

the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

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

A breach of the provisions of this section is an offence punishable under section 273, clause (2). Breach of the conditions of the license is punishable under section 273, clause (3).

The words "exceeding ten in number" after "cattle" were struck out by the Amending Act.

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

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

This is altogether new and is founded on a suggestion made by the Army Sanitary Commission. A breach of the order is punishable under section 273, clause (4).

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

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

Punishable under section 273, clause (5).

Penalties.

266. (239) Any person constructing a privy within a Municipality, and failing to have it shut out from view, as in section two hundred and twenty-five required, shall be liable to a fine not exceeding twenty rupees.

Failing to shut out
privy from view.

267. (263) Whoever erects a hut, or any range or block of huts or sheds, or adds to any hut or shed, or to any range or block already existing, contrary to the provisions of section two hundred and forty-three; and whoever fails to remove such hut block of huts, or shed, when required by the Commissioners to do so, shall be liable to a fine not exceeding twenty rupees for every such offence, and to a further fine, not exceeding five rupees, for each day during which the offence is continued after he has been convicted of such offence.

Erecting huts without
notice.

A further fine. The sentence of a Court, imposing a daily fine with prospective effect, is bad.—*In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. For other references see section 156.

268. (272) If any owner, 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, after notice in writing given to him by the Commissioners that such place or slaughter-house is defective in any of the particulars specified in section two hundred and forty-nine, and requiring him to remedy the defect specified within not less than thirty days, makes default therein, he shall be liable to a fine not exceeding twenty rupees for every day during which such default is continued after the expiration of the period mentioned in such notice.

Disobeying requisition
under section 249.

See note to preceding section.

269. If any person, in order to provide for the passage of water, or for any other purpose, shall, without the consent of the Commissioners, dig or cut up any public road or thoroughfare, he shall be liable to a fine not exceeding twenty-five rupees, and shall, in addition, be

Cutting up road for
passage of water.

bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road or thoroughfare.

270. Whoever, within a Municipality,—

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

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

(3) (248) constructs a latrine, urinal, cess-pool, house-drain or privy, in contravention of the provisions of sections two hundred and thirty or two hundred and thirty-one; or

(4) (250) without the written permission of the Commissioners, digs, or makes, or causes or suffers to be dug or made, any excavation, cess-pool, tank, or pit, in contravention of the provisions of section two hundred and thirty-two; or

(5) makes or repairs a roof or wall with grass, leaves, mats or other inflammable material in contravention of the provisions of section two hundred and thirty-six, shall be liable, for every such offence, to a fine not exceeding twenty-five rupees.

271. Whoever, within a Municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections two hundred and twenty-four, two hundred and twenty-five, 'two hundred and twenty-seven,' two hundred and thirty, two hundred and thirty-one, or two hundred and

Throwing rubbish into
sewers.

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

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

Making excavations.

Making a roof or wall
of grass, &c.

Disobeying requisition
under sections 224,
225, 227, 230, 231 and 248.

thirty-eight, shall be liable, for every such offence, to a fine not exceeding twenty-five rupees, and to a further fine, not exceeding five rupees, for every day during which he shall continue to make such default after service on him of such requisition.

272. Whoever, within a Municipality,—

(1) (241) without the written consent of the Commissioners previously obtained, makes or causes to be made, or alters or causes to be altered, any drain leading into any of the sewers or drains vested in the Commissioners by this Act; or

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

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

Making drains contrary to the orders of the Commissioners.

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

The following has been added to §272 in *Darjeeling* by §19 of Act 1 of 1900.

“272A. Whoever—

Fine for certain offences.

(a) contravenes any provision of any of the clauses of this Act mentioned in the first column of the following table, or

(b) fails to comply with any requisition lawfully made upon him or any direction lawfully given to him under any of the said clauses,

shall be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

“272B. Whoever, after having been convicted of failing to comply with any requisition lawfully made upon him or any direction lawfully given to him under any of the clauses of this Act mentioned in the first column

Continuing fine for certain offences.

of the following table,

continues to neglect to comply with the said requisition or direction, shall be punished, for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

Explanation.—The entries in the second column of the following table, headed “Subject,” are not intended as definitions of the offences described in the clauses mentioned in the first column, or even as abstracts of those clauses,

but are inserted merely as references to the subject of the clause, the number of which is given in the first column.

1	2	3
Clauses.	Subject.	Daily fine which may be imposed.
Section 201D ...	Requisition to re-construct, etc., a private road or bridge.	One hundred rupees.
" 201E ...	Requisition to provide and maintain, or to enlarge, water-way.	Fifty rupees.
" 201G ...	Requisition to close a private road.	Fifty rupees.
" 207A, clause (b).	Requisition to remove <i>débris</i> falling upon or into a private road or drain.	Ten rupees.
" 210B ...	Requisition to take down a building, etc., where buildings, etc., threaten the stability of other immoveable property.	One hundred rupees.
" 210C ..	Requisition to take down building, etc., where hillside or bank threatens the safety of buildings.	One hundred rupees.
" 210C ..	Requisition to take down a building, etc., where hillside or bank threatens the safety of buildings.	Five hundred rupees.
" 224C ...	Requisition to re-construct, etc., a private drain.	Two hundred and fifty rupees.
" 227 ..	Requisition to provide a drain...	Two hundred and fifty rupees.
" 229A ..	Construction, etc., of private drain.	Two hundred and fifty rupees.
" 236, sub-section (1).	Construction of external roofs or walls with inflammable material.	Twenty-five rupees.
" 236, sub-section (2).	Requisition to remove or alter external wall or roof made of inflammable material.	Twenty-five rupees.
" 244E, sub-section (1).	Sending written notice to Commissioners before commencing building work.	Fifty rupees.
" 244F ...	Sending written notice to Commissioners after completion of building work.	Fifty rupees.
" 244Q, sub-section (1).	Sending written notice to Commissioners before commencing building work.	Twenty-five rupees.

1	2	3
Clauses.	Subject.	Daily fine which may be imposed.
Section 244T, sub-section (1).	Requisition to stop work pending decision of Magistrate.	Five hundred rupees.
„ 244V, sub-section (1).	Prohibition of occupation of unsafe building.	Two hundred and fifty rupees in the case of a masonry or framed building and twenty-five rupees in the case of a hut.
„ 244V, sub-section (2).	Prohibition of occupation of insanitary building.	Fifty rupees.
„ 244X, sub-section (2).	Using building declared unfit for human habitation.	Fifty rupees.
„ 244Y, sub-section (1).	Requisition to abate overcrowding in building or room.	Fifty rupees.
„ 244Y, sub-section (4).	Requisition to vacate overcrowded building or room.	Ten rupees.
„ 244Z, sub-section (1).	Requisition to provide, repair, etc., roof-gutters and down-pipes or masonry platforms.	One hundred rupees.
„ 248A ...	Requisition to construct revetment, etc.	Five hundred rupees.
„ 248E ...	Revetment, turfing and sloping.	Two hundred and fifty rupees.
„ 224C ...	Requisition to reconstruct, etc., a private drain.	Fifty rupees.
„ 227 ...	Requisition to provide a drain...	Fifty rupees.
„ 244V, sub-section (1).	Prohibition of occupation of unsafe building.	Fifty rupees in the case of a masonry or framed building, and five rupees in the case of a hut.
„ 244V, sub-section (2).	Prohibition of occupation of insanitary building.	Ten rupees.

Fine for unlawfully commencing, carrying on or completing work.

“272C. If 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) is 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 carried on or completed otherwise than in accordance with the particulars on which such permission or orders was or were based, or
 (c) is carried on or completed after such permission has been withdrawn, or
 (d) is carried on or 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 if any alterations required by any notice issued under section 244H be not duly made,

the owner shall be liable to fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to five hundred rupees, and in the case of a hut to fifty rupees, and

to further fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to one hundred rupees, and in the case of a hut to ten rupees, for each day after conviction during which the offence is continued.

Fine for disobedience of direction for demolition or alteration where work unlawfully commenced, carried on or completed.

“272D. If any person to whom a direction to demolish or alter work is given under clause (i) of section 244S fails to obey the same, he shall be liable

to fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to five hundred rupees, and in the case of a hut to fifty rupees, and

to further fine which may extend, in the case of a road, bridge, drain or masonry or framed building, to one hundred rupees, and in the case of a hut to ten rupees, for each day after conviction during which he so fails.

“272E. When a building has been erected, re-erected or materially altered under this Act without any statement having been made, under rule 23 or rule 28 of Schedule C, that it was intended to use the building or any part thereof for any of the purposes specified in section 261, or as a stable, cattle-shed or cow-house, then any person using the building or any part thereof for any of those purposes shall be liable,—

(a) in the case of a masonry or framed building, to fine which may extend to two hundred rupees, and to further fine which may extend to twenty rupees for each day after conviction during which he continues such use, and

(b) in the case of a hut, to fine which may extend to twenty rupees, and to further fine which may extend to five rupees for each day after conviction during which he continues such use.”

273. Whoever, in a Municipality,—

(1) (255) begins to build or to take own, or alter or repair, any house contrary to the provisions of sections two hundred and thirty-five, two hundred and thirty-eight or two hundred and forty-one, or lets a house for occupation contrary to the provisions of section two hundred and forty-two; or, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever; or who, being permitted, fails to put up such fence or hoard, or to continue the same standing, or to maintain the

Offence under sections 235, 238, 241, 242.

same in good condition ; or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night ; or who does not remove the same within eight days when directed by the Commissioners ; or

(2) (286 & 290) without a license uses any place for any of the purposes specified in section two hundred and sixty-one, or section two hundred and sixty-three ; “or uses any place as a kiln in contravention of the provisions of section two hundred and sixty-two A ; or”

Offence under sections
261, 262.

(3) (291) being a holder of a license under section two hundred and sixty-one or section two hundred and sixty-three, breaks any condition of such license ; or

Offence under sections
261, 263.

(4) after the issue of an order under section two hundred and sixty-four, keeps horses or cattle exceeding ten in number in contravention of such order ; or

Offence under section
264.

(5) (293) keeps any pig-sty, pigs, sheep or goats contrary to the provisions of section two hundred and sixty-five,

Offence under section
265.

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

“A further fine . . . for every day.” A sentence of a Court imposing a daily fine with prospective effect is bad in law.—*In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See note to section 156 for other references.

See note to section 237.

The High Court in quashing an order by a Magistrate for the demolition of a second story added to a house without permission on the ground that such order could only be passed under § 238(1), by the Commissioner, also set aside the conviction had under § 273 (1) on the ground that there is no necessity for obtaining permission to add a second story to a house (*Emperor v. Mathura Prasad*, I. L. R., XXIX Cal., 491.) The legal Remembrancer was of opinion that the Court had overlooked the provisions of §240 defining the expression “erect” and “re-erect” and it is suggested that when the question next arises another reference should be made.

274. (282) Whoever, within a Municipality, after the expiration of the period mentioned in section two hundred and fifty-seven, knowingly buries or burns, or causes, procures or suffers to be buried or burned, any corpse in or on any ground not registered

Burying or burning
corpse in unregistered
grounds.

as a burial or burning-ground, shall be liable to a fine not exceeding one hundred rupees.

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

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

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

This section is taken from the Calcutta Municipal Consolidation Act Amendment Act, 1881, section 23, clause (3).

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

If the nuisance consisted in vitiating the atmosphere so as to make it noxious to the health of persons residing in the vicinity, the offence is

punishable under section 278, Indian Penal Code, with fine of Rs. 500 ; if in voluntarily corrupting or fouling the water of any public spring or reservoir, the offence is punishable with imprisonment of either description for three months and fine of Rs. 500,—Indian Penal Code, section 277.

A public nuisance is defined in section 268, Indian Penal Code, as “any Act . . . or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.”

“A further fine, etc.” A sentence by a Court imposing a fine for an offence, and a daily fine for such time as the offence may be continued in future, is bad in law. *In re Sagur Dutt*,¹ B. L. R., O. Cr., 41. See note to section 156.

*278. (294) Any Magistrate before whom any person is convicted of an offence contrary to the provisions of this Act relating to the use of any place for a purpose for which a license is required, or of the non-observance of any of the bye-laws relating thereto made under this Act, in addition to the fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such license.

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

It must be remembered that this section, forming part of Part VI, is not in force in any Municipality to which it has not been expressly extended.

PART VII.

OF A WATER-SUPPLY.

“279. (1) In any Municipality to which the provisions of this Part shall be extended in the manner prescribed by section two hundred and twenty-two, it shall be lawful for the Commissioners at a meeting to impose a water-rate not exceeding seven and-a-half per centum on the annual value of holdings when the houses and lands are situated in any road supplied with water, and not exceeding

Imposition of
water-rate.

six per centum when the house and lands are situated in any road not so supplied.

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

(2) In fixing the amount or "amounts" of the rate, regard shall be had to the principle that the total net proceeds of the tax, together with the estimated income from payments for water supplied from the works under special contract, or otherwise, shall not exceed the amount required for carrying out the purposes of this Part.

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

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

- (a) any house or land, no part of which is within a radius to be fixed by the Local Government for each Municipality from the nearest standpipe or other supply of water available to the public; or
- (b) any land used exclusively for purposes of agriculture:

(c) "any holding consisting only of tanks."

Provided also that nothing in this section shall prevent the Commissioners from making any special arrangement consistent with this Act with persons residing beyond the radius fixed by the Local Government."

The provisions of this part are taken from the Calcutta Municipal Consolidation Act, 1876 (B. C. Act IV of 1876). This section is taken from section 88, clause (b) of that Act.

In Part VII we have made some changes which are calculated, in our opinion, to render this part of the Bill more generally suited to the conditions under which Municipalities in the Mofussil are likely to avail themselves of these provisions of the law. The sections as originally drafted were taken from the Calcutta Municipal Act, 1876, which contemplates a supply of filtered water, and a general connection with dwelling houses in the town. It has been represented to us that the water need not in all cases be filtered, and that some Municipalities may desire to lay down water in the streets, but may not be able to give a house supply. We have modified the sections accordingly.

"A doubt has been expressed whether the provisions of Part VII would be applicable to towns (such as Darjeeling), which have already supplied water at the cost of the Municipality, and we have been urged to insert words expressly including such towns within the operations of Part VII of the Bill. But we feel no doubt that the wording of the Bill as it

stands sufficient to provide for these cases. It will be only necessary for the Municipal Commissioners of Darjeeling (or of any other town similarly circumstanced) to apply in the prescribed manner for the extension of Part VII (either wholly or partially) to their Municipality, and they will then be entitled to levy the water-rate authorized by section 85 (now section 86) of the re-amended Bill."—*Rep. S. C.*

The provisions of sections 37A to 37-M are applicable to this Part.

By section 280 the provisions of section 98 apply to this Part. As shown in the note to that section arable lands are not exempted from rate on holdings. Clause (b) of the above section is therefore necessary to exempt lands used exclusively for purposes of agriculture from the water-rate. The term "used exclusively for purposes of agriculture" would not include pleasure gardens nor, it is believed, orchards and fruit growing grounds.

280. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections ninety-six to one hundred and nine (both inclusive), and one hundred and twelve to one hundred and thirty (both inclusive), shall, *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this Part, be applicable to the assessment and collection of the water-rate.

This is altogether new. As the provisions of section 98 are hereby extended to the assessment of the water-rate, places used for public worship and registered public burial and burning-grounds are exempted from it.

With the sanction of the Local Government any holding used for purposes of public charity may also be exempted from it, under that section.

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

This section reproduces, with some slight verbal alterations, section 98 of the Calcutta Act.

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

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

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

From section 99 of the Calcutta Act with verbal alterations.

The definition of "owner" in section 6, clause (11), is important.

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

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

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

B. C. Act IV of 1876, section 93, with some alterations.

284. Whenever any house or land which shall have been unoccupied shall begin to be occupied during any quarter, there shall be forthwith payable by the occupier in respect of such house or land a sum calculated at one-fourth of the rate that would have been payable if the house or land had been occupied during the entire quarter

Rate payable on house being re-occupied.

for the period during which the house or land was not occupied, and the full rate for the residue of the quarter.

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

Section 96, B. C. Act IV of 1876.

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

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

“He that holds lands or tenements in severalty or is sole tenant thereof is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein.”—(1 *Steph. Com.*, 335).

286. The provisions of sections three hundred and twelve, three hundred and thirteen, and three hundred and fourteen shall be applicable to this Part, provided that the owner shall not be entitled to recover from any occupying tenant more than three-fourths of the water-rate that would but for this proviso be recoverable by him under the said sections.

Owner to pay water-rate in certain other cases.

The sections quoted refer to lighting rates. Section 312 provides that in certain cases the rate may be levied from the owner; section 313, that rates paid by the owner may be recovered by him from the occupier; section 314, that the owner shall have the same powers of recovering such rates as if they were rent.

287. In any Municipality to which the provisions of this Part shall be extended, the Commissioners shall provide a supply of water within the limits of the Municipality; and for this purpose it shall be lawful for them to cause such mains and pipes to be laid, and such tanks, reservoirs or other works to be made and constructed, as shall be necessary for the supply of water in the chief public streets; and they may also erect in all such streets sufficient and

The Commissioners to provide water-supply.

convenient standpipes or pumps for the use of the inhabitants of the Municipality for domestic purposes.

Section 129, B. C. Act IV of 1876.

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

What are not domestic purposes.

This section reproduces, with slight verbal alterations, section 130 of the Calcutta Act (B. C. Act IV of 1876).

289. The Commissioners at a meeting shall determine what pressure of water shall be maintained in their service pipes and mains, and during what hours such pressure shall be continued; and any rule made under this section shall be published in such manner as the Commissioners may direct, and shall not be altered except with the sanction of the Commissioners at a meeting.

Pressure at which water must be kept.

B. C. Act IV of 1876, section 131.

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

Communication-pipes.

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

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

Such communication-pipes, works, and fittings, may be made by the servants and workmen of the Commissioners

upon such terms as may be agreed upon between the Commissioners and the person requiring the supply, or subject to such charges as may be fixed by the Commissioners: and the Commissioners may require the amount necessary for the execution of such works to be paid or deposited before such works are executed;

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

This section reproduces *verbatim* section 137, B. C. Act IV for 1876.

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

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

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

This section reproduces, with one unimportant verbal alteration section 138, B. C. Act IV of 1876.

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

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

Section 139, B. C. Act IV of 1876, with merely verbal alteration.

294. The Commissioners may supply water for purposes other than domestic purposes, and may, subject to such charges and rates as may have been fixed by the Commissioners at a meeting, lay down, or allow to be laid down, the necessary pipes and works of such dimensions and character as may be approved by them.

Section 132, B. C. Act VI of 1876. The words "through a meter" have been struck out by the Amending Act.

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

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

Section 133, B. C. Act IV of 1876.

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

Section 134, B. C. Act IV 1876.

297. If any person supplied with water, shall neglect to pay the water-rate hereinbefore mentioned at the times of payment thereof, or the charge made for the said water when supplied for other than domestic purposes

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

the Commissioners may turn off the water from the house or land in respect of which such rate or charge is payable, and may recover the expense of turning off the water from such person ;

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

Section 140, B. C. Act IV of 1876, with verbal alterations.

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

Occupier in whose house water is wasted liable to penalty.

Section 141, B. C. Act IV of 1876, with slight verbal alterations.

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

Person causing waste of water liable to penalty.

Section 142, B. C. Act IV of 1876, *verbatim*.

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

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

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

Penalty.

Section 143, B. C. Act IV of 1876, with slight verbal alterations.

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

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

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

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

Section 146, B. C. Act IV of 1876, with alteration.

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

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

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

Section 147, B. C. Act IV of 1876, with slight alterations.

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

Obstructing or diverting water.

Section 149, B. C. Act IV of 1876, with slight verbal alterations.

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

Estimate and specification of works to be sent.

Section 153, B. C. Act IV of 1876, *verbatim*.

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

Owner to keep works
in repair.

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

Section 156, B. C. Act IV of 1876, with verbal alterations.

306. All public tanks, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other waterworks, whether made, laid or erected at the cost of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials, and things connected therewith, or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank, shall become vested in the Commissioners.

Tanks, &c., vested in
the Commissioners.

Section 158, B. C. Act IV of 1876, *verbatim*.

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

Application of rates
and moneys received
from the supply of
water.

Section 160, B. C. Act IV of 1876, *verbatim*.

By this section it appears obvious that the sums raised as water-rates must be credited to a separate fund, and not to the General Municipal Fund. For they can only be expended on purposes connected with the supply of water, and are therefore not available for the purposes to which the General Municipal Fund may be devoted.

PART VIII.

This part is taken from the Howrah Lighting Act, Act V (B. C.) of 1873.

OF LIGHTING WITH GAS.

308. In any Municipality in which this Part shall have been introduced in the manner provided in section two hundred and twenty-two, it shall be lawful for the Municipal Commissioners, from time to time, to submit to the Local Government, for its sanction, a plan for lighting with gas any portion of any area situate within the Municipal limits, whether so lighted already or not, such portion of the said area having been previously defined by the Commissioners at a meeting held for that purpose. The Local Government shall cause the plan to be published for one month in the *Calcutta Gazette*, and the Commissioners shall publish it in the vernacular within the limits of the Municipality; and after such publication, and after consideration of any objections which may be raised to it, or alterations suggested in it, the Local Government may, if satisfied that the lighting proposed in the plan is proper and sufficient, sanction such plan, or may refuse its sanction thereto, or may return it to the Commissioners for alteration in certain particulars to be specified by it, and when altered may sanction it as altered. The Local Government shall cause its sanction to any plan to be notified in the *Calcutta Gazette*, and shall at the same time cause the plan sanctioned to be published in the said *Gazette*.

Section 2, Act V (B. C.) of 1873.

In the manner provided in section 222. That is to say, by publication of the Government order extending the Part in the *Calcutta Gazette*: by posting a copy of the same, together with a translation in the vernacular, in the Municipal office and at other public places, and by public proclamation.

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

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

Provided that, as regards any portion of the said area already lighted with gas, for the future lighting of which a plan shall have been sanctioned by the Local Government under the provision of the last preceding section, if it shall appear that the estimated proceeds of the said rate at three per centum will not be sufficient to defray the whole expense of such lighting, it shall be lawful for the Commissioners to impose a rate sufficient to defray the whole expense of lighting such portion.

Section 3, B. C. Act V of 1873

“Local Government” has been substituted for “Lieutenant-Governor,” otherwise no change has been made.

“Holding” is defined in section 6, clause (3). Under section 318A the rate raised under this section must be credited to a separate Lighting Fund and cannot be expended upon any other purpose.

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

Rate payable by occupier quarterly in advance.

Section 4, B. C. Act V of 1873.

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

Valuation assessment, and collection of lighting-rate.

Section 5, B. C. Act V of 1873.

Hon'ble Mr. Reynolds :—“It seemed unlikely that this part of the Bill would ever be extended to places in which the tax on holdings was not in

force; and if it was so extended, it seemed proper that the valuation on holdings for the assessment of the lighting-rate should be made as it was for the water-rate, even though there was no valuation on holdings for general purposes."—*P. C., March 1, 1884.*

By this section all the provisions of the Act relating to the rate on holdings, except those contained in section 110 and 111, are declared applicable to the lighting-rate. It follows, therefore, that all those classes of holdings which are liable to the rate on holdings are liable to the lighting-rate. By section 98, holdings used for public worship, or duly registered as burning or burial-grounds, are exempted from the rate on holdings, and are therefore exempted from the lighting rate. Any holding used for purposes of public charity may be exempted from the rate on holdings, and consequently from the lighting rate, with the sanction of the Local Government. Arable lands will be liable to the lighting-rate if they are liable to the rate on holdings and not otherwise. The liability of arable lands to the rate on holdings is discussed in the note to section 98.

In the present Act, as originally drafted, arable lands and lands used for pasturage were distinctly exempted from the lighting-rate. The following extract explains how this provision came to be omitted:—

"The Hon'ble Mr. Reynolds moved the omission of the second clause of section 309, which provided that arable lands, places of public worship, etc., should be exempt from the lighting-rate. He said, there was a general exemption clause in section 97 (now section 98) relating to the house-rate, and there seemed no reason for having a different procedure for the lighting and the water-rate."—*P. C., March 1, 1884.*

It is not quite clear from the above extract, whether the fact was recognized that arable lands had not been exempted under section 98; but it is obviously improbable that it should have been overlooked.

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

Power to assess owners in certain cases.

Section 6, B. C. Act V of 1873.

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

313. Whenever any rate shall be recovered from any owner of any holding under the provisions of the last preceding section, it shall be lawful for such owner if there shall be but one occupying tenant of such entire holding to recover from such tenant the entire amount of the rate which shall have been so paid by such owner; and if there shall be one occupying tenant of a part of such holding or more than one occupying tenant

Owner to recover from the occupier rates paid by owner.

of such holding, then to recover from such tenant or each of such tenants such sum as shall bear to the entire amount of rate which may have been so recovered from such owner the same proportion as the value of the portion of such holding in the occupation of such tenant bears to the entire value of such holding subject however to the provisions of the next succeeding section.

Section 7, B. C. Act V of 1873.

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

Owner may recover rate so paid as rent.

Section 8, B. C. Act V of 1873.

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

Occupier liable to the rate for time of occupation only.

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

Excess paid in advance to be refunded.

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

No rate to be charged during vacancy.

Provided always that when any person ceases to be the occupier of any holding upon which the rate has been assessed, he shall give the Commissioners notice to that effect within seven days from the date of the cessation of his occupancy. If the occupier fail to give

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

such notice within such period, he shall be liable to the rate assessed of such holding for the whole quarter, although he may have occupied for a part only of such quarter; and in cases to which the provisions of section three hundred and twelve apply, the rate assessed on such holding for the whole quarter shall be recoverable from the owner, if such owner has failed to give notice that such holding is unoccupied, within seven days from the date on which it ceased to be occupied.

Section 9, B. C. Act V of 1873.

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

Unknown owner or occupier how to be designated.

Section 10, B. C. Act V of 1873.

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

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

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

Section 11, B. C. Act V of 1873.

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

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

Section 12, B. C. Act V of 1873.

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

This section supplies an omission in the Act, and makes it clear that the lighting rate must be credited to a separate fund, and is not available for general purposes.

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

This section is new, and obviously has reference to lighting by electricity.

PART IX.

* This Part is taken from the Latrines Act [Act VI of 1878 (B. C.)].

OF THE CLEANSING OF PRIVATE PRIVIES AND CESS-POOLS.

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

Notice to be issued by
the Commissioners.

Section 2, B. C. Act VI of 1878.

The changes made in this Part by the amending Act are thus referred to in the Final Report of the Select Committee:—

"After careful consideration we recommend that the present system of levying fees for the construction and cleansing of privies and cess pools may be left unaltered. We have, however, proposed (*section 81 of the Bill*) to exempt from taxation under this Part of the Act holdings which do not contain dwelling houses. We have also exempted jails, reformatories and lunatic asylums, in which an establishment is maintained for the cleansing of privies and cess-pools (*section 85 of the Bill*), and we have allowed remission or refund on account of vacant holdings (*section 83 of the Bill*)."

The Bengal Government circulated the following opinion dated 29th December 1899 of the Advocate General on the subject of the interpretation of section 320 read with section 221—"When the Local Government has, upon the application of the Commissioners of any Municipality, by order made under section 221 of the Bengal Municipal Act, 1884, as amended, extended all or any of the provisions of Part IX of that Act to such Municipality, either in its entire extent or to the exclusion of certain places within such extent, and the Commissioners have published such order in the manner prescribed by section 222, the provisions so extended came into force within the local limits of such Municipality either universally or to the exclusion of certain places within such limits as in the order of the Local Government is directed, and must, so long as such order remains uncancelled or modified under 223, be carried out by the Municipality."

Section 320 enacts: "In any Municipality in which the provisions of Part IX have been extended in the manner prescribed by section 222, the Commissioners may issue a notice declaring that from a date to be specified in such notice, they will maintain an establishment for the cleaning of 'private privies and cess-pools' within the limits of the Municipality or any part thereof, and the Commissioners shall make suitable provision accordingly." The words "may issue" in this section, though in their ordinary meaning giving an enabling and discretionary power must, regard being had to the context, the particular provisions and the general scope and object of the Act according to the well-established rule

in *Julius v. The Bishop of Oxford* (5 App. Cases, 214), be construed as conferring an obligatory duty which the Commissioners are not at liberty to disregard at their discretion. In that case *Lord Cairns* observes:—

“When a power is deposited with a public officer for the purpose of being used for the benefit of persons specifically pointed out and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised.” On this principle it was held that where by the Public Health Act, 1848 (11&12 Vic., Cap. 63, section 89) a local board of health “may” make rates to pay charges within that section, an obligatory duty was thereby cast on such Board to make rates. (*Rex v. Rotherham*, and *E. & B.*, 906; and *Wellington v. Hatton*, L. R., 2 Q. B., 63, cited with approval in *Julius v. The Bishop of Oxford*, supra.) Any other construction of the word “may” in this section would enable the Commissioners to render nugatory the order of the Local Government extending the provisions of Part IX to their Municipality in direct opposition to section 222, which provides that in the issuing of the notice therein prescribed to be issued, and at the date therein fixed, the provisions of Part IX, extended under section 221, shall come into force. Section 320, however, though imposing such obligatory duties on the Commissioners as those indicated above, gives them reasonable time within which to issue the notice in that section mentioned. Such reasonable time being the time requisite for the due equipment of the establishment therein specified, a period which necessarily varies with the situation, size and condition of each Municipality.

The words “or any part thereof” in the latter part of the section are to be referred back to section 221, and mean the part of the Municipality to which, when not extended throughout its entire local limits, the provisions of Part IX are extended by order of the Local Government.

For these reasons, I am of opinion that “the construction placed by the Commissioner of Chota Nagpur on section 320 read with sections 221 and 222, is erroneous, and that if the provisions of Part IX are, after having been extended and come into force in any Municipality under section 222, found, on good and sufficient reasons by the Commissioners to be unfitted to that Municipality or any part of it, or incapable of being efficiently worked therein, they should apply to the Local Government for such cancellation or modification of the order made under section 221 as seems to them desirable.”

The Legal Remembrancer has advised that under this section read with sections 325 and 334A the tax is leviable on Court buildings and, Government has ordered its payment accordingly (Ben. Govt. Munc. No. 1836M, dated 20-4-00 to Commr. of Patna).

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

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

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

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

Section 3, B. C. Act VI of 1878.

“Twenty-five Rupees.” The annual valuation of the holding is obviously referred to.

The alteration made by the Amending Act in this section is important. Formerly no class of holdings was exempted from assessment. Now only such holdings as contain dwelling-houses can be assessed. If the holding contains a dwelling-house, however, the annual value must be calculated on the whole holding, including tanks, gardens and arable lands, etc.

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

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

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

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

Provided that no such fee shall be levied in respect of any shop or place of business which does not contain any privies or cess-pools, when a fee under this Part is levied from the

occupier thereof in respect of his dwelling-house within the same Municipality.”

It is to be noted that this section merely provides that the fees shall be recoverable in the manner prescribed for the recovery of the rate on holdings. The provisions for the assessment of the rate on holdings are not applicable.

By section 15, clause (e), fees paid under this Part are to be reckoned in the amount of rates conferring a qualification to vote.

Clause (3) of this section makes it clear that the fees levied are to be credited to a separate fund.

Under the former section it was held that the owners of vacant houses could not be called on to pay the fees. Under the present section it is distinctly provided that they are liable to pay such fees. Under section 110, which is now made applicable, half the fees are, however, to be remitted, if a holding has been vacant for sixty or more consecutive days during the year.

323. If any holding is occupied in severalty by more than

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

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

Section 5 of B. C. Act VI of 1878, *verbatim*.

“He that holds lands or tenements in *severalty*, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein.”—1 *Steph. Com.*, 335.

324. Every owner who, under the provisions of the last

Owner may recover fees from occupier as rent.

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

Section 6, B. C. of Act VI of 1878, *verbatim*.

325. The Commissioners, at their discretion, may com-

Commissioners may compound with occupier or owner of certain premises for fee.

compound, for any period not exceeding one year, with any occupier or owner as aforesaid of any railway premises or of any premises used as a factory, dockyard, workshop, cooly depôt, school, hospital, market

court-house, or other similar place for a certain sum to be paid by such occupier or owner in lieu of such fee.

Section 7, B. C. Act VI of 1878, *verbatim*.

Such a composition will be binding on the Railway under section 131 (2) Act IX of 1890.

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

This section reproduces section 8 of B. C. Act VI of 1878, with the difference that the rate is to be fixed by the Commissioners instead of by the Lieutenant-Governor.

"In my opinion the maximum limit of fees leviable under section 321 is not applicable to the rate per head under section 326. (L. R., Circulated with Government letter No. 3130M, dated 2nd December 1903.)"

327. *Repealed by Bengal Act IV of 1894.*

328. *Repealed by Bengal Act IV of 1894.*

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

Exemption from prosecution under section 217.

Section 11, B. C. Act VI of 1878.

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

Section 12, B. C. Act VI of 1878.

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

Commissioners may require nightmen to take out licenses.

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

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

Section 13, B. C. Act VI of 1878.

By section 355 all fines under this Act may be imposed by a Magistrate and may be levied under the provisions of the Code of Criminal Procedure.

By the section 29A the powers of the Local Government under this section may be delegated to Commissioners of Divisions.

332. If the Commissioners think that any latrine or additional or common latrine should be provided for any house or land within the limits of the Municipality, the owners of such house or land shall, within fourteen days after notice given by the Commissioners, or within such longer time as the Commissioners may for special reasons allow, cause such latrine to be constructed in accordance with the requisition of such notice; and if such latrine is not constructed to the satisfaction of the Commissioners within such period, the Commissioners may cause the same to be constructed, and the expenses thereby incurred shall be paid by the owners and shall be recoverable as provided in section three hundred and twenty-two.

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

Section 14, B. C. Act VI of 1878.

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

Commissioners may require list of persons in a holding.

Section 15, B. C. Act VI of 1878.

334. Whoever, being the owner or occupier of any holding, fails to furnish such list within the time specified in such notice, after being required to furnish the same by the Commissioners,

Penalty.

shall be liable to a fine not exceeding one hundred rupees.

Section 16, B. C. Act VI of 1878, *verbatim*.

“334A. The provisions of this Part shall not apply to any jail, reformatory or lunatic asylum
Exemption of jails, &c. in which an establishment is maintained for the cleansing of privies and cess-pools therein.”

PART X.

This Part corresponds with Part IX of the former Act.

REGULATION OF MARKETS.

335. (300) In any Municipality to which this Part shall have been extended in the manner prescribed by section two hundred and twenty-two, the Commissioners at a meeting may provide land for the purpose of being used as a Municipal market; and may defray the cost of providing such land and of all expenses necessary for the establishment of such market from the Municipal Fund, and may take a lease of any market: and may charge rent, tolls, and fees for the right to expose goods for sale in such market and for the use of shops, stalls, and standings therein.

All such rents, tolls, and fees may be recovered as arrears of tax under the provisions of sections one hundred and twenty to one hundred and twenty-nine, both inclusive.

Under the corresponding section of the former Act, the sanction of the Lieutenant-Governor was necessary for the establishment of a Municipal market.

It will be noticed that section 301 of the former Act, which provides for a separate Market Fund, has not been reproduced in the present Act. The profits derived from a Municipal Market will, therefore, be credited to the General Municipal Fund.

Municipal markets are usually farmed out, but it does not appear that the Act gives any express sanction for such a practice.

The establishment of a Municipal market gives the Commissioners no power of prohibiting rival markets in the neighbourhood. The only class of markets with which the Commissioners have any power to interfere is that referred to in section 337.

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

The next section gives the Commissioners the power of ordering that, within such limits as they may fix, no land shall be used as a market for the sale of certain highly perishable commodities without a license from them. From the present section it is obvious, that if the number of shops, stalls, or standings is less than thirty, no such license is necessary.

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

The words "similar provisions" in this section refer to provisions of an equally perishable nature as those specified, and not to provisions generally (L. R.).

The object of the section is a sanitary one, and it empowers the Commissioners to order that certain kinds of provisions of a highly perishable nature, and which become highly offensive when decomposed, shall not be sold in a market which has not been duly licensed for the purpose.

There is consequently nothing in the section which renders it necessary for any one, under any circumstances, to take out a license for a market in which only provisions which are not of a highly perishable nature are sold. No license is required for a market in which only *dhan*, rice, pulses, or other grains, salt, sugar, *gur*, spices, and any other provisions not of a highly perishable nature are sold. The correct interpretation of this section is often overlooked.

"*Shall be used as a market.*"

The meaning of these words has been discussed in two Bombay cases.—*In re Raja Paba Khoji*, I. L. R., 9 Bom., 272, and *Queen-Empress v. Magan Harjivan and another*, I. L. R., 11 Bom., 106. In both cases it was ruled that the selling of articles in a private shop or shops, could not be held to be using such shops as a market. See also *Queen-Empress v. Baidar Bhai*, I. L. R., 10 Mad., 216, in which it was held that a butcher's shop is not a private market.

The Municipal Commissioners of Madaripur at a meeting passed the following resolution:—"That the provisions of section 337 of the Municipal Act III (Bengal Act) of 1889 be extended to this Municipality." A land-owner on whose land a market had been held for some years was prosecuted under section 344 for using such market without having obtained a license under section 328.

Held, that the resolution of the Commissioners was not an order such as is contemplated by section 337, as it was not sufficiently precise to

convey any definite meaning, and purported only to do what the Bengal Government had already done some time previously (i.e., by extending Part X to the Municipality).

Held further, that the conviction and sentence must be set aside, there being no proper order under section 337.—*Queen-Empress v. Mukunda Chunder Chatterjee*, I. L. R., 20 Cal., 654.

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

Provisions as aforesaid ; that is to say, provisions of a highly perishable nature, such as meat, fish, etc.

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

The provisions for the levy of a fee is new. It will be observed that although, under the following section, the Chairman is bound to grant the certificate if the land is fit for the purpose, the granting of the license is at the discretion of the Commissioners.

It is not a reasonable ground for the refusal of a license to a new market, to shew that its establishment will cause pecuniary loss to the proprietors of a neighbouring market. The interests of the public are what the Commissioners have to specially regard, and monopolies are inimical to those interests. The existence of two or more markets in the same neighbourhood ensures competition and reasonable prices.

It would appear from the preceding section, that the license must be granted or renewed at a meeting. This and the preceding section must be read together.

The addition to this section has been made in consequence of the remarks of the High Court in the case of *Moran v. Chairman of Motihari Municipality*, I. L. R., 17 Cal., 329. In that case while holding that the section as it previously stood left it optional with the Commissioners to grant or refuse the license, notwithstanding that the Chairman's certificate had been obtained, the Court remarked: "We think it most lamentable that Acts should be drawn, as they too often are, without that intelligent consideration of, or that anxious regard for, private rights, which ought to be the study of every legislature that springs from English authority."

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

Chairman bound to
certify fit places.

(307) The owners or lessees of all land used as markets for the sale of provisions as aforesaid at the time of the extension of this Part to the Municipality, shall be entitled to receive a license for the current year without the certificate required by section three hundred and thirty-nine, but in subsequent years the license shall not be renewed without such certificate.

Existing markets.

In the case of markets existing at the time of the extension of this Part to the Municipality, the section compels the Commissioners to grant a license for the current year without a certificate. In subsequent years the certificate is absolutely necessary.

*341. (308) Every license under this Part shall be registered in a book to be kept for that purpose by the Commissioners in their office, in which shall be stated—

Licenses to be
registered.

(a) the name and address of the owner of the land and market ;

(b) the name and address of the lessee thereof (if any) ;

(c) the extent and boundary of the market ;

(d) the description of articles sold therein ; and

(e) the days on which the market will be held.

*342. (309) Every transfer of interest in any such market shall be registered within two months after the date of transfer.

Transfers to be
registered.

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

Unregistered markets to
be deemed unlicensed.

“Any market,”—that is to say, any market of the kind referred to in section 337.

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

For meaning of "similar provisions," see note to section 337.

The further fine referred to must be adjudicated on a subsequent conviction after the offence. An order by a Magistrate imposing a daily fine for such time an offence may be continued is bad in law, as imposing a penalty for an offence which has not yet been committed.—*In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See note to section 156.

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

In the former section "may appoint persons, or otherwise take order."

For definition of "the Magistrate," see section 6, clause (8):

PART XI.

This Part reproduces, with only some unimportant verbal alterations, Part VIII of the former Act.

OF THE REGISTRATION OF BIRTHS AND DEATHS.

346. (295) The Commissioners of any Municipality, when required by the Local Government to do so, shall provide for the registration of births and deaths within the limits of the Municipality in accordance with the

Registration of births
and deaths.

provisions of Bengal Act IV of 1873 (*for registering births and deaths*), or any other similar Act for the time being in force.

This section is practically unaltered.

By section 11 of Act IV of 1873, the Commissioners must make such arrangements at a special meeting; and are empowered to do so of their own motion, that is to say, without a requisition from the Local Government. The Act will be found *post*.

Circular No. 48 of the 31st December 1891, circulates the following letter to the Secretary to the Government of India, Home Department, for information:—

With reference to your letter No. 307, dated the 7th September 1891, in which the Government of India again comment unfavourably on the results attained in the registration of vital statistics in Bengal, I am directed to say that the Lieutenant-Governor has given the subject his careful consideration, and, after enquiring into the question in the Municipalities which he has visited on tour, has satisfied himself that the duty of collecting and recording vital statistics cannot properly be entrusted to Municipalities in Bengal. It demands for its adequate performance more continuous care and attention than Municipal Commissioners are ordinarily willing to give to it, and it seems doubtful whether the object of recording such statistics, and the necessity for aiming at a high standard of accuracy have been at all generally realised. The results at any rate are so unsatisfactory that the Lieutenant-Governor has decided to introduce a complete change of system, and to transfer the work of registration to the Town Police, with effect from the 1st January 1892. Municipalities will be relieved of the charges hitherto incurred under this head, and His Honour has directed that the funds thus set free shall in all cases be applied to the advancement of primary education."

2. I am to add, with reference to your letter No. 256, dated 28th August 1890, that the Lieutenant-Governor has decided to introduce birth registration into rural as well as urban areas with effect from the 1st January 1892. His Honour trusts that, under the system now introduced, by which the work of registration will be conducted entirely by the agency of the Police, and with the greater attention that is now being paid to this subject, the registration of both births and deaths will attain more satisfactory results than has hitherto been the case."

347. (296) The Local Government may require the Commissioners of any Municipality to appoint and maintain, at any burning-ghat and burial-ground, a Sub-Registrar for the registration of all corpses brought to such burning-ghat or burial-ground for cremation or interment.

On requisition of Government, Commissioners to appoint Sub-Registrars at burning-ghats and burial-grounds.

The corresponding section contained the words "for natives" after the word "burial-ground." The section is therefore now applicable to burial-grounds of other nationalities also.

*348. (297) Whenever a Sub-Registrar shall have been appointed for any burning-ghat or burial-ground under the last preceding section, information of the particulars required by section eight of Bengal Act IV of 1873 to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall be deemed to be information given to the Registrar of the District as required by the said section.

Section nine of Bengal Act IV of 1873 shall be applicable to all Sub-Registrars appointed under this Act.

Section 9 of Bengal Act IV of 1873 is as follows: "Any Registrar who refuses or neglects to register any birth or death occurring within his district, which he is bound to register within a reasonable time after he shall have been duly informed thereof, or demands or accepts any fee or reward or other gratification as a consideration for making such registry, shall be punishable, at the discretion of the Magistrate, with fine which may extend to fifty rupees for each such refusal or neglect."

The particulars required by section 8 of the Act are such as may be prescribed in the forms which the Lieutenant-Governor may, from time to time, sanction.

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

"Local Government" for "Lieutenant-Governor;" otherwise unaltered.

"PART XIA.—*Extinction and Prevention of Fire.*"

"349A. For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire-brigade and to provide any implements, machinery, or means of communicating intelligence which the Commissioners may

Establishment and maintenance of fire-brigade.

think necessary for the efficient discharge of their duties by the brigade.

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

Power of fire-brigade and other persons for suppression of fires.

- (a) order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property ;
- (b) close any street or passage in or near which any fire is burning ;
- (c) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any hose or other appliance, any premises ;
- (d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred ;
- (e) call on the persons in charge of any fire-engine to render such assistance as may be possible ;
- (f) generally take such measures as may appear necessary for the preservation of life or property.

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

PART XII.

MISCELLANEOUS.

350. (313) The Commissioners of any Municipality may, from time to time, at a meeting which shall have been convened expressly for the purpose, and of which due notice shall have been given, frame such bye-laws as they deem fit, not being inconsistent

Power to impose penalties on breach of bye-laws.

with this Act, or with any other general or special law for

- “(a) regulating traffic, and for the prevention of obstruction and encroachments, and of nuisances on or near roads ;
- (a a) prohibiting the letting off of fire-arms, fire-works, fire-balloons or bombs, except (i) with the permission of the Commissioners or a Member of the Ward Committee or a Municipal officer empowered by the Commissioners in this behalf, and (ii) on payment of fees at such rates as may be sanctioned by the Commissioners at a meeting ;
- (b) regulating the use of, and the prevention of nuisances in regard to, public water-supply, bathing and washing-places, streams, channels, tanks and wells ;
- (c) regulating the disposal of sewage, offensive matter, carcases of animals and rubbish, and the management of privies, drains, cess-pools and sewers ;
- (d) regulating cremations and burials and the disposal of corpses ;
- (e) preventing nuisances affecting the public health, safety or convenience ; and
- (f) giving effect to the objects of this Act.”

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

“Bye-law,” or perhaps more correctly “by-law,” is derived from the Scandinavian “by” a town or borough, and therefore originally meant a town or borough law. It afterwards came to mean a rule or law passed by any Corporation. Wharton defines bye-laws as “the rules, regulations and constitutions of Corporations for the Government of their members.” Blackstone remarks, that it is one of the inherent rights of Corporations “to make bye-laws or private statutes for the better government of the Corporation, which are binding on themselves, unless contrary to the law of the land, when they are void. This is also included by law in the very act of incorporation, for as natural reason is given to the natural body for the governing it, so bye-laws or statutes are a sort of political reason to govern the body politic.”—(1 *Bl. Com.*, 476.) “And this is held to be a right so much of course, that when a charter of incorporation gave to a select body of the members a power to make bye-laws as to certain specified

matters, it was held that the body at large was nevertheless at liberty to legislate with regard to all matters not so specified."—(4 *Steph. Com.*, 13.)

Grant, in his treatise on the Law of Corporations, expounds the law on the subject as follows:—

"Where it is necessary for the accomplishment of the objects of their incorporation, a body politic has, as an incident to it, the power of making bye-laws, and of enforcing them by penalties; and such bye-laws, in the case of Municipal Corporations, and of other corporations entrusted with local, popular, or territorial Government, will bind both members and strangers, and not members of the Corporation only."

"A bye-law is a rule obligatory on a body of persons or over a particular district, not being at variance with the general laws of the realm, and being reasonable and adapted to the purposes of the Corporation; and any rule or ordinance of a permanent character, which a Corporation is empowered to make either by the common or statute law."

The following important provision contained in section 313 has been omitted from the present section: "Provided that no fee or toll, which is not expressly sanctioned by this Act, shall be levied under any such bye-law." At first sight the effect of this omission would appear to legalize the levy by bye-laws of tolls and fees not expressly sanctioned by this Act. It seems, however, very improbable that the omission has been made with any such intention. The cases in which tolls and fees may be levied are distinctly specified in the Act, and it appears highly improbable that there should have been an intention of giving, in addition, a general power of levying other fees. Supposing, however, that such fees and tolls could be imposed by bye-laws, it does not appear that they could be recovered under the Act. They would not be recoverable under section 360, as that section only provides for the recovery of fees due under this Act, and a distinction must obviously be drawn between fees due under this Act and fees due under bye-laws made under this Act.

It is more probable that the provision has been omitted on the ground that it embodied a legal principle so well known and accepted, that it was not likely to be disputed.

"It is, however, a rule of law, which has been designated as a 'legal axiom' requiring no authority to be cited in support of it, that no pecuniary burden can be imposed on the subjects of this country, by whatever name it may be called, whether tax, due, rate, or toll, except upon clear and distinct legal authority, established by those who seek to impose the burden"—(*Broom's Legal Maxims*, 4th Ed., p. 4.)

"So a bye-law may levy a toll or tallage on the members of the Corporation towards the necessary expenses of the Corporation; though clearly a bye-law to levy money of the subjects generally would be bad." (*Grant on Corporations*.)

The following provision of section 313 has also been omitted: "The Commissioners may, from time to time, at a meeting as aforesaid, repeal, alter, or add to any such bye-laws." This has probably been omitted as unnecessary: "Every Corporation too has a right, as of course, to alter, or repeal, the bye-laws, which itself has made."—(3 *Steph. Com.*, 13.)

The object of the changes made in this section is to legalize a number of useful bye-laws which have been made from time to time, but for the making of which the section, as before worded, furnished no sufficient authority. Instead of the words which have been inserted, the section before simply contained the words "for giving effect to the objects of this Act." Now a large number of the bye-laws which have been passed from time to time, though very useful and necessary, had no reference whatever to the objects of the Act.

“*Continuing offence.*”—A person having been previously convicted under a bye-law for having built a party-wall not of the thickness prescribed by the bye-law, was some time afterwards again summoned and convicted in respect of the same wall, and adjudged to pay a penalty of five shillings a day for seven days as for a continuing offence. But the Court held that the conviction could not be supported. The words “continuing offence,” the Court said, must be read to mean an offence which was from its nature susceptible of continuance, such as improper drainage, etc., and could not apply to the case of a party-wall when once finished. If the offence were within the bye-law, it would be more proper to hold the bye-law unreasonable than to allow a penalty to be enforced which might continue for the length of a man’s life.—*Marshall v. Smith*, L. R., 8 C. P., 416. Compare *Corporation of Calcutta v. Jadub Dooley*, I. L. R., 20 Cal., 605.

A bye-law can be made for the regulation of any trade carried on within the borough, but must not be in restraint of it. *Everett v. Grapes*, 3 L. J., N. S., 669.

In *Elwood v. Bullock*, 6 Q. B., 383, a bye-law that no person should erect any booth, or place any caravan for the purpose of a show or public entertainment within the borough, without the license of the Mayor, and that any such license, given at any other than fair time, should be revoked by the Mayor, if three inhabitant house-holders, residing within 100 yards of the place for which it was granted, should memorialise the Mayor to revoke it, was held to be unreasonable and void.

A bye-law that “no person not being a member of Her Majesty’s army or auxiliary forces, acting under the orders of his Commanding Officer, shall sound or play upon any musical instrument in any of the streets in the borough on Sunday” was held to be unreasonable and therefore bad, as it was not confined to cases in which a nuisance was caused. *Johnson v. Corporation of Croydon*, L. R., 16 Q. B. D., 708.

In *Hopkins v. Mayor of Swansea*, Lord Abinger observed:—“The bye-law has the same effect within its limits, and with respect to the person upon whom it lawfully operates, as an Act of Parliament has on the subjects at large.”

Per Pollock, C. B., with regard to bye-laws *ultra vires*: “Persons empowered to make bye-laws have no right to invest themselves with powers which the law will not sanction;” and *per* Bramwell, B.: “It is about the same as a policeman who thinks that he is not entitled to a staff unless he breaks somebody’s head with it.”—*Brown v. Holyhead Local Board*, 1 H. & C., 601.

Bye-laws may be made under this section regulating the use of Municipal Parks and Gardens by the Public (L. R.).

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

Additional power to make bye-laws in Hill-Municipalities.

For regulating or prohibiting the cutting or destroying of trees or shrubs, or the making of excavations or removal of soil or quarrying, where such regulation or prohibition

appears to the Commissioners to be necessary for any or all of the following purposes:—

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

In Darjeeling, section 20, Act^I of 1900, substitute the following:—

“350A. (1) *The Commissioners, at a meeting which has been convened expressly for the purpose and of which due notice has been given, may from time to time, make bye-laws for enforcing, prohibiting or regulating the doing of any act which may, in the opinion of the Commissioners, affect the stability or security of any hillside or bank or any immovable property thereon.*

(2) *In particular, and without prejudice to the generality of the foregoing power, the Commissioners at a meeting as aforesaid may make bye-laws for all or any of the following purposes, namely:—*

- (a) *prohibiting or regulating the making of excavations, the cutting of hillsides or banks and the removal of soil from hillsides or banks ;*
- (b) *prohibiting or regulating quarrying ;*
- (c) *prohibiting or regulating the removal of stones from hillsides, banks, jhoras or sites of landslips ;*
- (d) *for preventing or regulating the grazing or straying of cattle on hillsides or banks ;*
- (e) *for preventing the straying of poultry ;*
- (f) *for enforcing or regulating the cutting, trimming or removal of trees, shrubs, bamboos, bushes or hedges bordering on, overhanging or obstructing any road or drain, or causing, or being likely to cause, damage or injury to any road or drain or to any person using any road ;*
- (g) *for enforcing, regulating or prohibiting the cutting or destroying of trees, shrubs, bamboos or plants ;*
- (h) *for enforcing, regulating or prohibiting the making of, or for regulating the maintenance of, gardens or garden-ferraces ;*
- (i) *for prohibiting or regulating the making of holes or the placing of loose earth for or around trees, shrubs, bamboos or plants ;*
- (k) *for enforcing or regulating the planting and maintenance of particular kinds of trees, shrubs, bamboos or plants on land, where, in the opinion of the Commissioners, such enforcement or regulation is necessary or desirable with a view to the better protection of any hillside or bank from landslips.*

(3) *The word ‘cattle,’ as used in clause (d), shall have the same meaning as in the Cattle-trespass Act, 1871.*

“350B. *The Commissioners may, by any bye-law made under section 350A, declare that any person committing a breach of any such bye-law, or failing to comply with any notice issued thereunder, shall be liable to fine which may extend to fifty rupees and to further fine which may extend*

Fines for breach of bye-laws made under section 350A.

to twenty rupees for each day after conviction during which the offence is continued."

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

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

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

Local Government may cancel its confirmation of any bye-law.

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

This section is evidently based on section 184 of the Public Health Act, 1875, 38 and 39 Vict., c. 55

Bengal Government Circular No. 24 of the 6th December 1887 directs that all bye-laws or rules framed by Municipal Commissioners, and requiring the confirmation or approval of Government, should be submitted through the Legal Remembrancer.

Power to make rules as to business and affairs.

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

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

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

(2) Rules made under this section, consistent with this Act, shall be subject to the sanction of the Local Government, and shall, if sanctioned, be published in such manner as the Local Government may direct, and shall have the force of law."

Insertion of new sections, 351B to 351H.

21. After section 351A of the said Act the following shall be inserted in *Darjeeling*—

"351B. (1) *The Local Government may make rules for the amendment of Schedules A, B, C and D.*

Government may make rules to regulate any of the matters referred to in sections 201 F., 229 A., 237 and 248 E, and may by such rules alter, add to or cancel any of the rules contained in Schedules A, B, C and D, respectively.

(2) *All references in this Act to any of the aforesaid Schedules shall be construed as referring to such Schedule as for the time being amended in exercise of the powers conferred by sub-section (1).*

"351C. *The Commissioners, or any officer in receipt of a salary of not less than fifty rupees per mensem who may be authorised by them in that behalf, may enter into or upon any building or land, with or without assistants or workmen, in order to make any inspection, survey, measurement, valuation or inquiry or execute any work which is authorized by any of the clauses enacted by the Darjeeling Municipal Act, 1900, or by any rule or bye-law made under any such clause, or which it is necessary, for any of the purposes or in pursuance of any of the provisions of any such clause, rule or bye-law, to make or execute :*

Provided as follows :—

- (a) *except when it is in this Act otherwise provided, no such entry shall be made between sunset and sunrise ;*
- (b) *except when it is in this Act otherwise provided, no dwelling-house, and no hut which is used as a dwelling place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least six hours' previous written notice of the intention to make such entry ;*
- (c) *sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed ;*

(d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

“351D. (1) The Local Government may, by notification in the Calcutta Gazette, appoint an engineer to hear appeals under this Act.

Appeal to specially appointed Engineer.

(2) An appeal shall lie to the said Engineer from any order (not being an order apportioning expenses) or requisition made under section 201 C, sub-section (4), section 210, 210B, section 210C, section 224B, sub-section (3) section 228, section 239, clause (b), section 243, clause (b), section 244E, sub-section (2), section 244H, sub-section (1), or sub-section (3), section 244L, clause (b), section 244Q, sub-section (2), section 244V, section 248A, section 248B, section 248C or section 248D.

“351E. An appeal shall lie to the Commissioner of the Division from any order apportioning expenses incurred in pursuance of section 228, section 248B, section 248C or section 248D.

Appeal to Commissioner of the Division.

“351F. Every appeal under section 351D or section 351E must be presented within a period of thirty days after the date of the order or requisition against which the appeal is made :

Limitation of time for appeal.

Provided as follows :—

(a) if in any case the said period expires on a day when the office of the aforesaid Engineer or Commissioner is closed, the appeal may be presented on the day that the said office is reopened.

(b) any appeal may be admitted after the expiration of the said period when the appellant satisfies the appellate authority that he had sufficient cause for not presenting the appeal within such period.

351G. (1) In dealing with any appeal preferred to him under section 351E, the Commissioner shall be assisted by two assessors, who shall be selected and summoned by him for each appeal or group of appeals from a list to be prepared annually by the Deputy Commissioner.

Assessors in appeals to Commissioner of the Division.

Provided that, if any assessor so summoned fails to appear, the appeal may be heard in his absence.

(2) The assessors, if present, shall be consulted by the Commissioner, and their opinion shall be recorded in writing ; but the Commissioner shall not be bound to conform to their opinions.

“351H. (1) If the Engineer appointed under section 351D, or the Commissioner of the Division, rejects an appeal preferred to him under this Act, he shall by written order specifically state the grounds for such rejection.

Record of decision on appeal or reference.

(2) The said Engineer shall, when deciding any reference made to him under this Act, specifically state in writing the grounds for his decision.

(3) A copy of all orders passed by the said Engineer or Commissioner on any such appeal or by the said Engineer on any such reference shall forthwith be forwarded by him to the Commissioners, who shall thereupon inform the appellant, or the person who made the reference, as the case may be, of such orders.”

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

Commissioners may direct prosecution for public nuisance.

Practically unaltered. A complaint filed by a Municipal officer is exempted from stamp-duty—Act VII of 1870, section 19, clause (18).

353. (317) No prosecution for an offence under this Act or any bye-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within six months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman of the Commissioners.

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

“Continuing offence.” A sentence imposing a daily fine until such time as an accused person shall desist from an offence, is bad in law, as being an adjudication in respect of an offence not yet committed.—*In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See also 9 B. L. R., App., 35.

Under section 44, the Chairman shall exercise all the powers vested by this Act in the Commissioners, except such powers as are directed to be exercised by the Commissioners, at a meeting. Under section 45, the Chairman may by a written order delegate all or any of his duties and powers to the Vice-Chairman, provided that nothing done by the Vice-Chairman which might have been done under such a written order shall be invalid if done with the express or implied consent of the Chairman. In the case of *Kherota Prosad Pal v. The Chairman of the Howrah Municipality*, the Calcutta High Court held that a general delegation by the Chairman of his powers under this section must be in writing. The judgment is as follows:—

“It is unnecessary in the view we take of this matter, to consider more than the first objection raised to the conviction and sentence under section 218 of the Municipal Act of 1884. That objection is that the prosecution has been instituted without proper authority within the terms of section 353 read with sections 44 and 45 of the Act. It is not denied that no order

or consent of the Commissioners was previously obtained before prosecution, nor has it been contended that the Chairman, exercising the powers of a Commissioner under section 44, ordered this prosecution, nor that the Chairman by any written order delegated to the Vice-Chairman this duty. But it has been stated by the District Magistrate who heard the appeal—and this has been repeated in the explanation given on the issue of the rule—that for some months past the Vice-Chairman had his express consent to institute proceedings under section 353 of the Act. It seems to us that the law requires not express consent, but a written order where such general powers are delegated by the Chairman. No doubt the proviso sets out that nothing done by the Vice-Chairman which might have been done under the authority of a written order from the Chairman shall be invalid for want or defect of such written order if it be done with the express or implied consent of the Chairman previously or subsequently obtained. But we do not understand that proviso to altogether override the body of the section to which it is annexed. It seems to us rather that the proviso relates to specific acts in which an express or implied consent may have been given or held to have been given. In this particular instance the authority contended for is a general authority which had been given many months previous. We think, that is not the authority contemplated by the Act. We think, therefore, that the prosecution has been improperly instituted, and that the conviction and sentence should be set aside.”—*I. L. R.*, 20 Cal., 448.

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

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

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

Section 555 of the Criminal Procedure Code enacts that a Judge or Magistrate shall not, except with the permission of the Court to which an appeal lies, try or commit for trial any case in which he is a party, or personally interested, but provides that such Judge or Magistrate shall not be deemed to be a party or personally interested merely because he is a Municipal Commissioner.

Notwithstanding anything contained in section 555 of the Criminal Procedure Code, a conviction for an offence against any Municipal law or regulation, tried before a Bench of Magistrates which includes a salaried

officer of the Municipality, is bad.—*Nobin Krishna Mukerjee v. The Chairman of the Suburban Municipality*, I. L. R., 10 Cal., 194; *Wood v. Municipality of Calcutta*, I. L. R., 8 Cal., 891.

In a case decided on the 22nd August 1884—*In the matter of Kharak Chand Pal (Petitioner) v. Tarak Chunder Gupta, Municipal Overseer (Opposite Party)*, I. L. R., 10 Cal., 1030,—the Court, *per Prinsep, J.*, ruled as follows:—"The petitioner has been convicted under section 188 of the Penal Code of having disobeyed an order of the Municipal Commissioners of Comillah under section 256, Bengal Act V of 1876, dated the 29th March 1883.

"On enquiry we have ascertained that the District Magistrate, who tried and convicted the petitioner, was present as Chairman of the Municipal Commissioners at the meeting of the 29th March 1883, when the order was passed, the disobedience of which forms the subject of the present case.

"Section 555 of the Code of Criminal Procedure provides, that no Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested." (No permission has been applied for in the present case.) The explanation to section 555 further declares that "a Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner."

"That explanation, however, does not, in our opinion, apply to any case in which a Magistrate may have been personally concerned as a Municipal Commissioner in the matter which forms the subject of trial before him. It is rather intended to prevent an objection being raised that from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some municipal matter was involved. It is a very different matter when in the present case we find that the Magistrate is practically one of the prosecutors and the judge."—*Conviction set aside.*

The question arises as to whether the above ruling would be held applicable to the case of a Magistrate trying offences against bye-laws, in the passing of which he had been personally concerned as a Municipal Commissioner. The distinction, on the score of personal interest, between a bye-law and such a general order as the one in question, is not very obvious. It is at least open to question whether the above ruling does not carry the doctrine of disqualification by interest too far, especially as the current of the more recent English decisions appears to have set in the opposite direction. The Court followed *Sergeant v. Dale*, L. R., 2 Q. B. D., 558, a precedent of a very general nature. In a more recent case, however, *Reg. v. Handsley*, 8 Q. B. D., 833, it was held that when by statute a member of the council of a borough may act as a Justice of the Peace in matters arising under the Act (34 and 35 Vict., c. 154), in order to disqualify him from so acting, it is not sufficient to shew that, as a member of the council, he has a pecuniary interest in the result of the information or complaint or that the corporation of which he is the member are the prosecutors; but it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter.

The Court in this case (*Reg. v. Handsley*) intimated their disapproval of *Reg. v. Gibbon*, 6 Q. B. D., 168, the facts in which were as follows: By a Local Improvement Act the Corporation was made the authority for the execution of the Act with power to direct prosecutions for this purpose. An information for an offence under the Act having been preferred by an officer on behalf of the Corporation, a summons was issued upon it by a Justice who was also an alderman and member of the Corporation, but

came on for hearing before Justices, none of whom were connected with the Corporation. *Held*, notwithstanding, that such Justices could not proceed with the hearing of the summons, for it had been issued by one who was virtually prosecutor.

In *Reg. v. Milledge*, 4 Q. B. D., 322, and *Reg. v. Lee*, 9 Q. B. D., 394, it was held that when a councillor has taken part in *passing a resolution directing a prosecution*, he is disqualified from acting as a Justice in respect thereof. These rulings do not appear necessarily to conflict with *Reg. v. Handsley*, above cited.

In *Reg. v. Justice of Great Yarmouth* 8 Q. B. D., 525, the Mayor of Yarmouth was the Chairman of the Magistrates at a special sessions for appeal against poor rates, and was himself an appellant in one of the cases. After taking part in the decision of the other cases, he left the bench, when his own case came on, and conducted it himself. On a *certiorari* to bring up all the orders for the purpose of quashing them, *held*, that the Chairman being a litigant in a case similar to the other cases before the Court, was disqualified from acting as a Justice, and that the orders were bad. In this case the disqualification arose out of a personal and pecuniary interest.

Another case in which it was held that the interest is not a disqualification, unless it is sufficient to cause a real bias, is *Reg. v. Mayor and Justices of Deal*, 45 L. T. N. S., 439. In that case the petitioner had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Society for the Prevention of Cruelty to Animals. Some of the Justices who took part in the conviction were subscribers to a branch of the said Society. *Held*, upon rule for a *certiorari*, that there was nothing in these facts to create a real bias in the minds of the Justices which could amount to a disqualifying interest.

An objection was taken to a conviction under an order made by the town council of a borough in pursuance of the Dogs Act, 1871, that the convicting Justices had been parties to the making of the order; but the conviction was upheld. *Reg. v. Huntingdon, J.J.*, L. R., 4 Q. B. D., 522.

On an information laid under a Local Improvement Act by order of a Corporation who were the local board, for violating a bye-law in deviating from a plan of building, it was held that the convicting Justices were not disqualified merely because they were members of the Corporation. *Harving v. Stockton*, 31 J. P., 420.

See Rawlinson's "Municipal Corporation Act," Eighth Edition, p. 246, where the strict rule of disqualification is spoken of as the "old rule."

In *Nistaringi Debi v. Ghosh*, I. L. R., XXII Cal., 44, the High Court, held that the District Magistrate, if Chairman of the Municipality, ought not to try or hear an appeal from a conviction in respect of offences under the Act. It did not expressly decide whether he is disqualified under section 555 of the Criminal Procedure Code.

By section 4, clause (p) of the Criminal Procedure Code "offence" means any act or omission made punishable by any law for the time being in force. By clause (r) of the same section "bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force. Under the schedule referred to, all "offences against other laws" (i.e., not under the Penal Code) which are punishable with fine only or with imprisonment for less than three years, are bailable. It follows that all offences under the present Act, with the exception of that punishable under section 366, are bailable offences within the meaning of the Criminal Procedure Code; and that the provisions of that Code referring to such offences apply to them. By the same

schedule they are, with the same exception, cases in which a summons shall ordinarily issue in the first instance.

By section I Act V of 1867 (B.C.), the word "Magistrate" includes all persons exercising all or any of the powers of a Magistrate.

Objections have been raised to this section to the effect that it is at variance with Government orders regarding Municipal Benches. The orders in question direct that at least two Honorary Magistrates must form a Bench for the trial of Municipal cases. The present section enacts that a Magistrate may try such cases. Therefore, it has been alleged, the section and the orders are contradictory. The answer to the objection is that a Bench of Magistrates is a Magistrate within the meaning of this section and of the Criminal Procedure Code, and that Honorary Magistrates are not usually vested with jurisdiction to try cases singly. Were they vested by Government with the necessary local jurisdiction they could of course do so.

"*Fines under this Act.*"—There is an obvious distinction between fines under this Act, and under bye-laws made under this Act. This fact is recognized by section 353 which refers to a "prosecution for an offence under this Act or any bye-law made in pursuance thereof," thus obviously implying that the former does not include the latter. The same distinction was observed in 5 and 6 Will. 4, c. 76, s. 91, which provided that all the provisions thereafter contained relative to offences *against the Act* shall be taken to apply to all offences committed in *breach of any bye-law* or regulation made by virtue of the Act. Act III of 1864 contained a practically similar provision, which was re-enacted in the Bill of 1872, but omitted from the Act of 1876.

The omission is probably accidental, but does not appear to be of much consequence, as the general provisions of the Code of Criminal Procedure appear to apply to offences against bye-laws and are to the same effect as the section under consideration. In fact the section is clearly redundant, having regard to the provisions of the Criminal Procedure Code. The breach of a bye-law comes under the definition of an offence in section 4, clause (p), and the general provisions of the Code therefore apply to it.

It may be noted, however, that by the common law of England penalties under bye-laws are ordinarily only recoverable by action of debt or *assumpsit*, and that an indictment does not lie with regard to them.

By section 67 all fines paid or levied in any Municipality under this Act, shall be credited to the Municipal Fund. The following circular relates to certain other classes of fines :—

Municipal—No. 25T—M., dated the 6th April 1885.

"I am directed to acknowledge the receipt of your letter No. 126L—GM., dated the 3rd February last, in which you suggest that, as the charge of maintaining the police in Municipalities is now borne by Government the following fines realized within the Municipal limits through the action of the police should no longer be credited to Municipalities, but should form assets of the Provincial Revenues :—

- (a) Fines levied under section 14 of the Gambling Act II (B. C.) of 1867 ;
- (b) Fines levied for neglect of duty, absence, &c., from Police-officers paid by Municipalities ; and
- (c) Fines levied under section 34 of the Police Act V of 1861, for nuisances committed within Municipal limits.

2. In reply. I am directed to say that, after a full consideration of the question, the Lieutenant-Governor is pleased to direct that fines levied

under the Gambling Act, and those realized from the police in Municipalities for neglect of duty, &c., should be credited to Government with effect from the 1st instant. Proceeds from fines levied for nuisances committed within Municipal limits should, however, be made over to Municipalities as heretofore."

In Home Department Letter No. 132, dated 3rd October 1900, the Government of India renewed for a further period of 5 years the arrangement sanctioned by that Government in 1895 whereby fines under Act I (B. C) of 1869 (for the Prevention of Cruelty to Animals) within the Mofussil Municipalities of Bengal and within the jurisdictions of the Calcutta and Howrah Societies for the Prevention of Cruelty to Animals were granted to the Municipalities and Societies respectively.

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

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

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

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

***357. (368)** When any notice is required to be given to the owner or to the occupier of any land, such notice, addressed to the owner or occupier as the case may require, may be served on the occupier

Service of notice on owner or occupier of land.

of such land, or otherwise in the manner in the last preceding section mentioned :

Provided that when the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, they shall, if such place of abode be within the limits of their authority, cause every notice required to be given to the owner of any land to be served on such owner, or left with some adult male member or servant of his family ; and if the place of abode of the owner be not within such limits, they shall send every such notice by post in a registered cover addressed to his place of abode, and such service shall be deemed to be good service of the notice.

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

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

It is to be noted that this section merely provides that "error or defect of form" shall not render an assessment invalid. The section will not apply to any case where the property is not liable to assessment.

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

Holder of license to produce it when required.

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

Penalty.

360. (371) All costs, expenses, fees, tolls, or other moneys due under this Act to the Commissioners of any Municipality may be recovered in the manner provided in sections one hundred and twenty to one hundred and twenty-nine, both inclusive.

Recovery of moneys due to the Commissioners.

That is to say, by presentation in the first place 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 course of bringing a suit in a Civil Court.

Due under this Act.—If, therefore, fees could be levied under bye-laws made under section 350, such fees would not be recoverable under this section. Fees due under bye-laws could not be held to be fees due under this Act. Compare notes to section 350.

It is obvious that the Commissioners have no power to levy fees without distinct authority to do so. The practice, therefore, said to prevail in some Municipalities of levying fees for the consecration of pipal or other sacred trees on the sides of the public roads, is absolutely illegal.

361. (372) If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges, recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder who shall, at the time of sale, deposit the full amount of the purchase-money.

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

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

Under the corresponding section, the surplus proceeds were repayable, within three years, and if not claimed could then be credited to the Municipal Fund. Under the present section they will be credited at once to the Fund, and the ordinary law of limitation is the only restriction on their repayment. Similar alterations have been made in all the sections of the Act which deal with the matter of surplus proceeds.

There is no objection to the Municipal Commissioners buying in a holding put up to sale under section 361, provided the holding is required for any of the purposes specified in section 69, or for any of the other purposes of the Act, and that the Commissioners determine to make the purchase for such purpose.

The Commissioners are not, however, authorized to buy in holdings put up for sale for arrears of taxes unless the purchase is made under section 34 for the purposes of the Act (B. G. Cir., Muni., 2250 M., dated 6th August 1902 to Commissioner, Burdwan).

362. (373) The Commissioners may make compensation out of the Municipal Fund to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

Compensation for
Damages.

"Damage" is defined by Wharton to be "a loss or injury by the fault of another, *e.g.*, by an unlawful act or omission; any hurt or hindrance that a person receives in his estate; also the compensation to be fixed by

the jury when they find a verdict for the plaintiff." The object of the section appears to be to give local authorities the power of compromising civil suits to recover damages which may be brought against them. The next section provides that they must always have an opportunity of so doing. It does not appear that the section is intended to confer a power of giving compensation in cases of *damnum absque injuria* where no action would ordinarily lie.

By the Railway Clauses Consolidation Act, 1845, section 6, it is provided that the Company shall make full compensation for all damages sustained by reason of the exercise in regard to matters specified of the powers vested in the Company. In *Ricket v. Metropolitan Railway Company* (L. R., 2 H. L., 175), it was held "that no case comes within the Statute unless when some damage has been occasioned . . . in respect of which, but for the Statute, the complaining party might have maintained an action Any other construction would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature." *Semble*, therefore that the present section would apply to cases where in consequence of the statutory powers not having been properly exercised or having been exceeded, an action would lie, and also to cases where damage had been occasioned by the proper exercise of the statutory powers, for which an action would lie save for their existence.

A person who sustains injury from the execution of works authorized by a statute is not, generally speaking, entitled to compensation under the compensation clauses of the statute, unless the injury sustained is such as had the works not been authorized by the Statute, would have given the claimant a right of action. Therefore, where a company on the execution of works authorized by a local Act which incorporated the Waterworks Clauses Act, 1847, intercepted water from percolating underground into a well, and also abstracted from the well water which had already so percolated into it, it was held that inasmuch as, apart from the Statute, no action could have lain against the person who executed the works in respect of either the interception or abstraction of such water, the Statute gave no right to compensation in respect of either.—*New River Company v. Johnson*, 1. L. T. (N. S.), 295.

363. (374). No suit shall be brought against the Com-

No action to be brought against the Commissioners or their officers until after one month's notice of cause of action.

missioners of any Municipality, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners, and also (if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit; and unless such notice be proved, the Court shall find for the defendant.

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

If the Commissioners or their officer, or any person to whom any such notice is given, shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

To what classes of suits similarly worded provisions in other Municipal Acts apply, is a point which has given rise to a considerable amount of judicial discussion, and to some conflicting decisions. Thus, in *Poorno Chunder Roy v. Balfour*, 535 C. R., 9 W. R., Bayley J., held, that similar provisions contained in section 87 of Act III of 1864 applies to a suit to recover possession of land. Phear, J., questioned this, but concurred in dismissing the suit on other grounds. In *Abhoyanath Bose v. The Chairman of the Municipal Committee of Kishnagur*, 92 C. R., 7 W. R., Norman, J., held, that the same section applied to a suit brought to restrain the Commissioners from interfering with a road claimed to be a private one. In *Price v. Khilat Chandra Ghosh*, 5 B. L., App. 50, it was held that the same section did not apply to suits to recover possession of immoveable property, but only to actions for damages. In *The Municipal Committee of Moradabad v. Chatri Singh*, 1 L. R., 1 All., 269, a similar view was taken. In *Mayandi v. Meguhae*, 1 L. R., 2 Mad., 124, it was held that a similar provision in Madras Act III of 1871 (section 68) did not apply to a suit to recover money due under a contract, a breach of a contract not being a thing done under the Act. In *Manni Kasanudhan v. Crooke*, 1 L. R., 2 All., 296, it was held that such provisions only apply to suits in which relief of a pecuniary nature is claimed for something done under the Act, and for which the persons performing them are personally liable for damages.

It may be now accepted as established law that the provisions in question only apply to suits arising out of a pecuniary claim for acts done by the Commissioners or their subordinates in excess of their statutory powers.

The leading Bengal ruling on the subject will be found in the Full Bench decision in *Chunder Sikur Bandopadya v. Obhoy Charan Bagchi*, 1 L. R., 6 Calc., 8, from which the following extract may be quoted:—

“As the relief which has been decreed in these suits is for the specific recovery of land, irrespective of any damages for the plaintiff's dispossession, we consider that the 87th section of Bengal Act III of 1864 does not apply.

“That section, as it seems to us, is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise, or the honestly supposed exercise, of their statutory powers.

“The notice in the earlier part of the section is meant to give the defendant the opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation.”

In a case reported in 1 L. R., 8 Bom., 421, a somewhat wider interpretation is placed on a similar provision in Bombay Act VI of 1873. It was held that “Section 86 of the Act is not confined to an action for damages, but is applicable to every claim of a pecuniary nature arising out of the acts of Municipal bodies or officers, who, in the *bonâ fide* discharge of their public duties, may have committed illegalities not justified by their power.”

No cause of action will be allowed to be raised in a suit to which this section applies, unless disclosed in the notice of action required to be given.—*Ullman and others v. The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

Municipal Commissioners are entitled to the notice referred to in this section only when they have been acting *bonâ fide* in the belief that they were exercising powers given to them by the Act. Where their proceedings are not *bonâ fide*, and are only done colourably under cover of the Act, they are not entitled to any notice.—*Gopee Kishen Gosain v. Ryland*, 279 C. R., 9 W. R.

A distinct notice of action is absolutely necessary. A notice objecting to and asking for reconsideration of the order complained against is not sufficient.—*Abhoyanath Bose v. Chairman of the Municipal Committee of Krishnaghur*, 92 C. R., 7 W. R.

In a suit for the recovery of damages on account of the detention of an omnibus, and of a daily fine imposed by the Municipality of Howrah, such detention having been pronounced to be illegal, and such fine having been set aside by the High Court. *Held* that, if the plaintiff had any cause of action, it accrued upon the seizure of the omnibus, and not upon the order of the High Court which allowed the conviction to stand as to one rupee, and that he could not under the circumstances treat the continued detention of the omnibus as a fresh cause of action from day to day, and his suit not having been brought within three months was barred.—*Hughes v. Municipal Commissioners of Hourah*, 19 W. R., 339.

The plaintiff on April 1888 sued the defendants for damages for injuries caused by the defendant's works to his houses. On the case coming on for hearing, it appeared that the notice of action served upon the defendants was defective in form, and the suit was, on the 11th December 1888, dismissed, with liberty to the plaintiff to bring a fresh suit for the same cause of action."

On the 15th December 1888 the plaintiff served the defendants with a fresh notice, and on the 15th March 1889 instituted the present suit. It appeared from the plaintiff's evidence that in the beginning of December 1888 the house had been reduced to such a condition that it was incapable of sustaining further damage. *Held*, that the right to sue accrued to the plaintiff on the happening of damage by reason of the subsidence arising from the defendants' act; that the plaintiff had not shown that a right to sue upon which the suit could be maintained had accrued within three months before the institution of the suit as required by section 359 of the Municipal Act (IV of 1876), and within the terms of the notice of the 18th December; and that the suit was therefore barred.—*Dwarkanth Gupta v. Corporation of Calcutta*, 1. L. R., 18 Calc., 91.

The following reported cases may also be referred to with regard to the interpretation to be put on this section.—*Joshi Kalidas v. The Dakor Town Municipality*, 1. L. R., 7 Bom., 399; *Joharnal v. The Municipality of Ahmednagar*, 1. L. R., 6 Bom., 580; *Sorabji Nassarvanji v. The Justices of Peace of Bombay*, 12 Bom. H. C. Rep., 250.

There is no objection to serving the notice referred to in this section by registered letter (L. R.).

Anything done under this Act.—In the English Municipal Corporations Act, 1882, section 226, the words used are "for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act." In a memorandum prefixed to the Bill when introduced into Parliament, it was stated that the words in italics had been inserted with reference to the ruling in *King v. Burrell*, 12 A. & E., 460. In that case it was held that a notice of action, in a suit

for an omission or neglect was not necessary under section 135 of the Act of 1835, as, by that section, such notice was required only in actions for anything *done* in pursuance of the Act. This ruling, if correct, is evidently applicable to the present section. It seems, however, to have been differed from in *Wilson v. Mayor of Halifax*, L. R., 3 Ex., 114. See Rawlinson's 'Municipal Corporations Act,' 6th Edition, p. 314.

It is important to notice that when duties and powers are conferred by Statute, no action will lie for damages resulting from the exercise of those powers or the performance of those duties unless there has been negligence in such exercise or performance. Thus it has been more than once held that a Railway Company is not liable without proof of negligence to injury by sparks from a locomotive engine, as under its statutory powers it is authorised to run locomotive engines.—*Halford v. East Indian Railway Company*, 14 B. L. R., 1. But if it neglects to avail itself of all such contrivances as are known in practical use to prevent the emission of sparks from engines, it will be responsible for such neglect. (*Addison on Torts*, 5th Edition, 342.) On the same principle it was held that a Corporation authorised by Statute to make excavations for drainage purposes was not liable to damages thereby caused to a neighbouring house, when it had entrusted the execution of the work to skilled and competent contractors. *Ullman and others v. The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

The following circular has reference to civil litigation carried on by the Commissioners :—

No. 2424T—M., dated Darjeeling, the 26th October 1885.

I am directed to acknowledge the receipt of your memorandum No. 43 MM., dated the 10th June last, submitting, for the orders of Government, a copy of a correspondence between the Magistrate of the 24-Pergunnahs and the Chairman of the Naihaty Municipality, in which the question has been raised as to whether Municipal Commissioners should, in future, conduct their civil litigation themselves without reference to the Magistrate of the district. With reference to Rule 51, section I of the rules for the conduct of Civil suits of Government, you ask for instructions whether Municipalities generally, and specially those which elect their own Chairman, should, in future, conduct their civil litigation at their own discretion, or in accordance with the Civil Suit Rules, and under the control and advice of the Legal Remembrancer.

2. In reply, I am directed to say that, in Municipalities with non-official Chairmen, or with Chairmen who, though officials, are elected by the Commissioners, and not appointed by Government, civil litigation should be conducted at the discretion of the Commissioners. Should the Commissioners desire it, they may consult the Magistrate of the district, who has control over their proceedings, under section 63 of the Bengal Municipal Act; and the Magistrate may, if he considers it necessary, obtain the advice of the Legal Remembrancer. In the case of other Municipalities the rules for the conduct of civil suits of Government should apply.

With regard to appeals in the High Court in Land Acquisition cases undertaken by Government on behalf of, or at the instance of, Municipalities, Government has ruled that the Legal Remembrancer will at once advise the Collector, in each instance, of any sums advanced or required. That officer will at once deposit the amount required into the litigation fund from the funds placed at his disposal by the Municipality concerned and present the Legal Remembrancer with a duplicate challan. If he has not sufficient funds in his hands, he will at once obtain the amount required

from the party interested. The Accountant-General will also be advised by the Legal Remembrancer so that he may watch the recoveries. Govt. Cir., Munl. 1733—367M., dated 17th October 1901 to Legal Remembrancer.

364. (375) Notwithstanding anything contained in section three of Bengal Act VI of 1870
 Chaukidari *chakran* (an Act to provide for the appointment,
 lands. dismissal, and maintenance of village
chaukidars), the provisions of Part II of the said Act, relating to *chaukidari chakran* lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a Municipality, and all duties and functions which the panchayat of a village or any member thereof is required to discharge under the provisions of the said Part, shall be discharged, and all powers which the panchayat of a village or any member thereof is authorized to exercise under the said Part, shall be exercised by the Commissioners of such Municipality, and the proceeds of the assessment on such lands made under the said Part shall be paid into the Municipal Fund, and shall be available for the purposes of such Fund.

Section 3 of Act VI of 1870 (B. C.) provides that no panchayat shall be appointed in any village to which the provisions of Act III of 1864 (B. C.), or of Act VI of 1868 (B. C.) shall have been extended. Under section 2 of Act V of 1876 (B. C.) and section 2 of the present Act, section 3 of Act VI of 1870 (B. C.) applies to all villages to which the present Act shall have been extended or in which it may be in force.

The following extract explains the object of this section :—

The Hon'ble Mr. Dampier, in moving the introduction of the corresponding section of Act V, said, that "Hon'ble Members were aware that Bengal Act VI of 1870 provided a system for securing the payment and control of *chaukidars* in *mofussil* villages. And one of the chapters of that Act was to the effect that *chakran* lands, which had been assigned to provide for the performance of Police duties, might be assessed at half rates and given up to the *zemindars* entirely, the *zemindars* paying revenue on such land at half the usual rates only, instead of their being held as before by a *chaukidar* who, as a condition of his tenure, was bound to give a certain amount of Police service and a certain amount of service to the *zemindar*. It was assumed that the interest of the *zemindar* and the public in the *chaukidar's* service was half and half. There was a provision in the Act that Commissioners might be appointed to value these *chakran* lands, and it enacted that the rent payable by the *zemindar* should be paid over to the panchayat, who should devote it to the purpose of paying *chaukidars* But, on looking at the law, Act VI of 1870, it was found that in section 3 there was a provision of which the effect was to prevent that being done within the limits of Municipalities The subsequent sections of the law said that the sections which dealt with

chakran lands should not be applied in any place where there was not a panchayet. But under section 3 you might not appoint a panchayet in Municipalities, and therefore you could not apply the *chakran* provisions to such places. He thought it was obvious that it would be very desirable to deal with *chakran* lands within the limits of Municipalities in the same manner as they were dealt with in villages under Act VI of 1870.—(P. C., March 23, 1876.)

365. (376) All Police-officers shall give immediate information to the Commissioners of the

Police-officer to report offences and arrest persons refusing to give name and residence.

Municipality of any offence committed against this Act "or any bye-law made in pursuance thereof." When any person, in the presence of a Police-officer, commits, or is accused of committing, any such offence, and refuses on demand of a Police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

"Upon the recommendation of the Commissioners any servant of the Commissioners in receipt of a salary of not less than ten rupees per mensem, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a Police-officer under this section."

In revising this section it was thought desirable to adopt the language of the Criminal Procedure Code, so that there might be no possibility of any conflict with the provisions of the Code.—(P. C., March 1, 1884.)

The addition of the words "or any bye-law made in pursuance thereof," made by the amending Act is very necessary, as an offence against a bye-law made under the Act is not an offence against the Act. Compare notes to section 355.

366. (377) If any person employed under this Act (not being a public servant within the meaning of section twenty-one of the Indian

Penalty on officer, &c., taking unauthorized fees.

Penal Code) shall accept or obtain, or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing, or forbearing to do any official act; or for showing

or forbearing to show, in the exercise of his official functions, favour or disfavour to any person; or for rendering or attempting to render any service or disservice to any person with the Commissioners or with any public servant, or with the Government in the discharge of his official duties, he shall be punished with imprisonment, either simple or rigorous, as provided in section fifty-three of the Indian Penal Code, for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both.

It being somewhat doubtful as to what classes of Municipal servants can be considered to be public servants within the meaning of section 21 of the Indian Penal Code, this section has been enacted in order to make them similarly punishable, for certain offences. Such offences are punishable when committed by public servants, under sections 161, 163, Indian Penal Code.

The only classes of Municipal servants who can be held to be public servants are those who come under clause (10) of section 21 of the Indian Penal Code. The clause in question declares the following classes of persons to be public servants:—"Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district."

It is clear that Municipal assessors, tax collectors and other subordinates entrusted with the collection or disbursement of money are public servants under this definition. It does not appear probable that any other classes of Municipal subordinates would be held to be public servants. Labourers or menial servants employed to work on behalf of Government have been held not to be public servants.—*Queen v. Nachimattu and others*, I. L. R., 7 Mad., 18.

Saving clause.

*367. (378) Nothing in this Act contained shall be construed to

- (a) render lawful any act or omission on the part of any person which, but for this Act, would by law be deemed to be a nuisance:
- (b) exempt any person guilty of nuisance from a suit in respect thereof:
- (c) affect any enactment not hereby expressly repealed.

Nuisances in law are divided into public or common nuisances and private nuisances. The former are punishable under the criminal law. The remedy for the latter is ordinarily a civil suit.

"And nuisances are of two kinds, public or common nuisances which affect the public and are annoyances to all the King's subjects; for which reason we must refer them to the class of public wrongs or crimes and misdemeanors. And private nuisances which are the objects of our present consideration and may be defined as anything done to the hurt or

annoyance of the land, tenements or hereditaments of another.”—(3 *Bl. Com.*, 216.)

A public nuisance is defined by the Penal Code as “Any act or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.” (Section 268.)

The punishment for any public nuisance in any case not specially provided for by the Code is fine to the amount of Rs. 200. (Section 290.)

“And here I must premise that the law gives no private remedy for anything but a private wrong. Therefore no action lies for a public or common nuisance but an indictment only; because the damage being common to all the King’s subjects, no one can assign his particular proportion of it; or if he could, it would be extremely hard if every subject in the kingdom were allowed to harass the offender with separate actions Yet this rule admits of one exception, where a private person suffers some extraordinary damage, beyond the rest of the King’s subjects, by a public nuisance, in which case he shall have a private satisfaction by action. As, if by means of a ditch dug across a public way, which is a common nuisance, a man or his horse suffer any injury by falling therein; there, for this particular damage, which is not common to others, the party shall have his action.”—(3 *Bl. Com.*, 219.)

The principle here laid down has been adopted by the Indian Courts.—*Baroda Pershad Mustafi v. Gora Chand Mustafi*, 3 B. L. R., 295; 160 C. R., 12 W. R.; *Satku Valad Kadir v. Ibrahim Valad Mirza*, I. L. R., 2 Bom. 457.

The following are the remaining sections of the *Darjeeling Municipal Act* (1 of 1900 B. C.). (see note to section 6).

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|---------------------------------------|--|
| Addition of new Schedules,
A to D. | 22. After the sixth Schedule to the said Act the Schedules marked respectively A, B, C and D shall be added. |
| 23. The portions of the
Repeal. | said Act mentioned in the first column of Schedule E are repealed to the extent mentioned in the second column of that Schedule. |

PART II.—Temporary Provisions.

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|---|--|
| 24. This part shall
Temporary operation of
Part II. | only continue in force until the publication in the Calcutta Gazette of a notification by the Local Government declaring that it shall cease to have effect. |
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| 25. (1) Every claim for
Compensation. | compensation from the Municipal Fund for damages sustained by reason of the exercise of any power conferred by any clause enacted by this Act shall be referred to the Commissioner of the Division. |
|--|--|

(2) Every such reference must, except as provided in clauses (a) and (b) of section 351 F of the Bengal Municipal Act, 1884, be made within one year after the exercise of the said power; and the provisions of sections 351 G, and 351 H of the said Act, as to appeals, shall apply thereto.

(3) No compensation shall be payable under section 362 of the said Bengal Municipal Act, 1884, for any damage referred to in sub-section (1) of this section except under the orders of the Commissioner of the Division.

26. *All clauses enacted by this Act, other than section 3, shall be read as if the words "the Local Government" were substituted for the word "the Commissioners" and "the Commissioners at a meeting."*
 Substitution of Local Government for Commissioners.

27. *The portions of the Bengal Municipal Act, 1884, which are mentioned in the first column of Schedule F shall be read subject to the amendments respectively indicated in the second column of that Schedule.*
 Further amendment of Bengal Act III of 1884.

28. (1) *The Local Government may, by notification in the Calcutta Gazette, delegate to any officer any of the powers or duties conferred or imposed on the Local Government by any portion of the Bengal Municipal Act, 1884, other than the portions mentioned in Schedule G.*
 Delegation of certain of Local Government's powers and duties.

(2) *In the exercise or performance of any powers or duties delegated to any officer under sub-section (1), such officer shall be subject to the control of the Local Government.*

FIRST SCHEDULE.

(See sections 8 and 17.)

Municipalities in which the Commissioners shall be appointed by the Local Government.

Asansol.	Patuakhali.	Samastipur.
Sonamukhi.	Pirojpur.	Colgong.
Arambagh.	Jhallakati.	Nawabganj.
Uluberia.	Nalchitti.	Dumka.
Budge Budge.	Chandpur.	Kendrapara.
Garden Reach.	Cox's Bazar.	Jajpur.
Garulia.	Tikari.	Giridih.
Bhatpara.	Daudnagar.	Lohardaga.
Debhatta.	Bettiah.	Daltonganj.
Chakdaha.	Sitamarhi.	Jhalda.
Darjeeling.	Lalgunj.	Raghunathpur.
Netrokona.	Rosera.	Chaibassa.

SECOND SCHEDULE.

*(See sections 8 and 23.)**Municipalities in which the Chairman shall be appointed by the local Government.*

Asansol.	Tangail.	Darbhanga.
Sonamukhi.	Netrokona.	Samastipur.
Dainhat.	Patuakhali.	Kishanganj.
Kharar.	Pirojpur.	Nawabganj.
Uttarpara,	Chandpur.	Dumka.
Arambagh.	Cox's Bazar.	Kendrapara.
Uluberia.	Patna City.	Jajpur.
Budge Budge.	Dinapur Nizamut.	Hazaribagh.
Garden Reach.	Gaya.	Chatra.
Garulia.	Tikari.	Giridih.
Bhatpara.	Daudnagar.	Ranchi.
Santipur.	Sasaram.	Lohardaga.
Birnagar.	Bhabhua.	Daltonganj.
Chakdaha.	Siwan.	Jhalda.
Kandi.	Bettiah.	Purulia.
Maheshpur.	Sitamarhi.	Raghunathpur.
Jalpaiguri.	Madhubani.	Chaibassa.
Darjeeling.		

THIRD SCHEDULE.

FORM A.—(See section 112.)

*Notice to be published of the preparation of the list of assessment
on Persons.*

BENGAL MUNICIPAL ACT, 1884.

Section 112.

MUNICIPALITY OF

WHEREAS an assessment list of the tax upon persons occupying holdings has been deposited in the Office of the Commissioners as required by section one hundred and twelve of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the Office of the said Commissioners during office hours on any day not being a close holiday, and that the several persons whose names are included in the said assessment are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax Collector or other officer authorized to receive payment, the first payment to be made on the first day of (.....), and every subsequent payment on or before the first day of (.....), the first day of (.....), and the first day of (.....), or in default thereof, any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter, or which may be found on the holding in respect of which such defaulter is assessed, and by such other proceedings as are allowed by law.

Dated this.....day of.....

A. B.,

Chairman of Commissioners.

FORM B.—(See section 112.)

Notice to be published of the preparation of the Valuation and Rating List of Holdings.

BENGAL MUNICIPAL ACT, 1884.

Section 112.

MUNICIPALITY OF

WHEREAS a valuation and rating list of the rate on the annual value of holdings has been deposited in the office of the Commissioners as required by section one hundred and twelve of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the Office of the said Commissioners during office hours on any day not being a close holiday, and that the several owners of the holdings included therein are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax Collector or other officer authorized to receive payment, the first payment to be made on the first day of (.....), and every subsequent payment on or before the first day of (.....), the first day of (.....), and the first day of (.....), and in default thereof, any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter, or which may be found on the holding in respect of which the valuation is made, and by such other proceedings as are allowed by law.

Dated this.....day of

A B.,

Chairman of Commissioners.

FOURTH SCHEDULE.

FORM A.—(See section 120.)

Notice of demand under section 120.

BENGAL MUNICIPAL ACT, 1884.

To

MUNICIPALITY OF

TAKE notice that the sum of Rs., being the amount due from you as shown in the accompanying bill,

is hereby demanded from you, and that if you do not within fifteen days pay the same to an officer authorized to receive payment, or into the office of the Municipal Commissioners, the same with costs will be levied by distress and sale of your goods and chattels, or otherwise as provided by law.

A. B.,

Chairman of Commissioners.

[The following note will be added at the foot of the above notice in those cases only in which the notice is to be addressed to a person who has not already paid one instalment of the tax at the rate at which the demand is made.]

Note.—If you have any objection to make against this demand you may, instead of paying the amount which is hereby demanded, present a petition to the Commissioners praying for a review of the amount assessed (or rated). Such petition must be presented within fifteen days of the service of this notice, otherwise it will not be received. If you present such petition, no amount will be levied from you until the Commissioners shall have passed an order on your petition; but after fifteen days from such order the amount due by you, with such costs as the Commissioners may direct, will be levied unless it has been previously paid.

FORM B.—(See section 121.)

Table of fees payable upon Distraints under this Act.

Sums distrained for.				Fee.	
				Rs.	A.
	Under	1	Rupee	...	0 4
1	and under	5	Rupees	...	0 8
5	"	10	"	...	1 0
10	"	15	"	...	1 8
15	"	20	"	...	2 0
20	"	25	"	...	2 8
25	"	30	"	...	3 0
30	"	35	"	...	3 8
35	"	40	"	...	4 0
40	"	45	"	...	4 8
45	"	50	"	...	5 0
50	"	60	"	...	6 0
60	"	80	"	...	7 8
80	"	100	"	...	9 0
Above		100	"	...	10 0

The above charge includes all expenses including the service of notice of demand, except when peons are kept in charge of

property distrained, in which case three annas must be paid daily for each man. If the amount demanded be paid or the warrant discharged before the sale is held, so that no sale is necessary, one-fourth of the fees specified in the above table shall be remitted.

FORM C.—(See section 122.)

Distress Warrant.

BENGAL MUNICIPAL ACT, 1884.

Section 122.

To (here insert the name of the officer charged with the execution of the warrant).

WHEREAS of has not paid or shown sufficient cause for the non-payment of the sum of rupees due for taxes (or rates) mentioned in the margin, although the said sum has been duly demanded in writing from the said, and fifteen days have elapsed since the service of the notice of demand, this is to require you to distrain the moveable property of the said wherever it may be found within the Municipality, except ploughs, plough-cattle, tools, or implements of trade or agriculture, or any other moveable property subject to the same exceptions, which may be found within the holding specified in the margin to the amount of the said sum of and the further sum of to defray the charges of taking, keeping and selling such property; and if within ten days next after such distress the said sum of shall not be paid, to sell the said property, and having paid and deducted out of the proceeds of the sale the said sum of and the charges of taking, keeping, and selling such property, to return the surplus (if any) on demand to the person whom you shall have found in possession of the said property, and if no demand be made, to pay the same to the Commissioners. If distress cannot be made of sufficient property of the said, you are to certify the same to us in returning this warrant.

A. B.,

Chairman of

FORM D.—(See section 122.)

Form of Inventory and Notice,

BENGAL MUNICIPAL ACT. 1884.

(Section 122.)

(State particulars of goods seized.)

TAKE notice that I have this day seized the property specified in the above inventory for the sum of due for the taxes (or rates) mentioned in the margin, and that, unless you pay to me, or into the office of the Commissioners of. . . the said sum of and the further costs of this distraint as specified below, within ten days from the day of the date of this notice the property will be sold.

*Costs of Distraint—**Date.*

*(Signature of the officer
executing the warrant of
distress.)*

FORM E.—(See section 124.)

*Register of Distraints of Property and Sales held on account of
arrears for the month of in*

1. Name of defaulter.
2. Number on register and specification of the holding on account of which the arrear is due.
3. Amount of arrear due.
4. Amount of costs and penalty.
5. Total amount to be realised.
6. Inventory of property seized under distress.
7. Date of distress.
8. Date of sale.
9. Detail of articles sold.
10. Amount realised on each article.
11. Purchaser's name.
12. Total amount realised.
13. Amount paid into the Commissioners' office on account of the arrear due with date.
14. Amount paid into the Commissioners' office on account of costs, and penalties.

15. Surplus proceeds of sale remaining after deducting the amount of arrears, costs, penalties due.
16. How the surplus was disposed of, with date of such disposal.
17. Balance of arrear still remaining unrealised, if any.
18. On what date such remaining balance was realised or written off by authority.
19. Remarks (explaining why the property seized was released without sale if not eventually sold, &c., &c.)

FIFTH SCHEDULE.

(See sections 86 and 131.)

TAX ON CARRIAGES AND ANIMALS.

	Per quarter.
	Rs. A.
For every 4-wheeled carriage drawn by two horses...	4 8
For every 4-wheeled carriage drawn by one horse or a pair of ponies under thirteen hands...	3 0
For every 2-wheeled carriage	2 8
For every horse	2 0
For every pony under thirteen hands, and for every mule and donkey	0 12
For every elephant	6 0
For every camel	2 0
For every 4-wheeled carriage drawn by one pony under thirteen hands	2 8

Carriages, the wheels of which do not exceed twenty-four inches in diameter, are exempted.

SIXTH SCHEDULE.

(See sections 2 and 4.)

Act of the Governor-General in Council.

Number and years.	Subject.	Extent of repeal.
XXI of 1857 ...	To make better provision for the order and good government of the station of Howrah.	Sections 4, 5, 6, 8, 9, 16, 17, 24, 33, 34, 35, 36, 37, 39, 46.

SIXTH SCHEDULE—(concl'd.)

Acts of the Lieutenant-Governor of Bengal in Council.

Number and year.	Subject.	Extent of repeal.
V of 1873 ...	To provide for the levy of a lighting rate in Howrah.	The whole Act.
V of 1876 ...	To amend and consolidate the law relating to Municipalities.	Ditto.
VI of 1878 ...	To provide for the cleansing and construction of latrines in first class Municipalities.	Ditto.

Here follow the schedules to the Darjeeling Municipal Act (1 of 1900 B. C.).

SCHEDULE A.

RULES AS TO PRIVATE ROADS AND BRIDGES.

(See sections 201C, 201F and 351B.)

Part I.—Roads.

(1) Every application for permission to construct, re-construct or alter a private road other than a footpath must be accompanied by—

- (a) a plan of the road, showing cross-sections.
- (b) type-drawings of all bridges to be provided or already provided for the road, and
- (c) a description of the provision which it is intended to make or which already exists in respect of retaining-walls and revetments (if any) and drainage.

(2) Every application for permission to construct, or reconstruct or alter a private footpath must be accompanied by a full description of the path.

2. (1) A private road must be so constructed as to have a slope inwards towards the hillside.
Slope.
- (2) Such slope must be not less than the gradient of the road.
3. (1) Whenever the Commissioners so direct, the outer edge of a private road must be protected by training-walls, and the inner cutting by revetments.
Retaining walls and revetments.
- (2) Such walls and revetments must be of such number and must be placed in such positions as the Commissioners may direct, and must be constructed in accordance with the rules contained in Schedule D.
4. A stone-lined drain must be provided on the inner side of a private road, where such side is not rock.
Drain.

Part II.—Bridges.

5. Every application for permission to construct, reconstruct or alter a private bridge must be accompanied by drawings of the bridge.
Application for permission to construct, reconstruct or alter a private bridge.
6. A private bridge must be constructed so as to leave a sufficient water-way to pass the *maximum* discharge of the channel spanned by the bridge.
Waterway.
7. The flooring placed in the bed of the channel under a private bridge must, as far as practicable, be laid at the same slope as that of the channel.
Slope of flooring under bridge.
8. When a pocket for the deposit of *débris* is cut in the hillside above a private bridge, otherwise than in solid rock, such pocket must be lined with masonry walling.
Pocket above bridge.
9. Where a small drain is crossed by a private road, a wooden or iron grating must, if the Commissioners so direct, be laid over the drain, instead of a covered culvert.
Substitution of gratings for culverts.

SCHEDULE. B.

RULES AS TO PRIVATE DRAINS.

(See sections 224B, 229A and 351B.)

Construction of drains
for sullage water.

1. Drains for sullage water must be constructed—

(a) with round or half-round tiles bedded in concrete,
or

(b) with U-shaped stone masonry set in lime mortar and plastered over the inner surface with Portland cement, or

(c) with U-shaped stone concrete.

Construction of drains
for surface water.

2. (1) Drains for surface water only may be constructed either of dry rubble masonry or of any other material approved by the Commissioners, and may be either

rectangular or U-shaped or V-shaped in section.

(2) Such drains shall not be connected with any drain carrying sullage water or sewage.

3. Except with the written permission of the Commissioners no covered drain shall be constructed, and no open drain shall be covered in.

Drains to be open.

Sectional area.

4. The sectional area of every drain shall be subject to the approval of the Commissioners.

5. (i) Drains must discharge into the nearest water-channel or public drain, unless in any case the Commissioners otherwise direct.

Discharge.

(2) The outfall of a drain into a water-channel or public drain must be protected and guided in such manner as the Commissioners may direct.

(3) Where the drain of a private road joins the drain of a public road, the former drain must be so directed or so protected by strike-boards as to minimise the risk of damage to the public drain or road.

6. A masonry drain must be placed round every masonry or framed building or block of such buildings, and the site must be sloped from all sides towards such drain.

Drain round masonry
or framed building.

SCHEDULE C.

RULES AS TO THE USE OF BUILDING-SITES AND THE EXECUTION OF BUILDING-WORK.

[See sections 238, 339, 240, 243, 244B, 244C, 244J, 244L, 244O, 272E and 351B.]

Part I.—Definitions.

Definitions.

M. In this Schedule, unless there is anything repugnant in the subject or context,—

- (a) the word “base,” as applied to a wall, means the under side of the course immediately above the footings of the wall;
- (b) “nogging” means lime or cement concrete, or brick-work in lime or cement mortar, which is filled in between the frames of iron or wood in a framed building;
- (c) “party-wall” means a wall forming part of a building and used or constructed to be used for the support and separation of adjoining buildings belonging to different owners or constructed or adapted to be occupied by different persons; and
- (d) “topmost storey” means the uppermost storey in a building, whether constructed wholly or partly in the roof or not and whether constructed, used or adapted to be used for human habitation or not.

Part II.—Building-sites.

2. (1) When any application is made for approval of a site for the erection, re-erection or material alteration of a masonry or framed building, or when any application for permission to erect, re-erect or materially alter a hut involves the approval of a site, the Commissioners shall refer the application to the Municipal Engineer, who shall certify—

Certificate by Engineer
as to sites.

- (a) whether, in his opinion, the site is reasonably secure from danger from hillside slips either from

above or from below, or could be made secure as aforesaid by the addition of protective works, and

- (b) whether, in his opinion, if the site be built upon as proposed, the stability or security of any hillside or bank or any immovable property thereon would be threatened by the building, or could be ensured by the addition of protective works,

(2) If the said Engineer certifies that the site is not secure as aforesaid, or that the stability or security of any hillside, bank or property would be threatened by the proposed building, or that the addition of protective works is necessary,

and if the Commissioners consider that the site ought nevertheless to be approved or that the said protective works need not be added,

the Commissioners shall refer the matter to the Engineer appointed under section 351D, and shall deal with the application in accordance with his decision.

(3) If protective works have to be added as aforesaid to any site, the site shall not be approved until such works have been constructed and have received the written approval of the Commissioners.

Part III.—Buildings generally.

3. Every building erected or re-erected, and every material alteration made to a building, must have such architectural features as to prevent the building being, in the opinion of the Commissioners, unsightly or unsuitable to its surroundings.

4. (1) Except with the special sanction of the Commissioners, no building shall be erected or re-erected so as to have more than three storeys.

(2) When any such sanction is given, the materials and method of construction of the building must be such as may be prescribed by the Commissioners.

5. The floor or lowest floor of every building erected or re-erected from the ground level must be constructed at such level as will admit of—

Level of floor.

(a) the construction of a drain sufficient for the effectual drainage of the building and placed at such level as will admit of the drainage being led into some drain at the time existing or projected, and

(b) there being a ventilated air space of at least six inches in depth between the underside of the floor joists and the ground level.

6. A building shall not be placed over any drain, except with the written permission of the Commissioners.

Building over drain.

Part IV.—Masonry buildings and framed buildings generally.

7. The foundation of a masonry or framed building must rest on solid ground or rock.

Foundation.

8. (1) The projection of the bottom of the footings on each side of each wall of a masonry or framed building must be at least one-fourth of the thickness of the wall at its base.

Footings for walls.

(2) The height from the bottom of such footings to the base of each wall must be at least two-thirds of the thickness of the wall at its base.

(3) Except where the foundation is a rock, the bottom of such footings shall not be less than three feet below the ground level.

(4) When a wall is built on rock, footings may be omitted if the surface of the rock is properly cleaned and stepped to receive the first course of masonry.

9. The external and cross walls of a masonry or framed building of one storey must be built of—

External and cross walls of a one-storeyed building.

(a) stone or brick bedded in lime or cement mortar,

(b) stone or brick bedded in mud mortar, or

(c) timber or iron framing filled in with nogging, or covered with corrugated or plain iron, or planked:

Provided that, when stone or brick bedded in mud mortar is used, those portions of the walls around doors and windows and under the wall-plates for one foot in depth, and in the foundations up to plinth level, must be of stone or brick bedded in lime or cement mortar.

External and cross walls of a two-storeyed building.

10. (1) The external and cross walls of the lower storey of a masonry or framed building of two storeys must be built of—

- (a) stone or brick bedded in lime or cement mortar, or
- (b) timber or iron framing filled in with nogging or covered with corrugated or plain iron :

Provided as follows :—

- (i) if any of the said external walls do not support any masonry wall in the upper storey, they may be built of nogging instead of as prescribed in clause (a) ;

and

- (ii) if any of the said cross walls are intended for partitions only, and do not support any wall in the upper storey, they may be built of nogging or of timber framing planked with boards.

(2) The external and cross walls of the upper storey of a masonry or framed building of two storeys must be built of the materials specified in clause (a) or clause (c) of rule 9.

External and cross walls of a three-storeyed building.

11. (1) The external and cross walls of the lowest storey of a masonry or framed building of three storeys must be built of—

- (a) stone bedded in lime or cement mortar or
- (b) iron framing covered with corrugated iron, or filled in with nogging ;

and the external and cross walls of the storey next above the lowest storey of such a building must be built of—

- (i) stone or brick bedded in lime or cement mortar, or
- (ii) timber or iron framing filled in with nogging or covered with corrugated iron :

Provided that if any of the cross walls in either of the said storeys are intended for partitions only, and do not

support any wall in the storey above, they may be built of planked timber framing.

(2) The external and cross walls of the topmost storey of a masonry or framed building of three storeys must be built of—

- (i) stone or brick bedded in lime or cement mortar, or
- (ii) timber or iron framing, filled in with nogging, or covered with corrugated or plain iron, or planked.

12. The party-walls of a masonry or framed building must be built of stone or brick bedded in lime or cement mortar for their full height; and, if the Commissioners so direct, must be carried up, of a thickness of not less than nine inches, above the roof, flat or gutter to such a height as will give a distance of at least eighteen inches measured at right angles to the slope of the roof above the highest part of the roof, flat or gutter.

13. (1) Every wall of a masonry or framed building must have a damp-proof course at or above the level of the ground floor.

(2) Such damp-proof course may consist of sheet lead, asphalt, slates laid in cement, vitrified bricks or any other durable material impervious to moisture.

14. (1) The roof of every masonry or framed building must be constructed of corrugated or plain iron, lead, slates or tiles:

Roofs.

Provided that, with the written permission of the Commissioners, any such roof may be constructed of shingles securely attached to a frame of iron or timber.

(2) The rise of the roof shall not in any case be less than one-eighth of the span.

15. The floors of every masonry or framed building must be constructed to bear safely the maximum load to be carried, such load being taken, in the case of planked floors, as not less than sixty pounds *per* square foot, including the weight of the floor.

Floors.

16. (1) All beams and girders in a masonry or framed building must be supported by a breadth of brick-work, stone or other solid substance sufficient to secure their stability.

Beams and girders.

(2) The bearing of a beam or girder on a wall shall not, without the sanction of the Commissioners, be less than three-fourths of the thickness of the wall.

17. All iron posts, girders or joists or other iron work
Iron work. used for the support of any portion of
a masonry or framed building must be
of such quality and strength as are approved by the Commissioners.

Part V.—Dwelling-houses.

18. (1) Except with the written permission of the Commissioners, no dwelling-house or part thereof shall be erected or extended so that any external wall thereof is in any direction at a distance less than—

- Free passage about dwelling houses.
- (a) twenty feet from any part of any adjacent building, or
 - (b) ten feet from the boundary of the holding on which the house stands, or
 - (c) four feet from the side of any public road, or
 - (d) three feet from the toe of any bank or retaining-wall.

(2) The said permission shall not be granted unless the Commissioners are satisfied that notice of the intention to apply for it has been given to the neighbouring proprietor or his agent, and shall not be refused except on sanitary or other public grounds.

(3) If the said permission be granted, the Commissioners shall send a copy thereof both to the applicant and to the said neighbouring proprietor.

19. Every person who erects or re-erects out-houses, or
Out-houses. ranges or blocks of out-houses, whether the same are to be used as dwellings or stables or for any other purpose in connection with a dwelling-house, must build the same—

- (a) so that they may stand in regular lines, with a free passage or way, in front of and between every two lines, of such width as the Commissioners may direct, for ventilation and for facilitating scavenging; and