

as it may prescribe, for its approval, or for the approval of such officer.

"Five thousand" has been substituted for "three thousand" in this section.

*80. (71) It shall not be lawful for the Commissioners to authorize the expenditure on any object during the year of a sum in excess of that which has been sanctioned in the estimate of the year, or in a revised estimate, for such object; but if it be found necessary in the course of the year, the Commissioners may recommend to the Commissioner of the Division that the allotments which have been made to the different heads of the estimate shall be modified by transfer of any amount from one head to another, and the Commissioner of the Division may sanction such transfers of allotment.

The practice of transferring and expending such amount in anticipation of sanction is illegal, and should be avoided. If application for sanction be made in due time it cannot be necessary.

The amount of an estimate sanctioned for a given year for expenditure on any object must, of course, be expended within that year, or it lapses. The practice of drawing out such unexpended balances before the close of the year and keeping them in deposit, in order that they may appear in the accounts as disbursed in that year, is quite illegal and improper and an evasion of the budget system. It is not, however, an altogether unknown practice.

81. (72) The Commissioners shall, at such time and in such form as the Local Government shall direct, furnish annually a report of their proceedings and statements of the works executed by them, and of all sums received and expended by them.

The report and any orders which may be passed thereon by Government shall be open to the inspection of the taxpayers at the office of the Commissioners, with the account books and the quarterly and the annual accounts.

The Commissioners should obviously have an opportunity of considering and amending the report at a meeting before it is submitted.

82. (73) The municipal accounts shall be kept in such form, and shall be audited each year in such manner as the Local Government shall direct.

The power of directing in what manner the municipal accounts shall be kept, conferred on the Local Government by this section, is new.

83. (75) Unless the Local Government shall otherwise direct, all sums received on account of the Municipal Fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the Municipality, and shall be credited to an account, to be called the account of the Municipality to which they belong:

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the Local Government.

The words "unless the Local Government shall otherwise direct" are new. 'In the Government Savings' Bank' has been omitted from the second clause.

84. (76) Unless the Commissioner of the Division shall expressly extend (as he is hereby empowered to do, on the recommendation of the Commissioners at a meeting) the limit of the powers of the Chairman or Vice-Chairman in this behalf, all orders for the payment of money from the Municipal Fund, if for a sum not above five hundred rupees, shall be signed by the Chairman or Vice-Chairman; and all orders for larger sums by both of the said officers, or by one of the said officers and another Commissioner.

No such orders shall be issued otherwise than for the payment of money of which the expenditure has been authorized by the Commissioners at a meeting, as provided in section seventy-eight.

"Commissioner of the Division" has been substituted for "Lieutenant-Governor" at the beginning of the section. The other changes in the section are in consequence of the abolition of the distinction between first and second class Municipalities.

The second clause is important, though its provisions are commonly disregarded or misunderstood. The authorization here referred to is required in addition to a provision in the sanctioned budget estimates, though the two things are commonly confounded. The Chairman or Vice-Chairman is not justified in signing the order for payment unless there has been a distinct resolution passed at a meeting, authorizing the expenditure for the purpose in question. Such a resolution cannot be legally passed at a meeting, unless there is a distinct provision in the sanctioned budget estimates of a sum for the purpose in question, covering the proposed expenditure. Compare section 78 and note.

PART IV.

OF MUNICIPAL TAXATION.

85. (77) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, and with the sanction of the Local Government, impose within the limits of the Municipality one or other, but not both, of the following taxes :—

(a) a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality :

Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum ; or

(b) a rate on the annual value of all holdings situated within the Municipality :

Provided that such rate shall not exceed seven and a half per centum on the annual value of such holdings, except within the Municipalities of Dacca and Darjeeling, in which it shall not exceed ten per centum on such annual value ; and provided also that no rate shall be imposed on any holding of which the annual value is less than six rupees.

Under the Municipal Taxation Act, 1881. (Act No. XI of 1881). section 3, the Governor-General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax payable by persons residing, on military duty, within the limits of a Municipality, or by Government itself.

By section 4, as long as such an order is in force, the amount of tax incurred by such person on military duty shall be paid by Government. Provided that Government shall not be liable to pay any tax in respect of a horse which such person is bound by the regulations of the service to which he belongs to keep.

By section 5, as long as such order is in force, the amount of tax due on account of Government in its own behalf shall be such as an officer appointed for that purpose by the Local Government shall decide to be fair and reasonable.

The tax upon persons under clause (a) must be considered a rate within the meaning of section 15, as otherwise, if none of the special rates referred to in the present Act were in force, none of the residents could

be held to pay any rates at all, and none of them would be able to vote at the elections of Municipal Commissioners.

Two or more persons having separate sources of income, and occupying in severalty the same holding, may, it would seem, be separately assessed under clause (a). In such a case it appears somewhat doubtful whether each could be assessed up to the maximum of Rs. 84, or whether the total assessment upon all the occupiers of the holding must be within that amount. Probably the latter view is the correct one.

The proviso attached to the definition of "holding" in clause (3), section 6, must be borne in mind as regards clause (a) of this section. Where two or more adjoining holdings form part of the site or premises of certain classes of buildings, they shall be deemed to be one holding, except for the purposes of the Act mentioned in clause (a) of section 85. If, therefore, a dwelling-house, manufactory, or other building of the kinds specified, is built upon several holdings, the owner thereof can be separately assessed in respect of each of such holdings up to the limit of Rs. 84 per annum. If, on the contrary, such building is built on one holding only, the amount assessed cannot exceed Rs. 84 per annum, whatever may be the annual value of the building. In the case of a large manufactory or warehouse, it is, therefore, very much a matter of mere accident whether it can be adequately assessed or not, in a Municipality where a tax on persons is in force. The tax in question appears to be a quite unsuitable to any very advanced Municipalities. It is admittedly illogical and arbitrary, though it may work well enough as a rough and ready mode of assessment in small Municipalities, where the incidence of taxation is very light. The following remarks on this tax may be quoted:—

"The Hon'ble Mr. Dampier said,—the scheme of the tax was none of his own. The Bill merely continued the rough mode of assessment which was in force throughout the length and breadth of the land, and had been so for the last score of years. At the same time he admitted that this tax, if you came to look at it through a microscope, and to test it critically, was absolutely indefensible; it was a rough and crude mode of taxation, which, on the whole, was well adapted to the circumstances of the country; but he should be glad to improve upon it if it could be done."—*P. C., Feb'y. 19, 1876.*

The proviso that the total sum to be raised under clause (a) shall not exceed the amount which would be produced from an average rate of Rs. 2-4 per holding has been omitted. The following extract explains why.—"The Hon'ble Mr. Reynolds moved to substitute the following proviso for the proviso to (section 85), clause (a):—'Provided that the amount assessed on any one person in respect of the occupation of any one holding shall not be more than eighty-four rupees per annum.' He said that this amendment was rendered necessary in consequence of the amendment which had been made in the definition of 'holding,' the effect of which would be to diminish the total number of holdings in Municipalities. There was some danger in retaining the words in the first part of the proviso. 'The total sum to be raised by the tax in any year shall not exceed the sum which would be produced by an average rate of Rs. 2-4 for each holding.'"—(*P. C., March 15, 1884.*)

86. (78) The Commissioners may, from time to time, at a meeting convened as aforesaid, and with the sanction of the Local Government, order that the following tax, fee, tolls, and rates, or any of them, be levied within the limits of the

Municipality in addition to either of the taxes mentioned in the last preceding section :—

(a) a tax on carriages, horses, and other animals named in the fifth Schedule ;

(b) a fee on the registration of carts ;

(c) tolls on ferries and (subject to the provisions of sections one hundred and fifty-eight and one hundred and fifty-nine) tolls upon bridges and metalled roads ;

(d) a water-rate not exceeding six per centum on the annual value of holdings when the houses and lands are situated in streets supplied with water, and not exceeding five per centum when the houses and lands are situated in streets not so supplied ;

(e) a lighting rate not exceeding three per centum on such annual value ;

(f) a fee for the cleansing of latrines.

Provided that the taxes mentioned in clauses (d), (e), and (f) shall not be levied in any Municipality unless the provisions of Part VII in respect of clause (d), or of Part VIII in respect of clause (e), or of Part IX in respect of clause (f) shall have been extended wholly or partly to such Municipality in the manner hereinafter provided.

Clauses (d), (e), (f), and the proviso at the end of the section are new.

Of the taxes above enumerated, (d), (e), and (f) must be considered to be rates within the meaning of section 15, but apparently not (a) and (b). See note to section 15. (c) is of course out of the question.

The fact that any of the taxes specified in this and the preceding section have not been included in the estimates, does not preclude the Commissioners from levying them in the manner prescribed. Compare section 72.

Of the Tax on Persons.

87. (79) When it has been determined that a tax shall

Assessment list to be be imposed on persons occupying prepared. holdings within the Municipality, according to their circumstances and property, the Commissioners, after making such enquiries as may be necessary, shall cause to be prepared an assessment list which shall contain the following particulars, and any others which the Commissioners may think proper to include :—

(a) name of the street or road in which the holding is situated ;

(b) number of the holding on the register ;

(c) name of the person occupying the holding, whether such person be assessed or exempted from assessment;

(d) description of the holding, and of the property within the Municipality, and the profession or business of the person assessed;

(e) amount of annual assessment;

(f) amount of quarterly instalment;

(g) if the occupier of the holding is exempted from assessment, a note to that effect.

The tax upon persons shall be payable in quarterly instalments by persons occupying holdings.

Such tax shall not be assessed or levied on any person in respect of the occupation of arable lands or of any building which is used exclusively as a place of public worship.

"Public worship" has been substituted for "worship"; otherwise unaltered.

The holding may possibly not be situated near any street or road, and in such a case the omission of the particulars required by clause (a) could not reasonably be held to invalidate the assessment.

"Arable" is defined in Webster's Dictionary as "fit for ploughing or tillage, hence often applied to land which has been ploughed or tilled."

"Tillage" is defined by the same authority to be "the operation, practice or act of preparing land for seed and keeping the ground free from weeds which might impede the growth of crops."

In the case of a petition filed by certain pán-growers in the Baidyabati Municipality, Government was advised that pán gardens are arable lands and as such are not liable to taxation under this section.

Orchards and pleasure-gardens are obviously not arable lands.

"Shall be payable in quarterly instalments." This provision imposes on the Commissioners the duty of collecting the tax quarterly, and they are not justified in collecting it half-yearly. They have obviously no power of collecting it half-yearly in advance, as the tax-payers are only bound to pay it quarterly in advance. There is nothing in the Act which compels the Commissioners to maintain a staff for collecting the tax from door to door, though there is also nothing to prevent their doing so. They may require payment at their office if they are so minded. (L. R.)

A Gomastah resided in a cutcherry situated within a Municipality, in which a tax upon persons was in force. The Zemindar, his employer, was a non-resident. *Held*, that as the Gomastah paid no rent, and resided in the building solely to carry on the business of the Zemindar whose representative he was, the Zemindar must be considered to be the person occupying the holding under this section, and to be liable for the tax. (L. R.)

If the holding is occupied in severalty by more than one person, each of such persons may apparently be separately assessed under this section. For the tax is not assessed on holdings, but on persons occupying holdings according to their circumstances and property within the Municipality. It seems probable in such a case that the total assessment must not exceed the maximum of Rs. 84.

88. (80) Save as is herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by section one hundred and twelve is published, and shall be valid for three years and until the beginning of the year next after the date on which a new assessment or valuation may be published, or until the assessment and valuation be revised and amended :

. Provided that when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice shall be published.

It follows that when the Act is first extended to any place, no tax upon persons can be raised during the current quarter. For the assessment cannot take effect until the beginning of the quarter following that in which the notice shall be published, so that even if the notice is published directly after the Act is extended, no tax can be raised until next quarter.

When under the former Act the Bally Municipality was formed out of a portion of the Howrah Municipality, it was held that no tax could be collected during the current quarter. For the Act containing no provision for the division of a Municipality, had to be extended to the place as if it had never been in force there, and the notice referred to had therefore to be published. Section 9 of the present Act authorizes the subdivision of a Municipality, and therefore provides against similar difficulties in future. The section (9), however, does not provide for the uniting of two Municipalities, and precisely the same difficulty would occur in such a case.

89. (81) In any Municipality in which the tax on persons is imposed, no tax shall be assessed on any person in respect of his occupation of any holding which is the property of Government and used for the purposes of a public building, but a rate not exceeding seven and a half per centum may be assessed on the annual value of every such holding, to be ascertained in the manner prescribed by section one hundred and one, and such rate shall be payable by Government.

90. (82) Whenever any tax shall have been assessed on any person in respect of his occupation of two or more holdings, and the aggregate of the amount so assessed upon him shall exceed eighty-four

Procedure if aggregate amount of rates assessed on any person exceeds Rs. 84 per annum.

rupees per annum, such person may, within fifteen days of the publication of the notice required by section one hundred and twelve, apply to the Commissioners to cancel such assessment, and to substitute for the total amount of tax so assessed upon him, in respect of the said holdings, a rate to be calculated at seven and a half per centum on the annual value of such holdings; and the Commissioners shall thereupon substitute such rate; and, for the purpose of calculating the amount of such rate, shall determine the annual value of the said holdings in the manner prescribed by section one hundred and one.

Every rate imposed under this section shall be payable by the occupier of the holdings so rated.

These two sections are practically unaltered.

*91. (83) The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax; but the name of the occupier of every holding shall be included in the assessment list, whether he be assessed or exempted from assessment.

92. (84) If any person mentioned in the assessment list shall, at any time after the publication thereof, have ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed shall have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct.

The following extract bears upon this section :—

"The Hon'ble Mahomed Yusuf moved that the words 'the Commissioners shall,' in line 8 of section 91, be substituted for 'the Commissioners may' in line 8 of section 91. The section gave power to apply for a reduction in altered circumstances, but left it optional with the Commissioners to grant or refuse reduction of assessment in such cases. He contended that reduction of assessment should be imperative where the means and property of the assessee had been reduced, and notice of exemption should be given where a holding has ceased to be occupied."

"The Hon'ble Mr. Reynold remarked, that the amendment would require the Commissioners in these cases either to pass an order of exemption or to revise the assessment, but the clause did not apply only to the case of a man who ceased to occupy premises, but also to reduction of assessment. He, therefore, could not accept the amendment. He understood the object of the amendment to be, that when a man had ceased

to occupy, the Commissioners must in that case exempt; but the fact of ceasing to occupy need not necessarily in every case give an absolute right to exemption. He should, therefore, prefer to give the Commissioners the discretion provided in the section. The words 'may exempt' impose on the Commissioners the duty of exempting if cause was shown."—*P. C., February 20th, 1884.*

93. (85) The Commissioners may, at any time after the publication of the notice required by section one hundred and twelve, assess any person who was without authority omitted from the assessment list, or whose liability to assessment has accrued thereafter, and may enhance any assessment which appears to them to be inadequate, and to have been so made owing to mistake or fraud.

Any assessment or enhancement made under this section shall take effect from the beginning of the quarter next following that in which such assessment or enhancement is made.

The number of the section referred is necessarily altered, but otherwise no change has been made. The following extract from the Proceedings of the Council when Act V was under discussion is important as clearly shewing the object and effect of this section:—

"The Hon'ble Baboo Kristodass Pal moved the omission of the words 'to be inadequate and' in line 8. He said, that this section provided that the Commissioners might, at any time after the publication of the assessment list, assess any person who was without authority omitted therefrom, or whose liability to assessment had accrued thereafter; and might enhance any assessment which appeared to them to be inadequate, and to have been so made owing to mistake or fraud. He wished to be informed whether this enhancement might be made during the currency of the assessment, that was to say, within the three years for which the assessment was to remain undisturbed. [The Hon'ble Mr. Dampier said that it was so.] Then this section would override the other sections as to assessment. The ground of inadequacy was after all a very slender ground, and would be open to misconstruction. He submitted that, where there had been mistake or fraud which could be proved, the assessment ought to be revised, but no assessment ought to be enhanced merely because it appeared to be inadequate; for if you allowed the assessments which were made for three years to be disturbed on so slight a ground, it would open a wide loophole for enhancement."

"The Hon'ble Mr. Dampier explained that the essence of the provision was that the assessment was made by mistake or fraud; according to the wording it must have been inadequate and have been so made by mistake or fraud"—*March 2, 1876.*

It is clear from the above that the only cases in which assessments can be disturbed before the expiration of the three years, is where there has been mistake or fraud.

***94. (86)** The Commissioners may at any time substitute for any name mentioned in the assessment list the name of any new occupier of a holding, and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced.

***95. (87)** If any holding shall become vacant in the course of the year, the assessment on account of the occupation of such holding shall cease to have effect from the first day of the quarter next following that in which it became vacant.

Of the Rate on the value of Holdings.

***96. (88)** When it has been determined that a rate shall be imposed on the annual value of holdings, the Commissioners, after making such enquiries as may be necessary, shall determine the valuation of all holdings within the Municipality as hereinafter provided.

97. (89) Save as is herein otherwise provided, such valuation shall be valid for three years from the date on which it first takes effect in the Municipality, and until the beginning of the year next after the date on which a new valuation may be made, or until the valuation be revised and amended.

98. (90) The rate on the value of holdings shall not be assessed or levied on any holding which is used exclusively as a place of public worship, or which is duly registered as a public burial or burning ground under section two hundred and fifty-four.

"Buildings exempted from tax" in the margin is an obvious mistake for "holdings exempted from tax." "Public worship" has been substituted for "worship." The object of the alteration is obvious. Under the former section, places used for the purpose of private worship were exempted.

It will be noticed that arable lands, which are exempted from the tax on persons by section 87, are not exempted from the tax on holdings under this section. The ordinary and obvious inference appears to be, that the

intention of the Act is that they should not be exempted. As, however, contradictory opinions on the point have been given on high authority, it may be as well to see what evidence exists as to the intentions of the Council on the subject.

Before Act V of 1876 was passed, arable lands were expressly exempted under both Act III of 1864 and Act VI of 1868. Under the former Act a rate on holdings was in force, and under the latter a tax on persons. Arable lands were therefore at that time expressly exempted from all Municipal taxation. The following extract from the Proceedings of the Council, when the Bill of 1872 was under consideration, will shew, however, that, by that time, there was a strong opinion on the part of Government that they ought to be assessed :—

"Section 45 related to the tax upon buildings (holdings) and exempted buildings used exclusively as places of public worship or applied solely to charitable purposes."

"The Hon'ble Rajah Jotendro Mohun Tagore moved the insertion of the words 'and arable lands' after 'purposes,' so as to exempt arable lands from the tax."

"The Hon'ble Mr. Beaufort said that he would move as a counter-amendment that the following words be added to the section :—"Provided that the annual value of any arable land shall be deemed to be one-half of the annual rent at which such land may be reasonably expected to be let."

"The Hon'ble Mr. Bernard said it might be explained that lands taxed by Municipalities were exempted from road cess under Act X of 1871 of this Council, and if arable lands within municipal limits were exempted from taxation under this Bill, they would escape taxation altogether. The amendment which the Hon'ble Member in charge of the Bill had proposed would reduce the rate on arable lands in Municipalities very nearly to what they were assessed for road cess outside Municipalities."

"His Honor the President said, roads outside Municipalities were to be made by those taxed outside by the district road cess, and inside Municipalities, by Municipalities; and it was only fair that arable lands within Municipalities, which were exempted from the district road cess, should pay a tax such as the same lands outside Municipalities paid under the road cess. He quite thought with the Hon'ble Member that it would be hard that arable lands within Municipalities should pay a tax as high as that paid by houses and shops; and therefore it appeared to His Honor that the half-rate, which the Hon'ble Member in charge of the Bill had proposed, would meet the difficulty."

"The Hon'ble Rajah Jotendro Mohun Tagore said, that after the explanation that had been given he would withdraw his amendment."

"The Hon'ble Mr. Beaufort's amendment was then agreed to."—P. C., 18th July, 1872.

The principle of the amendment in question was accepted by the framers of the Draft Bill which afterwards became Act V of 1876, as section 69 contained a clause *identically the same as Mr. Beaufort's amendment*. This clause was, however, omitted by the Select Committee. The only possible conclusion which can be drawn from this omission, is, that they were of opinion that arable lands should be assessed at the full, and not at the half-rate. The fact having been already recognized by the Draft Bill, that arable lands were assessable under its general provisions referring to the tax on holdings, it would have been obviously necessary to introduce a distinct provision on the subject, had the Select Committee intended to exempt them altogether. Moreover, it appears from their

report, that they had no such intention. They specify the classes of holdings which they have exempted from municipal taxation, but arable lands are not among them.

When the Bill was considered in Council, a provision was added exempting arable lands from taxation with respect to the tax on persons. No such provision was inserted with regard to the rate on the value of holdings, and the obvious inference is, that it was not the opinion of the Council that they ought to be exempted.

In the Act now in force the provisions on the subject are taken from the former Act without alteration. It may be noticed, however, that the Bill, before it came into Council, contained a clause exempting arable and pasture lands from the lighting-rate, though it contained no such provision with regard to the rate on holdings. This exemption as regards the lighting-rate was deliberately omitted by the Council. Compare note to section 311.

As the present section has been made to apply to both the lighting-rate and the water-rate, it appears that arable lands are subject to both, though this fact has possibly been overlooked. There are no exemptions as regards fees under Part IX; and they are therefore subject to latrine tax also, though in cases of hardship the Commissioners have power under section 327 to exempt them. As section 106 has been extended to both the lighting-rates and water-rates, the Commissioners have a similar power with regard to these taxes also.

*99. (91) The Commissioners, in order to prepare the valuation list, may, whenever they think fit, by notice, require the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof; and the Commissioners, or any person authorized by them in that behalf, at any time between sunrise and sunset, may enter, inspect, and measure any such holding after having given forty-eight hours' previous notice of their intention to the occupier thereof.

100. Whoever refuses or fails to furnish any such return for the space of one week from the day on which he shall have been required to do so, or knowingly makes a false or incorrect return, shall be liable to a fine not exceeding twenty rupees, and to a further daily fine not exceeding five rupees for each day during which he shall omit to furnish a true and correct return; and whoever hinders, obstructs, or prevents any Commissioner or any person appointed by the Commissioners as aforesaid, from entering, or inspecting, or measuring any such holding, shall be liable to a fine not exceeding two hundred rupees.

This is new. A sentence by a Court inflicting a daily fine until such time as an accused person shall desist from committing a continuous

offence, is bad in law. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41; 6 Cr. R., 25 W. R.; 31 Cr. R., 21 W. R.

101. (92) The gross annual rent at which any holding may be reasonably expected to let, shall be deemed to be the annual value thereof, and such value shall accordingly be determined by the Commissioners, and entered in the valuation list:

Annual value of hold- ing how to be ascertained. Provided that, if there be on a holding any building or buildings, the actual cost of erection of which can be ascertained or estimated, the annual value of such holding shall in no case be deemed to exceed an amount which would be equal to seven and a half per centum on such cost, in addition to a reasonable ground rent for the land comprised in the holding:

Provided also, that where the actual cost so ascertained shall exceed one lakh of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one lakh of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section one hundred and two.

Provided further, that, in estimating the annual value of a holding under this section, the value of any machinery that may be on such holding shall not be taken into consideration.

The first para. is unchanged. The remainder of the section is entirely new.

As regards the construction to be placed upon the first para., Government has been advised that, in a town where there are both hired and unhired houses, "the annual value of unhired houses should be derived from a comparison of them with the hired houses in the vicinity, making such deductions from or additions to the rent of the latter as circumstances require."

"This is the construction which has been put on the 6 and 7 of William IV. from which this section is taken."

"The law does not justify the Commissioners in going into calculations and determining what ought to be the rent from the capital expended on the holding; nor, on the other hand, to take into consideration the contingency of all the houses being thrown into the market. In the one case the Commissioners would be levying a tax not according to the actual or presumed letting value, but on the capital; on the other, they would levy the rate on a hypothetical condition of things which had no existence in fact. What they should say in connection with each holding is (other things being as they are now), 'what do we, from a comparison of this unhired holding, with such and such a hired holding, consider a reasonable rent?'" (L. R.)

102. (93) Subject to the provisions of section eighty-five the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which the rate shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year :

Provided that when this Act is first extended to any place, the first rate may be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting.

It follows that when the Act is first extended to any place no such rate can be levied during the quarter then current.

*103. (94) As soon as possible after the percentage at which the rate is to be levied for the next year shall have been determined under the last preceding section, the Commissioners shall cause to be prepared a valuation and rating list, which shall contain the following particulars, and any others which the Commissioners may think proper to include :—

- (a) name of the street or road in which the holding is situated ;
- (b) number of the holding on the register ;
- (c) description of the holding ;
- (d) annual value of the holding ;
- (e) name of owner ;
- (f) amount of rate payable for the year ;
- (g) amount of quarterly instalment ;
- (h) if the holding is exempted from assessment, a note to that effect.

The rate upon holdings shall be payable in quarterly instalments by the owner of the holding.

It is obvious that the information required by clause (a) cannot always be forthcoming in Mofussil Municipalities, as the holding will often not be situated anywhere near a street or road. In such cases the law will be complied with if the remaining particulars are recorded.

Compare section 358, by which no assessment or rating shall be invalid for error or defect of form.

The tax being payable quarterly, it is obviously the duty of the Commissioners to take proper measures for having it paid quarterly, and they are not justified in collecting it half-yearly. Half-yearly collections in advance are illegal, as the rate-payers are only bound to pay quarterly in advance. The Commissioners are not bound by the Act to collect the tax from door to door, but there is nothing in it which prevents their doing so. (L. R.)

104. (95) If any house belongs to one owner, and the land on which it stands and any adjacent land which is usually occupied therewith, belongs to another, the Commissioners may value such house and land together, and may impose thereon one consolidated rate.

The total amount of the rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

If the owner of the house and the owner of the land do not agree in respect of the proportion of the rate so deducted by the owner of the house, the Commissioners shall, on the application of either party, make an award declaring the amount payable by each, and such award shall be final.

Only a slight verbal change has been made in this section. The words "such award shall be final" imply that a civil suit would not lie as regards the proportion in question. This appears to follow from the decision in *L. L. R.*, 1 Cal., 409, referred to in the note to section 114, and also from the provisions of section 116.

*105. (96) If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the Municipality, or the place of abode of such owner be unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him :

Provided that no arrear of rate, which has remained due

from the owner of any holding for more than one year, shall be so recovered from the occupier thereof.

*106. (97) Whenever, from the circumstances of the case, the levy of the rate on any holding in the Municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same.

The "excessive hardship" here referred to must be caused by actual indigence. The words cannot reasonably be held to apply to the case of any person who can, without difficulty, afford to pay the rate.

*107. (98) If the value of any holding shall be diminished from any cause beyond the control of the owner thereof, the owner thereof may apply for reduction of the valuation of the same.

108. (99) The Commissioners may, at any time after the publication of the notice required by section one hundred and twelve, value and rate any holding which was without authority omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight or fraud; and may re-value and re-assess any holding the value of which has been increased by additions or alterations to any building thereon.

Any rate imposed or enhancement made under this section shall take effect from the beginning of the quarter next following that in which the rate shall be imposed or enhancement made.

Practically unaltered. The note to section 93 may be taken into consideration with reference to this section. The only case in which the Commissioners can enhance an insufficient valuation during the time of its currency is where there has been mistake, oversight, or fraud. Where the value of a holding has been increased by building on it, they may at any time re-value and re-assess it. Where a holding has been omitted from the list without authority, they may at any time value and assess it.

The words "mistake" and "oversight" would appear to refer to mistake or oversight as to some existing fact, and not to errors of judgment. For instance, if two buildings were comprised in the same holding, and the assessor, unaware of this fact, and under the impression that one of them was comprised in some other holding, only valued one of them, the

holding would have been insufficiently valued by mistake. If the assessor overlooked the existence of one of the buildings—as in the case of a range of stables in a remote part of a compound, the holding would be insufficiently valued by oversight. But in the case of a wrong valuation of the holding, simply from defective judgment on the part of the assessor, it does not appear that the Commissioners have any power of interference.

The following has an important bearing upon this section :—

“The Hon’ble Baboo Kristodas Pal moved the insertion of the following words at the end of paragraph 1 :

“A notice shall be served upon the owner or occupier of every holding which may be so assessed, or the assessment of which might be fixed at a higher sum than was prevailing at the time being.

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

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

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

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

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

Provided that the owner of such holding, or his agent, has given to the Commissioners notice in writing of the vacancy thereof, and that the application for refund is

made within six months from the date on which such notice is delivered at the office of the Commissioners.

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

The proviso at the end of the second para. is new, and is taken from section 82 of the Calcutta Municipal Act. Its object is obvious.

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

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

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

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

Practically unaltered.

*113. (104) Any person who is dissatisfied with the amount assessed upon him, or with the valuation or rating of any holding, or who disputes his occupation of any holding, or his liability to be assessed or rated,

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

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

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

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

This section reproduces section 105 of Act V, and is practically to the same effect as regards appeals from assessments as section 33 of Act III of 1864. The ruling in *Manessur Dass v. The Collector and Municipal Commissioners of Chupra*, 1. L. R., 1 Cal., 409, with reference to section 33, is therefore, applicable to the present section. In that case it was held that no suit will lie in a Civil Court to set aside an order under that section, GARTH, C. J., remarking, that "some actions may, no doubt, be brought against the Commissioners for a great variety of acts which they may do under color of their statutory powers and under a mistaken view of their duties, but not an action of this kind. Their decision upon an appeal against a rate assessment is absolutely final."

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

Except as regards the number of the former section referred to, this section is unaltered.

*116. (107) No objection shall be taken to any assessment or rating, nor shall the liability of any person to be assessed or rated be questioned, in any other manner or by any other authority than in this Act is provided.

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

The words "and the transaction of business" are new.

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

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

Unaltered except as regards the number of the section referred to.

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

The receipt should be signed, and not stamped with a facsimile signature, as the legal validity of the latter is doubtful.

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

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

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

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

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

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

121. (112) If any person, after service upon him of such bill and notice, shall not, within fifteen days of the service of such notice, or from the date of any order made on an application for review under section one hundred and fourteen, pay the sum due, either to the Commissioners at their office, or to some person authorized by them to receive the money, or shew to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs on the scale shewn in the table of fees marked (B) in the fourth Schedule, may, at any time within three months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any moveable property belonging to the defaulter, except ploughs, plough-cattle, tools, or implements of agriculture or trade, wherever found, or of any moveable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax or rate.

If the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he

may sustain by reason of such distress, ~~or by reason of any~~ payment he may make to avoid such distress or any sale under the same.

This section is practically unchanged.

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

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

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

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

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

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

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

Provided that he shall not enter or break open the door

of any room appropriated for the zanána, or residence of women, which, by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

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

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

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

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

Certain persons prohibited from purchasing at sales.

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

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

Commissioners to keep account of distresses and sales.

***127. (118)** If no sufficient goods or chattels belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the Municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his Court for the distress and sale of any personal property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any personal property belonging to the defaulter within the jurisdiction of any other Magistrate whatsoever, and such other Magistrate shall endorse the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

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

Goods or chattels—Chattels *personal* are evidently referred to here, and not *chattels real* as well as *personal*. The word "*chattel*" includes certain kinds of immoveable property as well as moveable, but must be taken here as referring to the latter only. "Any estate in lands and tenements, which amounts not to freehold, is consequently a *chattel*, but inasmuch as it concerns, or, according to the technical expression savours of the realty, it is denominated a *chattel real*, in order to distinguish it from things which have no concern with the realty, *viz.*, mere moveables and the rights connected with them; and such things as these are, on the other hand often described as *chattels personal*." (1 *Steph. Com.*, 278.)

"The appellation was originally derived from the technical Latin word *catalla*, which, among the Normans, primarily signified only beasts of husbandry, or as we still call them cattle; but, in a secondary sense, was applicable to all moveables in general, and not only to these, but to whatever was not a *fief* or *fend* to which, among the Normans, there were two requisites, a given degree of duration as to time, and immobility with regard to place." (*Ibid.*)

***128. (119)** No distress or sale made under this Act shall be deemed unlawful, nor shall Distress or sale not unlawful for want of form. any party making the same be deemed a trespasser on account of any error, defect, or want of form in the bill, notice, summons, warrant of distress, inventory, or other proceeding relating thereto.

preceding section, and may at any time withdraw such order.

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

PART V.

This Part corresponds with Part VI of the former Act.

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

General.

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

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

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

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

175. (179) Whenever it is provided in this Part or in Part VI that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served as provided in sections three hundred and fifty-six and three hundred and fifty-seven, on every owner or occupier

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

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

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

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

Such an objection under section 6 and Schedule II, No. 1 (a) Act VII of 1870 requires a one-anna stamp, as it relates to conservancy and improvement.

*177. (181) If the objection shall allege that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and disposed of by the Commissioners at a meeting; unless the Chairman or Vice-Chairman shall certify that such cost will not exceed three

hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman :

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

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

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

Practically unaltered.

*180. (184) If the person or persons required to execute the work or to do the thing fail, within the time specified in any requisition as aforesaid, to begin to execute such

Power of Commissioners on failure of person to execute work.

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

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

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

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

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

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

owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit.

Practically unaltered.

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

Practically unaltered.

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

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

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

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

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

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

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

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

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

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

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

Practically unaltered.

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

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

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

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

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

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

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

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

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

Drains, privies, &c.,
under control of Com-
missioners.

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

Practically unaltered.

*191. (200) The Commissioners, or any officer authorized by them in that behalf, may inspect all privies, drains and cesspools at any time between sunrise and sunset, after six hours.

notice in writing to the occupier of any premises in which such privies, drains or cesspools are situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of preventing or removing any nuisance arising from such privies, drains or cesspools; and the expenses thereby incurred shall be paid by the owner or occupier of such premises.

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

This section is entirely new, and obviously very useful.

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

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

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

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

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

The provisions of the section regarding inequalities of surface are new.

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

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

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

196. (206) All sewage, rubbish, and offensive matter collected by the Commissioners from roads, privies, sewers, cesspools, and other places, shall be the property of the Commissioners, who shall have

All rubbish collected to be the property of Municipal Commissioners.

power to sell or otherwise dispose of the same; and the money arising from the sale thereof shall be carried to the credit of the Municipal Fund.

"Sewage" is added, otherwise the section is unchanged. "Sewage" is defined in section 6, clause (11) to mean nightsoil and other contents of privies, drains, and cesspools. "Rubbish" means broken brick, mortar, broken glass, kitchen or stable refuse, or refuse of any kind whatsoever not included in the term "offensive matter." Section 6, clause (14).

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

Of Bathing and Washing Places and Tanks.

*198. (208) All streams, channels, watercourses, tanks,
reservoirs, springs and wells, not being
private property, shall, for the pur-
poses of this Act, be under the direc-
tion and control of the Commis-
sioners.

All public streams,
&c., to be under direc-
tion and control of the
Commissioners.

199. (209) The Commissioners may, by order published
at such places as they may think fit,
set apart convenient tanks, parts of
rivers, streams, or channels, not being
private property, for the supply of
water for drinking and for culinary purposes: and may
prohibit therein all bathing, washing of clothes and ani-
mals, or other acts calculated to pollute the water set apart
for the purposes aforesaid;

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

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

The Commissioners may similarly take such order as
they think fit with the private portion of any stream or
channel used as a part of the public watersupply.

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

The last clause is new, and must obviously not be construed too literally. It is probably intended to have reference to the first clause of the section only, and not to the second and third. Otherwise it would apparently authorize an unjustifiable interference with private rights. If the private portion of the stream or channel supplied drinking water to the public, it would obviously be justifiable, on sanitary grounds, to protect it from pollution under the first clause. But to set it apart for the purpose of bathing, or for washing animals or clothes, might, under certain circumstances, be a serious interference with private rights, which the law could not possibly contemplate.

200. (211) The Commissioners may require the owners

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

or occupiers, of any land, within eight days, or such longer period as the Commissioners may fix, to cleanse any water-course, private tank, or pool therein, and to drain off and remove any waste or stagnant water which may appear to be injurious to health or offensive to the neighbourhood :

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

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

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

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

Of Obstructions and Encroachments on Roads.

201. (213) The Commissioners may close temporarily

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

any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any sewer, drain, culvert, or bridge, or for any other public purpose :

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

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

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

It will be observed that the section merely empowers the Commissioners to temporarily close a road for certain specified purposes. It gives them no power to permanently close or divert a public road. Such an act was held by the High Court to be illegal in *Empress on the prosecution of Jadanath Ghose v. Brojonath Dey*, 1 L. R., 2 Cal., 425.

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

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

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

202. (215) The Commissioners may issue a notice requiring any person to remove any wall, which he may have built, or any fence, rail, post, or other obstruction or encroachment which he may have erected in or on any road or open drain, sewer, or aqueduct, after the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876,

as the case may be, took effect in the Municipality; or in case none of the said Acts was in force in the Municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto; and if such person shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed; and thereupon the Commissioners may remove any such obstruction or encroachment; and the expenses thereby incurred shall be paid by the person who erected the same.

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

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

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

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

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

203. (217) If the person who built or erected the said

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

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

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

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

204. (218) The Commissioners may give notice in writing to the owner or occupier of any house requiring him to remove or alter any projection, encroachment, or obstruction erected or placed against or in front of such house which may have been so erected or placed after the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the Municipality; or in case none of the said Acts was in force in the Municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto, if the same overhangs the road, or juts into, or in any way projects or encroaches upon, or is an obstruction to the safe and convenient passage along any road;

or obstructs, or projects, or encroaches into or upon any aqueduct, drain, or sewer in such road.

And if such owner or occupier shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such projection, encroachment, or obstruction be removed or altered, and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction, and the expenses thereby incurred shall be paid by the owner or occupier so making default.

No person shall be entitled to compensation in respect of the removal of any projection, obstruction, or encroachment under this section.

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

The Magistrate and the Commissioners are protected by the next section.

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

205. (220) Every order made by the Magistrate under sections two hundred and two, two hundred and three, two hundred and four, or two hundred and thirty-three shall be deemed to be an order made by him in the discharge of his judicial duty, and the Commissioners shall be deemed to be persons bound to execute such orders of a Magistrate within the meaning of Act XVIII of 1850 (*for the protection of Judicial Officers*).

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

An Act for the protection of Judicial Officers,

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

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

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

In the former section "shall make reasonable compensation," otherwise no alteration has been made in the section. No penalty has been laid down for disobedience to a requisition issued under this section. Failure to comply with a requisition issued under section 221 of the former Act was, under section 223, punishable with a daily fine of Rs. 10. The only course open to the Commissioners if they wish to enforce this section, is to enact a bye-law prescribing a penalty for non-compliance with a requisition made under it.

207. Whenever any private house, wall, or other erection, or any tree, shall fall down and obstruct any public drain or encumber any public highway, the Commissioners may remove such obstruction or incumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners shall seem fit.

This is new. No penalty is laid down in the Act for non-compliance with a requisition under this section. The Commissioners could, under section 186, make the removal themselves, and recover the costs from the owner.

*208. (222) The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges bordering on any road, and to cut and trim any trees overhanging any road and obstructing the same or causing damage thereto.

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

Of General Conservancy and Improvement.

209. (224) If any well, tank, or other excavation, whether on public or private ground, be, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith, if it appears to them to be necessary, cause a temporary board or fence to be put up for the protection of passengers; and may require the owners or occupiers, or the owners and occupiers of the land on which such tank, well or other excavation is situated, within seven days, properly to secure or protect such well, tank or other excavation.

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

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

The Municipal Commissioners of Howrah enclosed a tank, alleged to be dangerous to passengers, under section 76, Act III of 1864, and sued the owner for the costs incurred, amounting to Rs. 117-10. The Court of first instance awarded Rs. 30 only, on the ground that the Commissioners had put up a very expensive enclosure. On appeal to the High Court, a decree was granted for the full amount claimed, on the ground that the Commissioners must be authorized to execute the necessary repairs or protection in a sufficient and durable manner, and that,

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

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

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

131. (122) When it has been determined that a tax on carriages, horses, and other animals specified in the fifth Schedule shall be imposed, the Commissioners at a meeting shall make an order that every carriage, horse, and every other animal of the kind specified in the said Schedule, which is kept or habitually used within, or which is let for hire within or without the Municipality, and habitually used within it, shall pay the tax, and shall cause such order to be published in the manner prescribed by section three hundred and fifty-four.

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

But such tax shall not be imposed on—

- (a) horses or ponies belonging to officers doing regimental duty, at the rate of one animal for each officer;
- (b) animals exempt from any Municipal tax under section 25 of the Indian Volunteers' Act, 1869;
- (c) carriages or animals belonging to Government, or to the Commissioners, or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers;
- (d) animals used by, or exclusively for the purposes of, any regiment;

- (e) horses or ponies used by police officers, at the rate of not more than one for each officer;
- (f) carriages the wheels of which do not exceed twenty-four inches in diameter;
- (g) carriages or animals kept for sale by any *bond fide* dealer in such carriages or animals, and not used for any other purpose.

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

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

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

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

It will be observed that carriages which are kept within the limits of a Municipality are liable to pay the tax, whether used or not. On a reference from the Dacca Municipality, an opinion to that effect was given by the Legal Remembrancer, who has also held that a carriage so damaged as to be unfit for use is not liable to the tax. For the definition of a carriage is a vehicle used for the conveyance of human beings, etc., and if it is unfit for use, it obviously cannot convey human beings.

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

*132. (123) Any order of the Commissioners imposing

Tax so fixed to continue in force until altered.

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

133. (124) In any Municipality in which a tax has been

Licenses how to be obtained.

imposed under section one hundred and thirty-one, the owner of every carriage, horse, and other animal specified in the said Schedule shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by

him, containing a description of the carriages, horses, and other animals liable to the tax, for which he is bound to take out a license.

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

This section is practically unaltered.

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

Practically unaltered.

*135. (126) On receiving the amount of the tax due as aforesaid, the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a license for the several carriages, horses, and other animals for the period in respect of which the amount is received.

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

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

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

This section is practically unaltered.

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

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

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

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

And the Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and

description of the carriages, horses, and other animals in respect of which such person is liable to be taxed.

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

The words "except for special cause shown" are new; otherwise the section is unaltered.

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

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

Of the Registration of Carts.

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

tion in such manner as the said Commissioners shall direct:

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

This section shall not apply to—

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

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

(c) Howrah or the Suburbs of Calcutta.

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

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

*143. (134) The registration of carts under the last preceding section shall be made, and the numbers assigned yearly or half-yearly, upon such days as the Commissioners shall notify; and such fee as they shall from time to time fix and notify, not exceeding four rupees if the registration has effect for a year, and not exceeding two rupees if the registration has effect for half a year, shall be paid for each registration.

*144. (135) Any person becoming possessed of any cart which has not been registered for the then current period of registration, shall register the same within one month from the date on which he may have become possessed thereof, and the

Commissioners shall grant registration in any such case on payment of such amount of the fee as shall bear the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person may have become possessed as aforesaid.

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

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

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

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

After such seizure, the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell such vehicle and animals by auction at such place as they may state in the notice; and if any registration-fee, together with the cost arising from such

seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

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

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

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

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

Of Tolls on Ferries.

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

Every ferry, while so administered, shall be deemed to be a Municipal ferry, and the profits derivable therefrom or such part of the profits as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the Municipal Fund.

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

A distinction is evidently meant to be drawn between a "public ferry" and a "Municipal ferry," and it appears that a Municipal ferry is no longer

a public ferry within the meaning of Bengal Act I of 1866. For section 2 of that Act enacts that "every ferry which has been or may be declared to be a public ferry, . . . shall belong exclusively to Government." It follows that the penal provisions of Act I of 1866 do not apply to Municipal ferries, and hence the necessity of reproducing them in this and the former Municipal Act.

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

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

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

Practically unaltered.

Section 4, Bengal Act I of 1866, is as follows: "All claims for compensation which may be preferred by any person or persons for any loss which may be sustained by them in consequence of any ferry having been declared public as aforesaid shall be enquired into by such Magistrate, who shall award compensation to any such person or persons who may appear justly entitled thereto. Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person or persons from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net profit."

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

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

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

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

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

When person crossing river not liable to toll.

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

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

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

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

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

Toll must be prepaid.

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

Penalty.

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

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

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

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

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

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

Of Tolls on Bridges and Roads.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Of general provisions relating to Tolls on Ferries
and Roads.*

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

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

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

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

*166. (157) Whoever, being a toll-collector or lessee of
a Municipal ferry or toll-bar, neglects
Penalty. to hang up a table of tolls as required
by the last preceding section, shall be liable to a fine not exceeding fifty rupees, and to a further fine, not exceeding ten rupees, for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

"A further fine." An order of a Court imposing a daily fine for such

future time as an offence may be continued is null and void. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. For other references, see note to section 156.

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

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

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

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

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

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

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

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

*169. (160) In all cases of resistance to the person authorized to collect tolls, police officers shall assist when required, and