provisions of this Act and any rules, bye-laws or orders made under this*

Act, relating to the use of building-sites or the erection, re-erection or material alterations of buildings, as the case may be.

"*Masonry buildings and framed buildings.*

"238. (1) *Every person who intends*—

Application for approval of site for erection re-erection or material alteration of a masonry or framed building.

(*a*) to *erect or re-erect a masonry or framed building, or*

(*b*) *to materially alter a masonry or framed building in the manner referred to in sub-clause* (*e*), *sub-clause* (*f*), *sub-clause* (*g*), *sub-clause* (*h*) *or sub-clause* (*g*) *of clause* (27) *of section* 6,

shall send to the Commissioners an application for approval of the site, together with a site-plan of the land.

(2) *Every such application and site-plan shall contain the particulars and be prepared in the manner prescribed in this behalf in Schedule C.*

"239. *Within thirty days after the receipt of any application made under section* 238 *for approval of a site, or of any information or further information required under Schedule C, the Commissioners shall, by written order, either*—

Approval of site when to be given or refused.

(*a*) *approve the site, subject to such conditions or modifications* (*if any*) *as may be specified in the order, or*

(*b*) *refuse, on one or more of the grounds mentioned in section* 244*B, to approve the site.*

"240. (1) *Every person who intends to erect, re-erect or materially alter a masonry or framed building shall send to the Commissioners an application for permission to execute the work,, together with a plan of the building, complete elevations and sections of the work, and a specification of the work.*

Application for permission to erect, re-erect or materially alter a masonry or framed building

(2) *Every document referred to in sub-section* (1) *shall contain the particulars and be prepared in the manner prescribed in this behalf in Schedule C.*

(3) *Every application under sub-section* (1) *for permission*—

(*a*) *to erect or re-erect a masonry or framed building, or*

(*b*) *to materially alter a masonry or framed building in the manner indicated in clause* (*b*) *of section* 238,

must be sent either together with the application sent under section 238 *or within a period of six months from the issue, under this Act, of the order* (*if any*) *approving the site ; and, if any such application be sent after the expiration of the said period, it shall not be received unless a fresh application is made under section* 238 *for approval of the site.*

"241. *Permission to erect or re-erect a masonry or framed building, or to materially alter a masonry or framed building in the manner indicated in clause* (*b*) *of section* 238 *shall not be given unless and until the Commissioners have approved the site on an application sent to them under section* 238.

Permission to erect, re-erect or materially alter a masonry or framed building not to be given unless and until site approved:

"242. *The erection, re-erection or material alteration of a masonry or framed building shall not be commenced unless and until the Commissioners*—

Work not to be commenced unless and until permission granted.

(*a*) *have granted written permission for the execution of the work on an application sent to them under section* 240, *or*

(*b*) *where an appeal or reference has been made to the Engineer appointed under section 351D—have received orders from the Engineer determining that permission to execute the work should be granted.*

Permission to execute work when to be granted or refused.

"243. *Within thirty days after the receipt of any application made under section 240 for permission to execute any work, or of any information or further information required under Schedule C, the Commissioners shall, by written order, either—*

(*a*) *grant permission to execute the work, subject to such conditions or modifications (if any) as may be specified in the order, or*

(*b*) *refuse, on one or more of the grounds mentioned in section 244C, to grant such permission:*

Provided that, where the approval of a site is required by this Act, the said period of thirty days shall not in any case begin to run until the site has been approved under this Act.

Record of reasons when approval or permission refused.

"244. *Whenever the Commissioners refuse to approve a site for the erection, re-erection or material alteration of a masonry or framed building, or to grant permission to erect or re-erect or materially alter such a building, they shall state specifically the grounds for such refusal.*

Reference to appellate Engineer if grant or refusal of approval or permission is delayed.

"244A. *If, within the period prescribed by section 239 or section 243 as the case may be, the Commissioners have neither given nor refused their approval of a building-site or their permission to execute any work, as the case may be, the Engineer appointed under section 351D shall be bound, on a written reference being made to him by the applicant within six months after the expiration of the said period, to determine forthwith, by written order, whether such approval or permission should be given or not.*

Grounds on which approval of site may be refused.

"244B. *The only grounds on which approval of a site for the erection, re-erection or material alteration of a masonry or framed building may be refused are the following, namely:—*

(1) *that the site is not, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer a safe site for the erection, re-erection or alteration of the building;*

(2) *that the erection, re-erection or alteration of the building upon the site would, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer, threaten the stability or security of some hillside or bank or some immoveable property thereon;*

(3) *that any particulars comprised in the site-plan would contravene some specified provision of this Act or some specified rule, bye-law or order made hereunder;*

(4) *that the application for such approval, or the site-plan, does not contain the particulars or is not prepared in the manner prescribed in Schedule C; or*

(5) *that any information required under the said Schedule has not been duly furnished.*

"244C. *The only grounds on which permission to erect, re-erect or materially alter a masonry or framed building may be refused are the following, namely:—*

Grounds on which permission to execute work may be refused.

(1) *that, having regard to the site, to the plan of the building, to the elevations, sections and specification of the work, and to the information and documents (if any) furnished to the Commissioners, the building, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer,—*

(a) *would not be safe for human habitation, or*

(b) *would threaten the stability or security of some hillside or bank or some immoveable property thereon;*

(2) *that the work, or any of the particulars comprised in the building-plan elevations, sections or specification, would contravene some specified provision of this Act or some specified rule, bye-law or order made hereunder;*

(3) *that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule C; or*

(4) *that any information required under the said Schedule has not been duly furnished.*

"244D. (1) *If the erection or re-erection of any masonry or framed building, or the material alteration of any such building in the manner indicated in clause (b) of section 238, is not commenced within six months after the date on which permission was given to execute the work, the work shall not be commenced until fresh applications have been made under sections 238 and 240 and fresh approval and permission have been given under this Act.*

Lapse of permission if not acted upon within six months.

(2) *If any other material alteration of a masonry or framed building is not commenced within six months after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made under section 240 and a fresh permission granted under this Act.*

"244E. (1) *When any site, after having been approved under this Act, has been prepared for building-work, the owner of the building shall, not less than three days before building-work is commenced, send to the Commissioners a written notice specifying the date on which it is proposed to commence such work.*

Notice before commencing building work, and inspection of site.

(2) *The Commissioners or the Municipal Engineer, if authorised by them in that behalf, may thereupon inspect the site; and, if it appears to the Commissioners that the site is in such a condition as to render the building unsafe or that the proposed work would threaten the stability or security of any hillside or bank or any immoveable property thereon, they may, by written order, withdraw their permission to execute the work, and may, if they think fit, by a like order grant a fresh permission subject to such conditions for ensuring safety as they may consider necessary.*

"244F. *Within fifteen days after the erection, re-erection or material alteration of any masonry or framed building has been completed, the owner shall send to the Commissioners a written notice of the fact.*

Notice after completion of building-work.

"244G. *The Commissioners, or any officer authorised by them in that behalf, may, at any time during the erection, re-erection or material alteration of any masonry or framed building, or within one month after the receipt of the notice sent under section 244F with respect to any*

Inspection of building.

building, inspect such building, without giving previous notice of the intention so to do.

Powers on inspecting building.

"244H. (1) *If, when any such inspection is made, the Commissioners find that the building is being or has been constructed—*

(a) *otherwise than in accordance with the plans approved under this Act, or*

(b) *in such a way as to contravene any of the provisions of this Act or any rule, bye-law or order made hereunder,*

they may, by written notice, require the owner of the building either—

(i) *to make such alterations as may be specified in the notice with the object of bringing the work into conformity with the said plans or provisions, or*

(ii) *to appear before them and shew cause why such alterations should not be made.*

(2) *If such owner does not appear and show cause as aforesaid, he shall be bound to make the alterations specified in such notice.*

(3) *If such owner appears and shows cause as aforesaid, the Commissioners shall, after hearing him, cancel the notice issued under sub-section (1) or confirm the same subject to such modifications (if any) as they may think fit.*

"*Huts.*

Application for permission to erect, re-erect or materially alter a hut.

"244J. (1) *Every person who intends to erect, re-erect or materially alter a hut shall send to the Commissioners on application for permission to execute the work.*

(2) *Every such application shall contain the particulars and be prepared in the manner prescribed in this behalf in Schedule C.*

Work not to be commenced unless and until permission given.

"244K. *The erection, re-erection or material alteration of a hut shall not be commenced unless and until the Commissioners—*

(a) *have granted written permission for the execution of the work on an application sent to them under section 244J, or*

(b) *where an appeal or reference has been made to the Engineer appointed under section 351D—have received orders from the Engineer determining that permission to execute the work should be granted.*

Permission to execute work when to be given or refused.

"244L. *Within fourteen days after the receipt of any application made under section 244J for permission to erect, re-erect or materially alter a hut, or of any information or further information required under Schedule C, the Commissioners shall, by written order, either—*

(a) *grant such permission, subject to such conditions or modification (if any) as may be specified in the order, or*

(b) *refuse, on one or more of the grounds mentioned in section 244O, to grant such permission.*

Record of reason when permission refused.

"244M. *Whenever the Commissioners refuse to grant such permission as aforesaid, they shall state specifically the grounds for such refusal.*

Reference to appellant Engineer if grant or refusal of permission is delayed.

"244N. *If, within the period prescribed by section 244L, the Commissioners have neither granted nor refused permission to erect, re-erect or materially alter a hut, the Engineer appointed under section 351D shall be bound, on a written reference being made to him by the applicant within six months after the expiration of the said period*

to determine forthwith, by written order, whether such permission should be granted or not.

Grounds on which permission to erect, re-erect or materially alter a hut may be refused.

"244-*O. The only grounds on which permission to erect, re-erect or materially alter a hut may be refused are the following, namely :—*

(1) *in the case of erection or re-erection, or of any material alteration of the kind indicated in clause (b) of section 238, that the site is, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer, an unsafe site for a hut ;*

(2) *that the work would, in the opinion of the Commissioners or (where an appeal or reference has been made to the Engineer appointed under section 351D) the Engineer, threaten the stability or security of some hillside or bank or some immoveable property thereon ;*

(3) *that the work would contravene some specified provision of this Act or some specified rule, bye-law or order made hereunder ;*

(4) *that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule C ; or*

(5) *that any information required under the said Schedule has not been duly furnished.*

Lapse of permission if not acted upon within six months.

"244*P. If the erection, re-erection or material alteration of any hut is not commenced within six months after the date on which permission was granted to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this Act.*

Notice before commencing building-work, and inspection.

"244*Q.* (1) *If any site be specially prepared for erecting, re-erecting or materially altering a hut in pursuance of any permission granted under this Act, the owner of the hut shall, not less than three days before building-work is commenced, send to the Commissioners a written notice specifying the date on which it is proposed to commence such work.*

(2) *The Commissioners, or the Municipal Engineer, if authorised by them in that behalf, may thereupon inspect the site, and, if it appears to the Commissioners that the site is in such a condition as to render the hut unsafe or that the proposed work would threaten the stability or security of any hillside or bank or any immoveable property thereon, they may, by written order, withdraw their permission to execute the work, and may, if they think fit, by a like order, grant a fresh permission subject to such conditions for ensuring safety as they may consider necessary.*

"*Exemptions.*

Exemptions.

"244*R. The following buildings shall be exempted from the operation of sections 240 to 244Q, except in so far as those sections relate to sites, that is to say—*

(a) *any building erected and used, or intended to be erected and used, exclusively for the purpose of a plant-house, summer-house (not being a dwelling-house), poultry-house or aviary, provided the building be wholly detached from, and situated at a distance of at least ten feet from, the nearest adjacent building ; and*

(b) *any building of a temporary character erected or intended to be erected by, or with the sanction of, the Commissioners for use solely as a hospital for the reception and treatment of persons suffering from any infectious or contagious disease.*

"Demolition, alteration and stopping of work.

"244S. If the Commissioners are satisfied—

Demolition or alteration of work unlawfully commenced, carried on or completed.

(1) that any work referred to in section 201C, sub-section (1) or section 224B, sub-section (1), or the erection, re-erection or material alteration of any building—

(a) has been commenced without obtaining the permission of the Commissioners, or (where an appeal or reference has been made to the Engineer appointed under section 351D) without waiting until the Commissioners have received the orders of the Engineer, or in contravention of any orders passed by him, or

(b) is being carried on or has been completed otherwise than in accordance with the particulars on which such permission or orders was or were based, or

(c) is being carried on or has been completed after such permission has been withdrawn, or

(d) is being carried on or has been completed in breach of any provision contained in this Act or in any rules or bye-laws made hereunder, or of any condition, modification, direction or requisition lawfully imposed, made or given under this Act or such rules or bye-laws, or

(2) that any alterations required by any notice issued under section 244H have not been duly made,

the Commissioners may apply to the Magistrate, and such Magistrate may make an order—

(i) directing that the work done, or so much of the same as has been unlawfully executed, be demolished by the owner or altered by him to the satisfaction of the Commissioners, as the case may require, or

(ii) directing that the work done, or so much of the same as has been unlawfully executed, be demolished or altered by the Commissioners at the expense of the owner:

Provided that the Magistrate shall not make any such order without giving the owner full opportunity of adducing evidence and of being heard in defence.

"244T. (1) In any case in which any work referred to in section 244S has been unlawfully commenced or is being unlawfully carried on, the Commissioners may, by written notice, require the person carrying on the work to stop the same pending the decision of the Magistrate on an application made to him under that section.

Power to stop progress of work unlawfully commenced or carried on.

(2) If any work be carried on upon any premises in contravention of a notice issued under sub-section (1), any person directing or carrying on such work may, under the orders of the Commissioners, be removed from the premises by any police-officer.

"244U. When any person is liable to be directed to demolish work and to pay a fine under this Act, both those directions may be given at the discretion of the Magistrate.

Demolition and fine cumulative.

"Control over occupation of buildings.

"244V. (1) If it appears to the Commissioners that any building or the site thereof is, in consequence of its condition or of its situation with reference to any hillside or bank, unsafe,

Power to prohibit occupation of unsafe or insanitary building.

they may, by written notice, prohibit the owner or any other person from occupying or continuing to occupy the building or from permitting it to be occupied until the building or the site, as the case may be, is rendered safe to the satisfaction of the Commissioners.

(2) *If it appears to the Commissioners that the drainage of, or the latrine accommodation provided for, any masonry or framed building is defective, they may, by written notice, prohibit the owner from letting the building for occupation until the defects have been remedied to their satisfaction.*

Power to remove persons occupying unsafe building

"244*W*. *If any person occupies or continues to occupy any building in contravention of any notice issued under sub-section* (1) *of section* 244*V*, *he may, under the orders of the Commissioners, be removed from the building by any police-officer.*

Prohibition of use of unfit building for human habitation.

"244*X*. (1) *If, for any reason, any building intended for or used as a dwelling place appears to the Commissioners to be unfit for human habitation, they may apply to the Magistrate to prohibit the further use of such building for such purpose; and the Magistrate may, by written order, make a prohibition as aforesaid or may pass such other order as he may deem just and proper:*

Provided that the Magistrate shall not make any order under this sub-section without giving the owner and occupier of the building full opportunity of adducing evidence and of being heard in defence.

(2) *When any such prohibition has been made, no owner or occupier of such building shall use the same or suffer it to be used for human habitation until the Commissioners certify in writing that the causes rendering it unfit for human habitation have been removed to their satisfaction, or the Magistrate, by written order, withdraws the prohibition aforesaid.*

Abatement of over-crowding in dwelling house or dwelling-place.

"244*Y*. (1) *If it appears to the Commissioners that any dwelling-house or any hut which is used as a dwelling-place, or any room in any such house or hut, is so overcrowded as to endanger the health of the inmates thereof, they may apply to the Magistrate to abate such overcrowding;*

and the Magistrate may, by written order, require the owner of the building or room, within a reasonable time to be prescribed in the said order, to abate such overcrowding by reducing the number of lodgers, tenants or other inmates of the building or room,

or may pass such other order as he may deem just and proper;

Provided that the Magistrate shall not make any order under this sub-section without giving the owner and occupier of the building or room full opportunity of adducing evidence and of being heard in defence.

(2) *The Commissioners may, by written order, declare what amount of superficial and cubic space shall be deemed, for the purposes of sub-section* (1), *to be necessary for each occupant of a building or room.*

(3) *If the owner of any building or room referred to in subsection* (1) *has sub-let the same, the landlord of the lodgers, tenants or other actual inmates of the same shall, for the purposes of this section, be deemed to be the owner of the building or room;*

(4) *It shall be incumbent on every tenant, lodger or other inmate of a building or room to vacate on being required by the owner so to do in pursuance of any requisition made under sub-section* (1).

"*Roof-gutters and down-pipes or platforms.*

Provision, &c., of roof-gutters and down-pipes or masonry platforms.

"244*Z*. (1) *The Commissioners may, by written notice, require the owner or occupier of any building—*

(*a*) *to provide and maintain a sufficient number of suitable roof-gutters and down-pipes or masonry platforms for carrying water from the roof of the building into such drains as may be specified in the notice, or*

(b) *to renew, alter repair or remove any such gutters, pipes or platforms already provided for the building.*

(2) *The said gutters must be of such dimensions and have such slope, and the said pipes must be of such dimensions, and the bends in such pipes must be made at such angles, as may be prescribed by rules made by the Commissioners at a meeting.*"

Of Sanitary Measures with regard to Blocks of Huts.

Power of Commissioners as to inspection of huts.

*245. (264) Whenever the Commissioners at a meeting are satisfied, from inspection, or by report of competent persons, that any existing block of huts within the Municipality is, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage and the impracticability of scavengering, attended with risk of disease to the inhabitants or the neighbourhood, they may cause the locality to be inspected by two Medical Officers, who shall make a report in writing on the sanitary condition of the said block of huts; and shall specify, if necessary, in the said report, the huts which should be removed, the roads, drains, and sewers which should be constructed, and the low lands which should be filled up, with a view to the removal of the said risk of disease.

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

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

"Now, on turning to the medical certificate, we find nothing of the kind. It runs as follows: 'We, the undersigned Medical Officers, have the honor to report that, at the request of the Municipal Commissioners, we have carefully inspected the blocks of huts situated within the localities specified below, and we are of opinion that the huts are so crowded together and so irregularly situated that there is risk of disease to the inhabi-

tants, and there are no means for effectually scavengering the localities, and there is a want of drainage. We have specified below, in detail, what improvements we consider to be necessary in the way of making roads and drains and removing huts'. The crowding of huts is a matter which gives jurisdiction to the Commissioners under section 264. Irregular building does not. So, looking at the certificate, we must read it to be that, so far as the huts are crowded together, there is risk of disease. Further than this we cannot go, for it certainly does not state that insufficiency of scavengering or the want of drainage is attended with any risk whatever The order cannot go beyond the certificate. I think, therefore, that so much of the order as refers to the crowding of the huts and the removal of them is good, while the latter portion which refers to the insuffiency of scavengering and want of drainage, is bad.''

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

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

But where the Municipality having proceeded in accordance with sections 245 and 246 of the Act decides that certain rules are necessary, that conclusion, in the absence of *mala fides* or fraud or considerations of that nature, cannot be questioned in the Civil Court. [*F. W. Duke* v. *Ramessar Maliah*, I. L. R., XXVI Cal., 881.]

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

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

The provisions of sections 175—184 are applicable to any requisition made under this section.

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

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

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

Sale of huts.

In an unreported case (*Ramanath Ghosh* v. *Chairman, Howrah Municipality*, Appeal No. 1105 of 1900) the High Court have ruled as follows. "The suit * * is one in regard to what is called a bustee road. The plaintiff claims the bustee road as his. The Howrah Municipality who are the defendants allege that the road is vested in them.

The Subordinate Judge has found in favour of the defendants, but has given the plaintiff a declaration that the soil of the road belongs to him.

"The plaintiff * * * * impugns the finding at which the Subordinate Judge has arrived. He even says that there are no grounds upon which the Subordinate Judge should have applied the provisions of section 30 of the Municipal Act to this road; secondly, that although the Municipality have the right to use the bustee road, for conservancy purposes of the village in which it is situated, it has no right to use it for the purpose of cleaning other *bustees*.

"In our opinion there is no force in either of these pleas.

"The Subordinate Judge has proved as a matter of fact that the road is a bustee road constructed by the Municipality and which vested in the Municipality at least 14 years ago and that since then it has been used by the Municipal *mehtars* and others as a pathway. He further finds that it is such a road as vests in the Municipality under section 30. These are findings of facts which conclude us: and no grounds have been shown us which induce us to suppose that there findings have been arrived at in an improper manner.

As to the second grounds of appeal there is no authority in the Municipal Act for such a view of the matter. There is no clause in that Act which in any way limits the right of user of the Municipality over *bustee*

roads. The Municipality seems to have full rights over the road in this case and to be entitled to use it in any way it pleases."

The following is added to section 248 *in Darjeeling* by section 18, Act 1 of 1900.

"*Revetting, turfing and sloping.*

Power to require revetting, turfing and sloping.

"248*A*. *If it appears to the Commissioners that the condition or the situation of any land, being private property, is such as to threaten the stability or security of any hillside or bank or any immoveable property thereon, the Commissioners may, by written notice, require the owner of the land to do all or any of the following things, namely :—*

(*a*) *to construct and maintain a revetment, retaining-wall or toe-wall upon any part of the land ;*

(*b*) *to re-construct, enlarge, strengthen, alter or repair any revetment, retaining-wall or toe-wall already standing on the land ;*

(*c*) *to turf the land or any portion thereof ;*

(*d*) *to slope the land or any portion thereof.*

Execution of work where owners of adjacent property would be benefitted.

"248*B*. *If any owner to whom a notice is issued under section 248A represents to the Commissioners, within fifteen days after the service of the notice, that the work required by the notice will directly and substantially benefit the owners of any adjacent buildings or land, the Commissioners may, after hearing all the owners concerned, themselves cause the said work to be executed ;*

and the expenses thereby incurred shall be recovered from any or all of such owners, in such proportions as the Commissioners may direct.

Power to execute works in combination.

"248*C*. *If it appears to the Commissioners that buildings or lands belonging to two or more owners can be protected, by the execution of works of the nature referred to in section 248A, more economically or advantageously in combination than separately,*

the Commissioners may themselves cause such works or any of them to be executed, maintained and kept in repair ;

and the expenses thereby incurred shall be recovered from the said owners, in such proportions as the Commissioners may direct.

Power to execute works where public road, drain, revetment or retaining-wall is affected.

"248*D*. *Notwithstanding anything contained in section 248A, the Commissioners may at any time themselves cause any revetment, retaining-wall or toe-wall to be constructed, re-constructed, enlarged, strengthened, altered or repaired on any private land immediately abutting upon any public road, drain, revetment or retaining-wall ;*

and the expenses thereby incurred shall be paid by the Commissioners and the owner of such land, in such proportions as the Commissioners may direct.

Rules as to revetting, turfing and sloping.

"248*E*. *Whenever any revetment, retaining-wall or toe-wall is to be constructed, re-constructed, enlarged, strengthened, altered or repaired, or any land is to be turfed or sloped, in pursuance of section 201D, section 210B, section 210C, section 248A, section 248B, section 248C, or section 248D, the work shall be executed in accordance with the rules contained in Schedule D, so far as they are applicable to the particular case.*"

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

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

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

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

Sale of unwholesome food or drink.

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

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

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

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

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

(1) Where any matter or ingredient not injurious to health has been added to the food, because the same is required for the production or preparation thereof as an article

of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the food, or conceal the inferior quality thereof;

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

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

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

No proceedings to be had without leave of the Commissioners.

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

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

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

Power to destroy unwholesome articles.

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

Person refusing to sell any article to Commissioners liable to penalty.

"D. If the Commissioners, or any person authorized by them in that behalf, shall apply to purchase any article of food exposed to sale, and shall tender the price for a quantity not more than shall be reasonably requisite

for the purpose of analysis, and the person exposing the same for sale shall refuse to sell the same, such person shall be liable to a penalty not exceeding fifty rupees."

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

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

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

Registry of shops for sale of European drugs.

252. No shop or place shall be kept for the retail sale of drugs recognized by the British Pharmacopœia, not being also articles of ordinary domestic consumption, unless the same shall have been registered in the Office of the Commissioners. Any keeper of such shop or place failing to register the same within two months after this section shall come into force, or within two months from the date of the establishment of such place, shall be liable to a fine not exceeding one hundred rupees. The Commissioners shall, upon registration, grant the keeper of such shop or place a license which he shall be bound to display in some conspicuous part of his premises.

Certificated dispensers.

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

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

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

This section is taken *verbatim* from the Calcutta Municipal Consolidation Act Amendment Act, 1881, section 23. Using such a shop or place

without its being registered is an offence punishable under section 275. Breach of the provisions of the second clause with regard to the compounding, etc., of drugs is punishable under section 276.

For Rules prescribed under this section, see Appendix.

Inspection of drugs.

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

Compensation if drug be not adulterated.

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

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

This is also taken from the Calcutta Municipal Consolidation Act Amendment Act, 1881, section 24. The last para. is taken *verbatim* from section 277 of Act V of 1876.

Adulterating drugs intended for sale is punishable under section 274, Indian Penal Code, with six months' imprisonment, and fine of Rs. 1,000. Selling, or exposing such adulterated drugs for sale, is similarly punishable under section 275, Indian Penal Code.

Under section 521, Criminal Procedure Code, the Court can order the destruction of the drugs in addition to any punishment inflicted.

Of Burial and Burning-Grounds.

Registration of existing burial and burning-grounds.

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

The object of the section is to obtain a correct record of the burial and burning grounds actually in use, and all such must be registered without charge during the period specified.

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

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

It has been held that the Commissioners have no power to levy fees upon interments or cremations in new burial or burning-grounds sanctioned under the section. The only case in which they are justified in levying such fees is, where they have themselves provided, out of the Municipal fund, fitting places to be used as burial or burning grounds according to the provisions of section 259 (L. R.)

No burial or burning-ground . . . . shall be made or formed. This plainly refers to new grounds which might be made or formed after these sections come into force. If made or formed with the permission of the Commissioners, such grounds must (having regard to sections 257 and 274) be registered.

Having lapsed into disuse. The question has been raised as to whether these words refer to grounds which have been registered under the preceding section, and *then* fallen into disuse, or to grounds which had fallen into disuse *before* the extension of these sections. In all probability the latter case is referred to. If the Commissioners permit disused grounds to be re-opened registration of such grounds is obviously necessary with reference to sections 257 and 274.

By section 29A the powers and functions of the Local Government under this section have been delegated to Commissioners of Divisions.

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

256. (280) If it shall appear to the Commissioners at a meeting that any public or private burial or burning-ground is dangerous to health or offensive to the taxpayers or to the inhabitants of the neighbourhood, and also that a suitable place for interment

or burning as the case may be, exists within a convenient distance and is open and available to the inhabitants of the Muncipality, the Commissioners shall give public notice of their intention to close such burial or burning-ground, and shall consider any objections which may be preferred within fifteen days of the publication of such notice; after considering such objections they may, by notification to be affixed on some conspicuous part of the ground, appoint a time, not being less than two months, for the closing of such burial or burning-ground.

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

Under the corresponding section, the sanction of the Commissioner of the Division was required, before the issue of the notification in question. *Semble* that the objections should be considered at a meeting. Cf. *Municipality of Poona* v. *Mohanlal*, I. L. R., 9 Bom., 51.

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

Private burial-places may be excepted.

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

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

Appeals from orders under sections 256 and 256A.

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

257. (281) After the expiration of the three months mentioned in section two hundred and fifty-four, no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning-ground; but

Prohibition to bury or burn in unregistered grounds.

the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

A breach of the provisions of this section is an offence punishable under section 274.

The words "special permission for a corpse" clearly show that a separate special permission must be given for every such corpse, and that the Commissioners have no power to grant a general permission to any person, or to the public generallly, to bury or burn in an unregistered ground.

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

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

No. 532 T.—M. of the 12th May 1884, in the Municipal Department, orders that the following clause should be added to Rule 8 of the "Rules for reporting, transmitting, and disposing of intestate moveable property:

"The *bona fide* expenses incurred by a Municipality on account of the cost of the burial or cremation of the corpses of persons dying intestate within Municipal limits, should also be included in Form III, and should be paid at once from the estate of the deceased to the Vice-Chairman of the Municipality, on his presenting a duly receipted bill for the amount to the Judge.

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

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

By section 28A the powers and functions of the Local Government under this section have been delegated to Commissioners of Divisions.

Commissioners may provide for burial of paupers free of charge.

*260. (284) The Commissioners at a meeting may, from time to time, out of the Municipal Fund, provide for the burial and burning of paupers free of charge within the limits of the Municipality.

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

Power to license fuel-shops at burning-grounds.

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

"At the instance of the Commissioners of South Barrackpore, we have introduced *by section 69 of the Bill* a new section (260A), giving the Municipal Commissioners power to grant licenses to persons for the sale of fuel and other necessaries at cremation-grounds and to prescribe a rate for the sale of such articles."—*Final Report of Select Committee on Amending Bill.*

Of certain Offensive and Dangerous Trades or Occupations.

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

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

melting tallow;

boiling offal or blood;

skinning or disembowelling animals;

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

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

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

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

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

as a shop for the sale of meat;

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

or as a lodging-house or a serai.

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

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

It would seem that this section does not apply to cases where the premises are only temporarily used for the purposes specified, for private convenience and not in the way of business or trade. There is a High Court ruling with regard to section 77, Act III of 1864 (B. C.), which appears to be in point, as no distinction can be drawn between the two sections in this respect. *In the matter of Sree Ram Chunder Haldar*, Glover and Birch, JJ., remarked as follows: "We think that this rule must be made absolute. The Junior Government Pleader, who has appeared on behalf of the Chairman of the Municipality, says, that no one is permitted to make bricks, whether for his own use or for sale, without taking out a license. The only section of Act III of 1864 (B. C.) which could be applied to this case refers to making bricks or doing other things with reference to trade. There is nothing in the section which applies to a person making bricks for his own use or which makes it an offence against Municipal Regulations to make them without first taking out a license . . . . It appears to us that this fine has been improperly levied on the petitioner, and that it should be returned to him."—65 Cr. R., 20 W. R.

One Deno Manjee was prosecuted by the Howrah Municipality for using a straw depôt without a license. He was acquitted by the Honorary Magistrate who tried the case, on the ground that he had petitioned for a license, and that the order of the Secretary refusing the same was not according to law. The acquittal was set aside by the High Court, on the ground that the only question which the Bench had to decide was as to whether the accused was carrying on his business without a license or not and not as to whether his petition had been properly dealt with.—*Unreported case.*

The offence of using any place for any of the purposes detailed in this section without a license is punishable under section 273, clause (2); a breach of the conditions of the license is punishable under section 273, clause (3).

It appears that the only person liable to a penalty for using the premises for any of the purposes specified is the owner or occupier who carries

on the business. His servants cannot be held to be liable, neither can the customer be held to be liable. A butcher, therefore, who slaughtered cattle in a slaughter-house for which no license had been taken out by the owner could not be held to have used the premises as a slaughter-house within the meaning of this section. For the offence consists, not in the isolated act, but in the carrying on of the trade or business without a license—*Municipal Commissioners of the Suburbs of Calcutta* v. *Zamir Sheik*, 4 Cr. R., 16 W. R.

The definition of "owner," given in section 6, clause (11), must, however, not be lost sight of.

The scale of fees now requires the approval of the Commissioner of the Division. This provision follows the example of the Punjab Act. The provision is a salutary one, as the section has been much abused. It is obvious that the power of demanding a fee for the grant of a license is not a power to tax a particular industry, at discretion. The scale of fees should be moderate and fixed for each class of industry.

Government has laid down the following general principles to be followed in this matter.

"A distinction should, in the first place, be drawn between dangerous trades and offensive trades, and those only should be included in the latter category which cause actual annoyance or discomfort to persons living in the neighbourhood and which can equally well be carried on outside Municipal limits. In respect of these the Lieutenant-Governor has no objection to fees being levied at such rates as will tend to discourage the establishment of such industries within Municipalities. In the case of trades which contain some elements of danger (such as the danger from fire which attends on the establishment of depôts for imflammable material) but which it is not desirable to drive outside Municipal limits, inasmuch as they can with suitable precautions be carried on within those limits without causing annoyance or risk to the neighbours, the fee levied should not be much in excess of the cost of maintaining the supervision necessary to secure that such precautions are taken, "(Ben, Govt. Muncpl. Cir. No. 67M, dated 10th June 1896 to Commissioners.)"

The fee leviable under section 261 is only a fee in respect of a license to use a place for a certain specified purpose. No power is given to the Commissioners to levy a tax on the products of the manufacture carried on in a place so licensed. Ben. Govt. Muncpl., No. 2057 M., 23rd June 1898.

By section 46 of Act I B. C., of 1893, this section is repealed as regards inflammable materials, in the Municipalities to which that Act is extended. The Act will be found *post*.

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

262. (287) If it be shewn to the satisfaction of the Commissioners at a meeting that any place licensed under section two hundred and sixty-one is a nuisance to the neighbourhood they may, notwithstanding anything contained in the said section, give notice to the occupier to discontinue the use of such place within one month after the date of such notice:

"Provided that in this case the Commissioners shall refund so much of the fee levied under section two hundred and sixty-one as may be proportionate to the unexpired portion of the year for which the license was granted."

This section is apparently based on the ruling in *Municipal Commissioners of the Suburbs of Calcutta* v. *Mohammed Ali*, 6 Cr. R., 16 W. R., in which it was laid down that a previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance.

In the same case it was ruled that "no one has a right to corrupt the air of a particular locality by the practice of a noxious trade, simply because at the commencement of the nuisance, no one was in a position to be injured by it; and no prescriptive right can be acquired to maintain, and no length of enjoyment can legalize, a public nuisance involving actual danger to the health of the community."

"Another species of nuisance is the carrying on of an offensive or dangerous trade or manufacture. Such carrying on when only occasioning injury to some private individual may form the subject of an action at his suit; but when it is detrimental to the public at large, it is a criminal offence punishable by fine and imprisonment; and it may be remarked that to support an indictment for such nuisances as these, it is not necessary to prove that they are offensive to health, if they be manifestly offensive to the senses."—(4 *Steph. Com.*, 245.)

Commissioners may prohibit private kilns.

"262A. Within such local limits as may be fixed by the Commissioners at meeting no place shall be used as a kiln for making bricks, pottery, tiles or lime for private purposes."

This section has been added with reference to the ruling *In the matter of Sriram Chunder Haldar*, quoted in the note to section 261.

Disobedience to an order issued under this section is punishable under section 273, clause (2).

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

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

The Commissioners may license places for such purpose, and may levy a fee not exceeding one rupee on