

for that purpose shall have the same powers as they have in the exercise of their ordinary police duties.

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

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

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

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

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

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

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

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

provided the expense they undergo is made out and does not exceed the bounds of reason, they are entitled to recover.—*Unreported case.*

"Hoard" (or more commonly perhaps "hoarding"), a fence enclosing a house in which builders are at work. See the Dictionaries of Webster and Skeat. The use of the word in this section is therefore unusual, though correct in the next.

210. (226) If any house, wall, structure, or any thing affixed thereto, be deemed by the Commissioners to be in a ruinous state, or in any way dangerous, they shall forthwith, if it appears to them to be necessary, cause a proper hoard or fence to be put up for the protection of passengers, and may require the owners or occupiers or the owners and occupiers of the land to which such house, wall or structure is affixed, within seven days to cause such repairs to be made to such house, wall or structure as they may consider necessary for the public safety, or to remove such house, wall, structure or thing affixed thereto.

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

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

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

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

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

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

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

*211. (228) If the Commissioners shall have caused any repairs to be made to any house or other structure, and if such house or other structure be unoccupied, the
 Power to enter upon possession of houses so repaired.

Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them.

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

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

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

212. (229) The materials of anything which shall have been pulled down or removed under the provisions of section two hundred and ten, may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred.

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

The provision for refund of the surplus sale is now subject to the ordinary law of limitation.

213. (230) The Commissioners may, by published order, appoint from time to time certain periods within which any dogs without collars or other marks distinguishing them as private property, found straying in the roads or beyond the enclosures of the houses of the owners of such dogs, may be destroyed; and such dogs may be destroyed in accordance with such order.

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

Commissioners may offer rewards for destruction of noxious animals.

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

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

215. (232) The Commissioners at a meeting may cause a name to be given to any road and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house; and in like manner may from time to time cause such names and numbers to be altered.

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

Penalties.

216. (236) Any person who, in any Municipality—
 Offences under sections 189 and 215. (1) places, or allows his servants to place, rubbish on a public road at other than the times appointed by the Commissioners under the provisions of section one hundred and eighty-nine; or

(2) destroys, pulls down, defaces, or alters any name or number put up by the Commissioners under the authority of section two hundred and fifteen,

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

217. (198) Any person who, in any Municipality—
 Occupier not removing filth, &c. (1) being the occupier of a house in or near a public road, keeps, or allows to be kept, for more than twenty-four hours, or for more than such shorter time as may be prescribed by a bye-law, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, nightsoil or filth, or any noxious or offensive matter, in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same; or

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

(3) (203) being the owner or occupier of any private
 drain, privy or cesspool, neglects or
 Not keeping private drain, &c., in proper order. refuses, after warning from the Com-
 missioners, to keep the same in a pro-
 per state; or

(4) (209 and 210) disobeys an order passed by the
 Commissioners under the provisions
 Disobeying order under section 199. of section one hundred and ninety-
 nine; or

(5) (214) encroaches upon any road, drain, sewer, aque-
 duct, or watercourse by making any
 Erecting obstruction. excavation, or by erecting any wall,
 fence, rail, post, or other obstruction,
 shall, for every such offence, be liable to a penalty not
 exceeding fifty rupees.

When the owner of certain land lived in another district, and was not
 proved to have suffered the land to be in a filthy state, and the Municipal
 Commissioners fined his muktia under section 67, Act III of 1864.—*Held*,
 that the discretion which that section gave of proceeding against either
 the owner or the occupier had not been properly exercised. Proceedings
 quashed.—70 Cr. R., 16 W. R.

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

218. (215, 218, & 222) Whoever, being an owner or
 occupier of any house or land within
 Disobeying requisition under sections 202, a Municipality, fails to comply with
 204 or 208. a requisition issued by the Commis-
 sioners under the provisions of sections two hundred and
 two, two hundred and four, or two hundred and eight,
 shall be liable, for every such default, to a penalty not
 exceeding fifty rupees, and to a further penalty, not exceed-
 ing ten rupees, for every day during which the default is
 continued after the expiration of eight days from the date
 of service on him of such requisition.

The further penalty cannot be imposed with prospective effect. A
 sentence ordering an accused person to pay a daily fine as long as he

shall persevere in committing an offence is absolutely bad in law. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41; *In re W. N. Love*, 9 B. L. R., App., 35; 6 Cr. R., 25 W. R.; 31 Cr. R., 21 W. R.

219. (204, 211, 224 & 226) Whoever, being an owner or occupier of any house or land within a Municipality, fails to comply with any requisition issued by the Commissioners under the provisions of sections one hundred and ninety-five, two hundred, two hundred and nine, or two hundred and ten, shall be liable, for every such default, to a penalty not exceeding one hundred rupees, and to a further penalty, not exceeding twenty rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

"A further penalty." See note to preceding section.

PART VI.

This Part corresponds with Part VII of the former Act.

OF SPECIAL REGULATIONS.

220. (233) No provision contained in this Part, or in Parts VII, VIII, IX or X, shall apply to any Municipality, unless and until it has been expressly extended thereto by the Local Government in the manner provided by the next succeeding section.

221. (234) The Commissioners may apply, in pursuance of a resolution passed at a meeting specially convened to consider the question, to the Local Government, to extend to the Municipality all or any of the provisions of this Part, or of Parts VII, VIII, IX or X; or to exclude from the operation of the said provisions, or any of them, any place within the Municipality.

And the Local Government may thereupon make and order accordingly.

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

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

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

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

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

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

Of Privies, Drains, and Excavations.

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

The words "or to remove any privy" are new. No penalty is laid down by the Act for non-compliance with a requisition under this section. It is of course open to the Commissioners to enact a bye-law on the subject. Under section 180 they can execute the work themselves and recover the costs.

*225. (238) Every person constructing a privy shall have such privy shut out by a sufficient roof and wall or fence from the view of persons passing by, or residing in, the neighbour-

road: and the Commissioners may require any owner or occupier of land on which a privy stands to cause the same to be shut out from view as aforesaid within fifteen days.

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

***226. (240)** If any person, without the written consent of the Commissioners first obtained, makes or causes to be made, or alters or causes to be altered, any drain leading into any of the sewers or drains vested in the Commissioners, the Commissioners may cause such branch drain to be demolished, altered, re-made, or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such branch drain.

***227. (242)** If any land, being within one hundred feet of a sewer, drain or other outlet into which such land may, in the opinion of the Commissioners, be drained, is not drained to the satisfaction of the Commissioners, the Commissioners may require the owner, within one month, to drain the said land into such sewer, drain or outlet.

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

228. (243) If it appear to the Commissioners that a group or block of houses, &c., may be drained by a combined operation, a group or block of houses may be drained or improved more economically or advantageously in combination than separately, and a sewer, drain or other outlet already exists within one hundred feet of any part of such group or block of houses, the Commissioners may cause such group or block of houses to be so drained and improved, and the expenses thereby incurred shall be recovered from the owners of such houses in such proportions as shall to the Commissioners seem fit.

Only verbal changes have been made in this section.

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

230. (246) No person shall, without the written permission of the Commissioners, construct or keep any latrine, urinal cesspool, house-drain or other receptacle for sewage or other offensive matter, within fifty feet of any public tank or watercourse, or a tank or watercourse which the inhabitants of any locality use.

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

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

***231. (247)** No person shall, without the written permission of the Commissioners, construct a privy with a door or trap-door opening on to any road or drain. The Commissioners may require any owner or occupier upon whose land any such privy exists to remove the same within eight days.

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

232. (249) The Commissioners at a meeting may, by a general order, prohibit the making of excavations for the purpose of taking earth or stone therefrom, or for the purpose of storing

rubbish or offensive matter therein, and the digging of cesspools, tanks or pits without special permission previously obtained from them.

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

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

Of Obstructions and Encroachments on Roads.

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

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

or obstruction to be removed or altered; and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction.

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

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

Practically no change has been made by this section.

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

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

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

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

Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences to protect the public from injury, danger or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.

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

The fact that such person undertakes to erect and light such fences does not relieve the Commissioners from the legal liability for any damages, which may result from his neglect to do so in an efficient manner.—*The Corporation of the Town of Calcutta* (defendant) v. *Ander-son* (plaintiff), 1. L. R., 10 Cal., 446.

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

during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night:

Provided that no person shall put up a hoard or fence without the written permission of the Commissioners, nor shall he keep up the said hoard or fence for a time longer than allowed in the said written permission.

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

Of Building Regulations.

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

The Berhampore Municipality published an order under the former section. One Tara Chand Matwar, or Tara Chand Kowr, who had failed to comply with the order, was prosecuted and convicted under section 188 of the Penal Code. On an appeal to the High Court, the conviction was set aside, on the ground that the Magistrate had not recorded any finding that the disobedience to the order caused or tended to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, and that the Court could not conclude that such effects had been produced.

It may be doubted, however, whether an order passed under this section can be held to be an order promulgated by a public servant. Although a Municipal Commissioner is, under section 21 of the Indian Penal Code, a public servant, it is very doubtful whether the Commissioners in their corporate capacity constitute a public servant. An order under this section is passed in their corporate capacity, and not by any individual member, and according to the opinions of the Judges in *I. L. R.*, 3 Cal., 758, it is very doubtful whether a Municipal Corporation can be considered a public servant under the Indian Penal Code. Apparently the only way of proceeding in the matter is by enacting a bye-law prescribing a penalty for the breach of an order passed under the section. This can be done under section 350.

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

It is not obvious why the section empowers the Commissioners to pass an order which has no effect, unless a bye-law is made to enforce it. Obviously the simpler method would have been to empower the Commissioners to pass a bye-law on the subject. This plan was adopted

in Act III of 1864, section 63 of which provided, that "it shall be lawful for the Commissioners at a meeting, by a bye-law to be made in manner hereinafter provided, to direct that, etc." Section 207 of the Bill of 1872 was to the same effect.

237. Before beginning to build or rebuild any house, not being a hut, the person intending to build or rebuild any such house shall give notice thereof in writing to the Commissioners, and shall accompany such notice with a general description of the building which he intends to erect, and of the provision he intends to make in respect of drainage and latrine accommodation.

This section is new. Compare section 241.

A structure with *kutchra pueru* walls must, probably, be considered not to be a hut. See note to section 245.

238. Within fourteen days after the receipt of the notice mentioned in the last preceding section, the Commissioners may refuse sanction to the building of a house not to be provided with drainage and latrine accommodation, unless it be shown to their satisfaction that proper provision is, or can be, made, for drainage and latrine accommodation within the holding or in the neighbourhood thereof.

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

Compare section 241.

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

Compare section 241.

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

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

See next section.

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

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

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

or if, when a plan has been required under section two hundred and thirty-nine, the house is built or begun to be built before such plan has been approved, or before the expiration of fourteen days after the submission of such plan ;

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

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

or if the house is built, or begun to be built, in any other respect contrary to the provisions of this Act, the Commissioners may cause such house to be altered or demolished as they shall see fit.

242. The Commissioners may prohibit the owner of any new house to be approved before occupation, until the drainage and latrine accommodation of such house shall have been inspected and approved by the Municipal officers appointed for the purpose.

This is new. A breach of an order issued under this section is punishable under section 273, clause (1).
See note to section 238.

243. (261) It shall not be lawful for any person to erect a hut, or any range or block of huts or sheds, or to add any hut or shed to any range or block already existing, or to enlarge any existing hut, without previous notice to the Commissioners; and the Commissioners may require such huts or sheds to be built so that they may stand in regular lines, with a free passage or way in front of and between each line, of such width as they may think proper for ventilation and to facilitate scavenging, and with such number of privies, and with such means of drainage, as to them may seem necessary, and at such a level as will admit of such drainage, and with a plinth at least two feet above the level of the nearest street.

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

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

Disobedience to a requisition issued under this section is punishable under section 267. The Commissioners may also proceed under section 180,

and remove the huts or sheds themselves, recovering the costs from the persons upon whom the requisition may have been served.

Of Sanitary Measures with regard to Blocks of Huts.

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

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

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

“Now, on turning to the medical certificate, we find nothing of the kind. It runs as follows: ‘We, the undersigned Medical Officers, have the honor to report that, at the request of the Municipal Commissioners, we have carefully inspected the blocks of huts situated within the localities specified below, and we are of opinion that the huts are so crowded together and so irregularly situated that there is risk of disease to the inhabitants, and there are no means for effectually scavengering the localities, and there is a want of drainage. We have specified below, in detail, what improvements we consider to be necessary in the way of making roads and drains and removing huts.’ The crowding of huts is

a matter which gives jurisdiction to the Commissioners under section 264. Irregular building does not. So, looking at the certificates, we must read it to be that, so far as the huts are crowded together there is risk of disease. Further than this we cannot go, for it certainly does not state that insufficiency of scavenging or the want of drainage is attended with any risk whatever. The order cannot go beyond the certificate. I think, therefore, that so much of the order as refers to the crowding of the huts and the removal of them is good, while the latter portion, which refers to the insufficiency of scavenging and want of drainage, is bad."

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

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

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

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

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

*247. (266) The Commissioners at a meeting may order

Expenses may be recovered by instalments or remitted in case of poverty. that any expenses payable in respect of any work done by them in consequence of the failure of the owners or occupiers to execute such work, when required to do so under the last preceding section, shall be recovered by instalments from the person liable to pay the

same; or if it should appear to them that the said person is unable by reason of poverty to pay the same, may order the same, or any portion thereof, to be paid out of the Municipal Fund.

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

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

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

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

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

And if it appear to the said Magistrate that the same is noxious or unfit for such use, he shall order it to be

forfeited and disposed of in such way as to him shall seem proper.

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

***251. (274)** The Commissioners, or any person authorized by them in that behalf, may at all reasonable times enter into and inspect any market, buildings, shop, stall, or place used for the sale of meat, poultry, fish, vegetables, corn, bread, flour, wine, spirits, butter, ghee, or other food or drink, or as a slaughterhouse, and may examine any of the aforesaid articles of food or drink which may be therein; and in case any of the aforesaid articles of food or drink appear to be intended for the food or drink of man, and to be unfit for such food or drink, may seize the same.

And if it appear to a Magistrate that any of the aforesaid articles of food or drink is unfit for the food or drink of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food.

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

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

It is nowhere stated in the Act that orders made by the Magistrate under section 250, 251, 253 shall be deemed to be orders made by him in the discharge of his judicial duty. By section 205, however, the protection of Act XVIII of 1850 is extended to orders made by the Magistrate under various other sections. It is not clear, therefore, whether a Magistrate acting under the present sections or sections 250 and 253 is protected or not. Under section 521 of the Criminal Procedure Code, however, the Court may, on a conviction under section 272, 273, 274, or 275, of the Penal Code "order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed." Such an order would obviously be made in the discharge of the Court's judicial duty.

252. No shop or place shall be kept for the retail sale of drugs recognized by the British

Registry of shops for sale of European drugs. Pharmacopœia, not being also articles of ordinary domestic consumption, unless the same shall have been registered in the office of the Commissioners. Any keeper of such shop or place failing to register the same within two months after this section shall come into force, or within two months from

the date of the establishment of such place, shall be liable to a fine not exceeding one hundred rupees. The Commissioners shall, upon registration, grant the keeper of such shop or place a license which he shall be bound to display in some conspicuous part of his premises.

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

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

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

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

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

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

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

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

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

Under section 521, Criminal Procedure Code, the Court can order the destruction of the drugs in addition to any punishment inflicted. See note to section 251.

Of Burial and Burning-Grounds.

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

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

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

The only alteration consists in the substitution of the words "Local Government" for "Lieutenant-Governor."

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

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

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

256. (280) If it shall appear to the Commissioners at a meeting that any public or private burial or burning-ground is dangerous to health or offensive to the tax-payers, or to the inhabitants of the neighbourhood, and also that a suitable place for interment or burning, as the case may be, exists within a convenient distance, and is open and available to the inhabitants of the Municipality, the Commissioners shall give public notice of their intention to close such burial or burning-ground, and shall consider any objections which may be preferred within fifteen days of the publication of such notice; after considering such objections they may, by notification to be affixed on some conspicuous part of the ground, appoint a time, not being less than two months, for the closing of such burial or burning-ground.

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

Under the corresponding section, the sanction of the Commissioner of the Division was required, before the issue of the notification in question.

257. (281) After the expiration of the three months
 *Prohibition to bury mentioned in section two hundred
 or burn in unregistered and fifty-four, no corpse shall be
 ground. buried or burnt otherwise than in a
 place which is borne on the register of the Commissioners
 as an open burial or burning ground; but the Commis-
 sioners may grant special permission for a corpse to be
 buried or burnt elsewhere.

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

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

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

This section is altogether new.

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

The provision for the imposition of fees is new.

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

Of certain Offensive and Dangerous Trades or Occupations.

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

- Certain offensive and dangerous trades not to be established within limits to be fixed by the Commissioners without license.
- melting tallow;
- boiling offal or blood;
- skinning or disembowelling animals;
- as a soap-house, oil-boiling house, dyeing-house;
- as a tannery, slaughterhouse, or kiln for making bricks, pottery, tiles or lime;
- as a manufactory or place of business from which offensive or unwholesome smells may arise;
- as a yard or dépôt for trade in hay, straw, wood, thatching-grass, jute, or other dangerously inflammable material;
- as a store-house for kerosine, petroleum, naphtha, or any inflammable oil or spirit;
- as a shop for the sale of meat;
- or as a lodging-house or a serai.

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

The Commissioners may levy a fee in respect of such license and the renewal thereof, and may impose such conditions upon the license as they may think necessary.

The provision for the levy of a fee in respect of the license is new.

The former provision, that the section should not be applicable until one year after it should come into force in any Municipality, has been omitted.

It would seem that this section does not apply to cases where the premises are only temporarily used for the purposes specified, for private convenience and not in the way of business or trade. There is a High Court ruling with regard to section 77, Act III of 1864 (B. C.), which appears to be in point, as no distinction can be drawn between the two sections in this respect. In *In the matter of Sreeram Chunder Halder, Glover and Birch, J.J.*, remarked as follows:—"We think that this rule must be made absolute. The Junior Government Pleader who has appeared on behalf of the Chairman of the Municipality, says, that no one

is permitted to make bricks whether for his own use or for sale, without taking out a license. The only section of Act III of 1864 (B. C.) which could be applied to this case refers to making bricks or doing other things with reference to trade. There is nothing in the section which applies to a person making bricks for his own use or which makes it an offence against Municipal Regulations to make them without first taking out a license. It appears to us that this fine has been improperly levied on the petitioner, and that it should be returned to him."—65 Cr. R., 20 W. R.

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

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

It appears that the only person liable to a penalty for using the premises for any of the purposes specified is the owner or occupier who carries on the business. His servants cannot be held to be liable, neither can a customer be held to be liable. A butcher, therefore, who slaughtered cattle in a slaughterhouse for which no license had been taken out by the owner, could not be held to have used the premises as a slaughterhouse within the meaning of this section. For the offence consists not in the isolated act, but in the carrying on of the trade or business without a license.—4 Cr. R., 16 W. R.

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

262. (287) If it be shewn to the satisfaction of the

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

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

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

and no length of enjoyment can legalise, a public nuisance involving actual danger to the health of the community."

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

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

The Commissioners may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

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

The provision for the levy of fees in respect of such licenses is new. The other changes in the section are merely verbal. A breach of the provisions of this section is an offence punishable under section 273, clause (2). Breach of the conditions of the license is punishable under section 273, clause (3).

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

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

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

265. (292) Within such limits as the Commissioners may direct, no person shall keep any pig-sty adjoining or near a road unless

it is shut out therefrom by a sufficient wall or fence, and in no place within such limits shall more than ten pigs or more than twenty sheep or goats be kept without the written permission of the Commissioners.

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

Punishable under section 273, clause (5).

Penalties.

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

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

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

268. (272) If any owner, occupier or farmer of any place for the sale of meat, poultry, fish or vegetables, or of any slaughterhouse, within the limits of a Municipality, after notice in writing given to him by the Commissioners that such place or slaughterhouse is defective in any of the particulars specified in section two hundred and forty-nine, and requiring him to remedy the defect specified within not less than thirty days, makes default therein, he shall be liable to a fine not exceeding twenty rupees for every day during

which such default is continued after the expiration of the period mentioned in such notice.

See note to preceding section.

269. If any person, in order to provide for the passage of water, or for any other purpose, shall, without the consent of the Commissioners, dig or cut up any public road or thoroughfare, he shall be liable to a fine not exceeding twenty-five rupees, and shall in addition be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road or thoroughfare.

This is entirely new.

270. Whoever, within a Municipality,—

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

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

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

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

shall be liable, for every such offence, to a fine not exceeding twenty-five rupees.

271. Whoever, within a Municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections two hundred and twenty-five, two hundred and thirty, or two hundred and thirty-one, shall be liable, for every such offence, to a fine not exceeding twenty-five rupees, and to a further fine, not exceeding five rupees, for every day during which he shall continue to make such default after service on him of such requisition.

This is new. See note to section 267 as to illegality of daily fine.

272. Whoever, within a Municipality,—

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

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

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

"Branch drain" is substituted for "drain," otherwise para. (2) exactly reproduces section 245.

273. Whoever, in a Municipality,—

(1) (255) begins to build or to take down, or alter or repair, any house contrary to the provisions of sections two hundred and thirty-five or two hundred and forty-one, or lets a house for occupation contrary to the provisions of section two hundred and forty-two; or, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever; or who, being permitted fails to put up such fence or hoard, or to continue the same standing, or to maintain the same in good condition; or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during

the night; or who does not remove the same within eight days, when directed by the Commissioners; or

(2) (286 & 290) without a license uses any place for any of the purposes specified in section two hundred and sixty-one or section two hundred and sixty-three; or

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

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

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

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

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

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

This is practically unaltered.

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

This section is altogether new.

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

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

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

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

If the nuisance consisted in vitiating the atmosphere so as to make it noxious to the health of persons residing in the vicinity, the offence is punishable under section 278, Indian Penal Code, with fine of Rs. 500 ; if, in voluntarily corrupting or fouling the water of any public spring or reservoir, the offence is punishable with imprisonment of either description for three months and fine of Rs. 500,—Indian Penal Code, section 277.

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

“ A further fine, etc.” A sentence by a Court imposing a fine for an offence, and a daily fine for such time as the offence may be continued in

future, is bad in law. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See note to section 156.

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

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

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

PART VII.

OF A WATER SUPPLY.

279. In any Municipality to which the provisions of this Part shall be extended in the manner prescribed by section two hundred and twenty-two, it shall be lawful for the Commissioners to impose an annual water rate not exceeding six per cent. on the annual value of holdings, when the houses and lands are situated in streets supplied with water, and not exceeding five per cent. when the houses and lands are situated in streets not so supplied.

The said water-rate shall be paid by the occupiers of the holdings by quarterly instalments in advance.

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

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

"A doubt has been expressed whether the provisions of Part VII would be applicable to towns (such as Darjeeling), which have already supplied water at the cost of the Municipality, and we have been urged to insert words expressly including such towns within the operation of Part VII of the Bill. But we feel no doubt that the wording of the Bill as it stands is sufficient to provide for these cases. It will be only necessary for the Municipal Commissioners of Darjeeling (or of any other town similarly circumstanced) to apply in the prescribed manner for the extension of Part VII (either wholly or partially) to their Municipality, and they will then be entitled to levy the water-rate authorized by section 85 (now section 86) of the re-amended Bill."—*Rep. S. C.*

It will be the duty of the Commissioners to regulate the rate according to the amount of benefit enjoyed by the residents of particular streets. In making the rate assessable on all holdings it has been taken for granted, that all the rate-payers in a town are benefited by the introduction of a pure supply of water, whether it is brought close to their doors or not.—*P. C., Feb'y. 23rd. 1881.*

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

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

The question as to whether arable lands are liable to the water-rate depends upon whether they are held to be liable to the rate on holdings, a point which is discussed in the note to section 98. Compare also section 311 and note.

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

This section reproduces, with some slight verbal alterations, section 96 of the Calcutta Act.

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

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

From section 99 of the Calcutta Act, with verbal alterations.

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

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

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

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

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

284. Whenever any house or land which shall have been unoccupied shall begin to be occupied during any quarter, there shall be forthwith payable by the occupier in respect of such house or land a sum calculated at one-fourth of the rate that would have been payable if the house or land had been occupied during the entire quarter for the period during which the house or land was not occupied, and the full rate for the residue of the quarter.

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

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

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

Person subletting to several different tenants to be deemed occupier. He that holds lands or tenements in severalty or is sole tenant thereof, is he that holds them in his own right only without any other person being joined or connected with him in point of interest during his estate therein." 1 *Steph. Com.*, 335.

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

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

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

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

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

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

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

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

290. If the Commissioners at a meeting shall determine to supply water to houses within the Municipality, every person paying the water-rate hereinbefore mentioned shall be entitled to lay down communication-pipes from the service pipes of the Commissioners for bringing into his house or land a reasonable supply of water for domestic use:

Communication-pipes, &c., to be made of required dimensions, and at expense of householder.

Provided that the Commissioners shall be at liberty to cut off the supply of water to any house or land during the time the said house or land is unoccupied.

Such communication-pipes and the pipes and works within the house connected therewith, shall be of such character, dimensions, and materials as the Commissioners shall fix and approve; and shall be made and constructed at the expense of the person requiring the same.

B. C. Act IV of 1876, section 136.

291. The communication-pipes and all fittings thereon leading water from the service pipes of the Commissioners into any house or land, and the pipes, works, and fittings inside the house or land, must

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

in all cases be executed subject to the inspection and satisfaction of the Commissioners.

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

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

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

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

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

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

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

293. In the event of any pipes, works or fittings connected with the supply of water to any house or land being at any time found, on examination by any officer of the Commissioners authorized in that behalf, to be out of repair to such an extent as to cause waste of water, the Commissioners may cause the water to be turned off from such house or land, after giving notice in writing of not

less than twenty-four hours, and may recover from the occupier of such house or land the expense incurred for turning off the water.

Section 132, B. C. Act IV of 1876, with merely verbal alterations.

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

Section 132, B. C. Act IV of 1876.

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

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

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

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

Section 134, B. C. Act IV of 1876.

297. If any person supplied with water shall neglect to pay the water-rate hereinbefore mentioned at the times of payment thereof, or the charge made for the said water when supplied for other than domestic purposes, the Commissioners may turn off the water from the house or land in respect of which such rate or charge is payable, and may recover the expense of turning off the water from such person :

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

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

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

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

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

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

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

And any person taking or causing to be taken for use, outside the limits of the Municipality, water supplied by the Commissioners,
Penalty.

without the permission of the Commissioners, shall be liable to a fine not exceeding fifty rupees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

307. The water-rate and all moneys collected, received or recovered for or in respect of the supply of water or the execution of works, and all fines connected therewith, or in any respect relating to the watersupply, shall be applied by the Commissioners in defraying the expense of making, extending or maintaining the waterworks, in paying the interest of money borrowed for the waterworks, and in the liquidation of debts incurred in connection therewith, or for some other purpose connected with the supply of water.

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

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

PART VIII.

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

OF LIGHTING WITH GAS.

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

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

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

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

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

Section 3, B. C. Act V of 1873.

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

"Holding" is defined in section 6, clause (3). The rate raised under this section must be credited to a separate Lighting Fund, as it cannot be expended upon any other purpose.

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

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

311. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections ninety-six to one hundred and nine (both inclu-

sive), and one hundred and twelve to one hundred and thirty (both inclusive), shall, *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this Part, be applicable to the assessment and collection of the lighting-rate.

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

Hon'ble Mr. Reynolds:—"It seemed unlikely that this part of the Bill would ever be extended to places in which the tax on holdings was not in force; and if it was so extended, it seemed proper that the valuation on holdings for the assessment of the lighting-rate should be made as it was for the water-rate, even though there was no valuation on holdings for general purposes"—*P. C., March 1, 1884.*

By this section all the provisions of the Act relating to the rate on holdings, except those contained in sections 110 and 111, are declared applicable to the lighting-rate. It follows, therefore, that all those classes of holdings which are liable to the rate on holdings are liable to the lighting rate. By section 98, holdings used for public worship, or duly registered as burning or burial grounds, are exempted from the rate on holdings, and are therefore exempted from the lighting-rate. Arable lands will be liable to the lighting-rate if they are liable to the rate on holdings, and not otherwise. The liability of arable lands to the rate on holdings, is a disputed question, which has been discussed in the note to section 98.

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

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

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

312. If any holding shall be occupied by more than

Power to assess one tenant holding severally, or shall owners in certain cases, be of less annual value than one hundred rupees, it shall be lawful for the Commissioners to recover the rate from the owner of such holding.

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

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

313. Whenever any rate shall be recovered from any

Owner to recover owner of any holding under the provisions of the last preceding section, it shall be lawful for such owner, if there shall be but one occupying tenant of such entire holding, to recover from such tenant the entire amount of

the rate which shall have been so paid by such owner; and if there shall be one occupying tenant of a part of such holding or more than one occupying tenant of such holding, then to recover from such tenant or each of such tenants, such sum as shall bear to the entire amount of rate which may have been so recovered from such owner, the same proportion as the value of the portion of such holding in the occupation of such tenant bears to the entire value of such holding, subject, however, to the provisions of the next succeeding section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART IX.

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

OF THE CONSTRUCTION AND CLEANSING OF LATRINES.

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

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

321. When such provision has been made, the Commissioners may levy fees, to be fixed on such scale, with reference to the annual value of holdings within the limits of the Municipality.

pality, or such part thereof as aforesaid, as the Commissioners at a meeting may from time to time direct;

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

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

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

Section 3, B. C. Act VI of 1873.

"Twenty-five rupees." The annual valuation of the holding is obviously referred to.

The question having arisen as to whether holdings having no latrines in them, and receiving no services from the Municipal Scavengering Establishment, were liable to taxation under section 3, Act VI of 1868, the point was referred by Government to the Advocate-General for opinion. The opinion of the Advocate-General was as follows: "By section 2 of the above Act, provision is made for the maintenance of an establishment for the cleansing of all public and private latrines within the limits of Municipalities, and by subsequent sections fees or rates in lieu of fees are required to be levied on all holdings and places particularly mentioned. It follows that all houses and lands which have no latrines pay as well as those which have them, and that all holdings, including tanks and gardens also, pay, it being borne in mind that the expenses of the general establishment and of other matters contained in the Act are to be defrayed by the levy of fees or rates."

It appears then, that there are absolutely no classes of holdings which are exempted from latrine tax, and that it is, therefore, leviable not only on arable lands, but also on those holdings which are exempted from house-rate under section 92, *viz.*, holdings used exclusively as places of public worship, or duly registered as public burial or burning grounds.

322. The said fee shall be payable by the occupier for

the time being of the holding, or by
Recovery of fees. the owner thereof under the next

succeeding section, in quarterly instalments, and shall be recoverable in the manner prescribed for the recovery of the rate on the value of holdings in this Act.

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

The proceeds of the said fees shall be applied to the maintenance of the said establishment, and to the providing of public latrines, and generally to carrying out the provisions of this Part.

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

This section is practically the same as section 4, B. C. Act VI of 1868. A reference was made in 1880 by the Howrah Municipality as to whether owners of vacant houses could be called upon to pay fees under this section. The Advocate-General held, that they could not be so called on, as the fact that the fee is payable by the occupier only, implies that when there is no occupier it cannot be demanded at all. The owner can only be called on to pay the fee when the house is occupied in severalty by more than one person. He is in that case, however, merely a medium for collecting the rate, and the actual liability is imposed on the occupiers, from whom he is authorized to recover the amount.

By clause (3) it is obvious that the fees levied under this Part must be credited to a separate Latrines Fund apart from the General Municipal Fund.

323. If any holding is occupied in severalty by more than one person, the Commissioners may levy the said fee from the owner of such holding, who may recover from each occupier such sum as shall bear to the entire amount of the fee so levied the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of such holding.

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

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

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

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

325. The Commissioners, at their discretion, may compound, for any period not exceeding one year, with any occupier or owner as aforesaid of any railway premises or of any premises used as a factory, dockyard, workshop, cooly dépôt, school, hospital, market, court-house, or other similar place, for a certain sum to be paid by such occupier or owner in lieu of such fee.

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

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

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

327. The Commissioners may reduce the amount of a fee payable under this Part, or may reduce or remit fee. remit the fee if in their opinion the levy of it would be productive of excessive hardship to the person liable to pay the same.

Section 9, B. C. Act VI of 1878.

328. Whoever refuses to pay any fee or rate due under this Part, or having compounded for the payment of a certain sum under section three hundred and twenty-five, refuses to pay such sum, shall be liable, on conviction, to a fine not exceeding three times the amount payable by him, exclusive of the amount so payable.

Section 10, B. C. Act VI of 1878.

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

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

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

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

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

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

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

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

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

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

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

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

334. Whoever, being the owner or occupier of any holding, fails to furnish such list within the time specified in such notice, after being required to furnish the same by the Commissioners, shall be liable to a fine not exceeding one hundred rupees.

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

PART X.

REGULATION OF MARKETS.

335 (300) In any Municipality to which this Part shall have been extended in the manner prescribed by section two hundred and twenty-two, the Commissioners at a meeting may provide land for the purpose of being used as a Municipal market; and may defray the cost of providing such land and of all expenses necessary for the establishment of such market from the Municipal Fund, and may take a lease of any market;

and may charge rent, tolls, and fees for the right to expose goods for sale in such market and for the use of shops, stalls, and standings therein.

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

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

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

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

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

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

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

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

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

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

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

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

market for the sale of provisions as aforesaid within the Municipality.

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

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

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

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

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

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

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

In the case of markets existing at the time of the extension of this Part to the Municipality, the section compels the Commissioners to grant a license for the current year, without a certificate. In subsequent years, the certificate is absolutely necessary. The question arises, however, as to whether the Commissioners have, in subsequent years, the power of refusing the license altogether, in the case of such markets, notwithstanding that the certificate had been duly obtained. It does

not appear that they have such power, as the words "shall not be renewed without such certificate" are probably intended to imply that it must be renewed if the certificate has been obtained.

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

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

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

(c) the extent and boundary of the market;

(d) the description of articles sold therein; and

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

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

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

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

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

This section is practically unaltered. For meaning of "similar provisions" see note to section 337.

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