112. (1) The municipality may, if they think fit, cause any work of the nature to which this sub-chapter applies, to be executed by municipal or other agency under their own orders, without first of all giving the person by whom the same would otherwise have to be executed the option of doing the same.

[1]Municipality may execute certain works under this sub-chapter without allowing option to persons concerned of executing the same.

(2) The expenses of any work so done shall be paid by the person aforesaid, unless the municipality shall, by a general or special order or resolution, sanction, as they are hereby empowered to sanction, the execution of such work at the charge of the municipal fund.

Expenses in such cases by whom to be paid.

[2](3) Any pipes, fittings, receptacles, or other appliances for or connected with the drainage of private buildings or lands shall, if supplied, constructed or erected at the expense of the municipality, be deemed to be municipal property, unless the municipality shall have transferred their interest therein to the owner of such buildings or lands.

1 **Origin of section.**—This section now confers powers on a municipality which are necessary in order to avoid the dangers of faulty workmanship in the execution of drainage works. It is taken from sec. 260 of the Bom. City Act. This section applies to section 99—111.

2 **Sub-section (3).**—Marginal note should be, "Pipes, &c., when municipal property."

(4)—*Powers regarding external structures, &c.*

113. (1) The municipality may give [2]written permission to the [3]owners or occupiers of buildings in public streets to put up open verandahs, balconies, or rooms, to project from any upper storey thereof, [4]at such height from the surface of the street as the municipality may fix by by-laws from time to time, and to an extent not exceeding four feet beyond the line of the plinth or basement wall, [5]and may prescribe the extent to which, and the conditions under which, roofs, eaves, weather-boards, shop-boards and the like may be allowed to project over such streets.

[1]Permission necessary for certain projections.

[6](2) Any such [3]owner or occupier putting up any such projections as aforesaid without such permission or in contravention of such orders, shall be punished with fine which may extend to twenty five rupees, [7]and if any such owner or occupier fails to remove any such projection as aforesaid in respect of which he has been convicted under this section, he shall be punished with further fine which may extend to five rupees for each day on which such failure or neglect continues.

I am of opinion therefore, that the defendants are entitled, under the section in question, to remove this, being as it is in front of the house."

"We think, therefore, that upon the proper construction of section 195, the question to be considered is merely whether the eaves were an obstruction; and as to this it is not denied, they are an obstruction to the convenient passage along that part of the street. We do not consider that the fact of the gutter having been covered over after the filing of the suit affects this question. It is the eaves which constitute the obstruction. They of course prevent loaded carts from passing as near to the wall of the plaintiff's house as it would be possible for them to do if the eaves were not there, so that the result is the same whether we have regard to the state of things at the date of the filing of the suit or the date of hearing. It is no doubt a well-recognised general rule, that where powers are given by the Legislature to interfere with private property, these powers are to be exercised strictly and exclusively for the purposes and objects for which they were given, and unless it can be shown that such interference is necessary for the furtherance of those objects, it will not be permitted. That is the general rule which is applied, in the case of railway and other companies authorised to take compulsorily the lands of others.

"But in applying this rule, the powers conferred on municipalities and corporations for the purpose of making improvements in large towns or doing other similar acts for the public benefit have always been liberally construed.—*Golloway* v. *The Mayor and Commonalty of London*, L. R. I. Eng., and Ir. Ap. 34, *Quinton* v. *Corporation of Bristol*, L. R., 17 Eq., 524. (I. L. R. 12 Bom 474, *Ollivant* v. *Rahimtulla Nur Muhammad*.)

"It is said in this case that the obstruction in question was not an obstruction to the safe and convenient passage" along the alleged street. It is a seat permanently fixed into the street, and although it may be close to the verandah of the plaintiff's house, it was none the less in the street, over the whole of which, as pointed out by Sir G. Jesseli the public would have the right of passing if it is a public street. The remarks of this Court in *Ollivant* v. *Rahimtulla* show that the circumstance of the obstruction being near to plaintiff's house cannot affect the question, the public having the right to go as near as they like to it. Moreover, in the dark, such an obstruction would be distinctly unsafe. We may say also that it is not the practice of the Court to interfere with corporate bodies "unless they are manifestly abusing their powers"—*Duke of Bedford* v. *Dawson*, L. R. 20 Eg. 353. (*The Ahmedabad Municipality* v. *Manilal*, I. L. R. 19 Bom. 212.)

11 **Projection over drain removeable.**—A verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain which runs between the street and the front of the house, is a 'fixture' and "a projection, encroachment, or obstruction over or on a public street" within the meaning of sec. 341 of the Calcutta Municipal Act, and may be required to be removed.

The verandah is a projection over the drain which by the definition in the Act is part of the street. All such drains under the Act vest in the municipality (*Corporation of Calcutta* v. *Imadul Huq*. I. L. R. (1907) 34 Cal 844.)

114. The municipality may by written notice require the owner of every building in any street to put up and keep in good condition proper troughs and pipes for catching and carrying the water from the roof and other parts of such building, and for discharging the same, in such manner as they may think fit, so that it shall not fall upon the persons passing along the street.

[1]Troughs and pipes for rain-water.

1 **Origin of section.**—This is a reproduction of section 41 of the old Act of 1873. "Street" is here substituted for "public street" in the old Act. This follows Panjab Act, sec. 121.

See Madras Act, sec. 166 (12), which applies to owner *or occupier* of any building in a *public* street. See the Bom. City Act, sec. 239, which provides that sewage and rain-water pipes may be required to be distinct, each emptying into separate drains.

115. The municipality may erect or fix to the outside of any building, brackets for lamps to be lighted with oil or gas, or subject to the provisions of the Indian Electricity Act, 1887, for lamps to be lighted with

Fixing of brackets, &c., to houses.

electricity or otherwise, or subject to the provisions of the Indian Telegraph Act, 1885, as amended by subsequent enactments, for telegraph wires or telephonic wires, or for the conduct of electricity for locomotive purposes, or such pipes as they may deem necessary for the proper ventilation of sewers and water-works, and such brackets and pipes shall be erected so as not to occasion any inconvenience or nuisance to the said building or any others in the neighbourhood.

[1]Naming streets and numbering houses.

116. (1) The municipality may from time to time cause to be put up or painted on a conspicuous part of any building at or near each end, corner, or entrance to every street, the name by which such street is to be known, and may from time to time fix a number in a conspicuous place on the outer side of any building, or at the entrance of the enclosure thereof fronting the street.

[2](2) Any person who destroys, pulls down or defaces any such name or number, or puts any name or number different from that put up by the municipality, and any owner or occupier of any building who shall not at his own expense keep such number in good order after it has been put up thereon, shall be punished with fine which may extend to twenty-five rupees.

1 **Origin of section.**—This is an exact reproduction of section 48 of the old Act of 1873. It follows Madras Act sections 174, and 182, Bom. City Act section 327, Panjab Act section 89 and Bengal Act sec. 215.

By section 54 (1), it is the duty of a municipality to make provision for "(k) naming streets and numbering houses."

See (1901) 2 K. B. 18 where the question of the power of a municipality to alter an old name of a street, or to give any name to a new street contrary to the wishes of any person, is discussed.

2 **Sub-section (2).**—The marginal note should be "Penalty."

117. Any person

[1]Penalty for defacing building, &c.

(*a*) who without the consent of the owner or occupier, affixes any posting bill, placard or other paper or means of advertisement against or upon any building, wall, board, fence or pale, or

(*b*) who without such consent as aforesaid writes upon, soils, defaces or marks any such building, wall, board, fence or pale with chalk or paint or in any other way whatsoever,

shall be punished with fine which may extend to twenty rupees.

1 **Origin of section.**—This has been taken from sec. 328 of the Bom. City Act.

The proposals to extend the section to the employer of the bill sticker, and to exempt the municipality as regards its own posters, were rejected.

118. The municipality may by written notice require the owner or occupier of any land so to trim or prune the hedges thereof bordering any public street, that the said hedges may not exceed the height of four feet from the level of the street, and width of four feet, and to cut down, lop, or trim all trees or shrubs which in any way overhang, endanger, or obstruct, or which they deem likely to overhang, endanger, or obstruct any public street or to cause damage thereto, or which so overhang any public tank, well, or other provision for water-supply as to pollute, or be likely to pollute, the water thereof.

[1]Removal and trimming of hedges, trees, &c.

1 **Origin of section.**—This is an exact reproduction of sec. 43 of the old Act of 1873. Compare the Panjab Act, section 130, and the Madras Act, sec. 176, which latter requires also that fences should be constructed and maintained. Compare Bengal Act, sec. 208, and Bom. City Act, sec 383.

Swords for trimming hedges—license required for.—A municipality is not exempt from the provisions of the Arms Act, 1878. Certain officers of a municipality are public servants, but a municipality as a body corporate, is not a public servant (I. L. R. 3 Calc. 758, vide sec. 45 ante) and therefore sec. 1 (b) of the Arms Act does not apply to a municipality. Moreover, it would not be in the course of the duty of those municipal officers who are public servants to possess or bear arms, and these officers would not come within the exemption in sec. 1 (b) of the Act. G. R. 1591 of 7th March 1895, Gen. Dep., decided that accordingly the Secretary of the municipality should take out a license for the possession of arms (Form VIII), and this license would protect persons employed by the municipality using the swords for trimming hedges.

(5)—*Powers for promotion of Public Health, Safety and Convenience.*

119. (1) If any building, or any thing affixed thereon, be deemed by the municipality to be in a ruinous state or likely to fall, or in any other way dangerous to any inhabitant of such building or of any neighbouring building, or to any occupier thereof, or to passengers, the municipality shall immediately, if it appears to them to be necessary, cause a proper hoard or fence to be put up for the protection of passengers ; [2]all expenses incurred by the municipality under this sub-section shall be paid by the [3]owner or occupier of such building and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

[1]Ruinous or dangerous buildings.

(2) The municipality shall also cause notice in writing to be given to the owner or occupier, requiring such owner or occupier forthwith to take down, secure, or repair such building or thing affixed thereon, as the case shall require, and if such owner or occupier do not begin to repair, take down, or secure such building or thing within three days after the service of such notice, and complete such work with due diligence, the municipality shall cause all or so much of such building or thing,

[4]Action to be taken on default by owner or occupier.

as they shall think necessary, to be taken down, repaired, or otherwise secured.

Proviso if danger is not imminent.

Provided always that if the danger be not of hourly imminence, it shall be at the discretion of the municipality instead of themselves causing a hoard or fence to be put up, to issue in the first instance notice in writing to the owner or occupier to put up a proper hoard or fence, and in the event of the owner or occupier failing to put up within two days from the service of such notice, a hoard or fence which the municipality consider sufficient in the circumstances of the case, the municipality shall at once cause such hoard or fence to be put up and thereafter proceed as provided in sub-sections (1) and (2).

1 **Origin of section.**—This is sec. 46 of the old Act of 1873, somewhat amplified. It follows the Bom. City Act, secs. 329 and 354, and Madras Act, section 153, which also extends to a "tree." The Panjab Act, secs. 127—128 also extend to "any well, tank, reservoir, pool, depression or excavation." Compare Bengal Act, section 210, and Madras Act, sec. 185, and 185-A.

See the Bom. District Police Act, sec. 39 (1) (*a*) (*b*).

"*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, &c. (3) Composed or consisting of ruins; a ruinous heap."

The word is, however, apparently used here only in the sense of "likely to fall," for, if the building, &c., was in ruins, that is, had already fallen down, there would be no necessity for taking measures for the protection of passengers.

A building in ruins may be dealt with under sec. 131.

Under chapter X sec. 133 of the Criminal Procedure Code the District Magistrate, &c., may take action in the case of any such dangerous buildings, but it was held in *Queen Empress* v. *Tusoda Nand.* (I. L. R. 21 All. 501), that such action was limited to where the danger is to persons "living or carrying on business in the neighbourhood or passers by" that is to members of the general unascertained mass of the public and not to persons actually living in the dangerous building or in the servants' houses in the compound belonging to it.

"*Be deemed by the municipality*"—*discretion cannot be questioned unless ultra vires.*—The municipality after due notice to plaintiff under section 63 of the Bengal Municipal Act III of 1864 (corresponding to this section) demolished his building. Plaintiff brought a suit for damages for illegal and malicious demolition contending that though ruinous the building was not *dangerous* because it was in an open compound away from the ordinary resort of the public. *Held*, the decision of the Municipal Commissioners is by the terms of the section final, so long as they act within the law, and the Civil Court cannot interfere with their discretion. (*Gopee Kisshen Gossain* v. *Ryland* (1868) 9 W. R. 279.) See note 1 s. 126.

"*Appears to be necessary.*"—The primary object of section 354 of the City of Bombay Municipal Act (Bom. Act III of 1888), is the safety of the public to secure which the Commissioner must of necessity be given very wide powers. But it does not follow that these powers can be exercised arbitrarily and without due consideration to the provisions of the section and the rights of individuals.

The word 'appear' in the section does not involve 'appear to the eye.' It is sufficient if it appears to the Commissioner on the representation of a competent officer whose duty it is to make such representations. But the Commissioner's action when 'it appears' is judicial, so that he must exercise his discretion in determining what action should be taken. It is not sufficient that he should merely sign a notice which was sent to him by the Executive Engineer, because it had previously been signed by that officer. It should be considered as a notice to show cause. It is not invalid, at the same time it cannot deprive the person served with it of his right to object, unless the legislature has clearly deprived him of such a right.

Danger means peril, risk, hazard, exposure to injury from pain or other evil and can vary in degree according as the apprehended injury is expected to occur at once or at some future time. Section 354 applying to all degrees of danger and prescribing various

precautionary measures to be taken to prevent injury resulting therefrom, it follows that first, the degree of danger must be ascertained, and then the appropriate precautionary measures prescribed. Where it is not suggested that the danger is imminent, a duty is imposed on the Commissioner to decide judicially what should be done to assure the safety of the public having due regard to the interest of the owner of the structure.

The discretion must not be arbitrary · *Paskall* v. *Passmore* 15 Pa. St. D. 304; *Gangjibhoy* v. *The Municipal Corporation of Bombay* (1899) 1 Bom. 4 R. 754 at p. 764. But the Court is in the first instance entitled to enquire whether the discretion has been exercised. Discretion has to be exercised, first, in coming to the conclusion as to the state of the structure, and, then in fixing upon the appropriate remedy. It is sufficient exercise of his discretion in deciding what structures are dangerous if he appoints a competent person to represent to him what structures are dangerous. But if a notice is issued, based on the representation of such a person, it is open to the owner to prove that that person has not exercised his discretion or has been actuated by improper motives in prescribing the steps to be taken.

If the owner can prove to the satisfaction of the Court that his house was not in such a dangerous condition as to warrant an order to pull down, that would be prima facie evidence that the person appointed by the Commissioner has not exercised his discretion. The Commissioner can exercise his discretion through an agent, but it follows that if the agent has not exercised his discretion, nor has the Commissioner, the Commissioner has the opportunity to remedy this when the owner complains.

Under certain circumstances the safety of the public must be considered in priority to the right of private individuals, as in the case of imminent danger, but where there is no suggestion of imminent danger, the person affected is entitled to be heard as a matter of common justice. *Cheetham* v. *Mayor &c. of Manchester*,(1875) L. R. 10 C. P. 249; *Cooper* v. *The Wandsmith Board of Works*, (1868) 14 C. B. N. S. 180, referred to. (*Lalbhai* v.*The Municipal Commissioner of Bombay*, I. L. R. (1909) 33 Bom. 334, (1908) 10 Bom. L. R. 821. 3 Ind. Cas. 361.)

2 **Hoarding expenses.**—This clause as to expenses is necessary here because this sub-section does not provide for a notice, and so section 154 (b) does not apply as it does to sub-section (2).

3 **Owner or occupier.**—See notes 4 and 5, section 63, See section 156 (2) as to power of occupier to recover from owner, and (3) limit to his liability to pay.

"As between the defendant and the public, the occupier of a ruinous house, although only a tenant-at-will, is bound to repair it, so that it become not dangerous to the public. (*Reg.* v. *Watts*, 1 Salu. 357.)

4 **Time for owner and to take action.**—The words "the service of" make it clear that the time runs from service, not date, of notice. Sec. 46 (VI of 1873) only authorises the municipality to pull down a house if the owner does not begin to repair and secure it within three days from the notice. The municipality cannot interfere within that period on the ground that immediate and adequate measures have not been taken to secure the house. (*Mancharsha Bejanji* v. *The Municipality of Bandora*, 1889, P. J. 279.)

Bengal Act, section 212, provides that the materials of any thing pulled down, &c. may be sold and proceeds applied to payment of expenses.

Powers and duties with regard to dangerous, stagnant or insanitary sources of water-supply.

120. (1) The municipality may at any time by [2]written notice require that the owner of, or any person who has the control over, any well, stream, channel, tank or other source of water-supply, shall, whether it is private property or not,

(*a*) keep and maintain any such source of water-supply, other than a stream, in good repair, or

(*b*) within a reasonable time to be specified in the notice, cleanse any such source of water-supply from silt, refuse and decaying vegetation, or

(*c*) in such manner as the municipality prescribe, protect any such source of water-supply from pollution by surface drainage, or

[3](*d*) within twenty-four hours of such notice, repair, protect or enclose in such manner as the municipality approve, any such source of water-supply other than a stream in its natural flow, if for want of sufficient repair, protection or inclosure, such source of water-supply is in the opinion of the municipality dangerous to the health or safety of the public or of any persons having occasion to use or to pass or approach the same, or shall

[4](*e*) desist from using and from permitting other to use for drinking purposes any such source of water-supply which not being a stream in its natural flow, is proved to the satisfaction of the municipality to be unfit for drinking; or

(*f*) if notwithstanding any such notice under clause (*e*) such use continues and cannot in the opinion of the municipality be otherwise prevented, close, either temporarily or permanently, or fill up or enclose or fence in such manner as the municipality consider sufficient to prevent such use, such source of water-supply as aforesaid;

(*g*) drain off or otherwise remove from any such source of water-supply, or from any land or premises or receptacle or reservoir attached or adjacent thereto, any stagnant water which the municipality consider is injurious to health or offensive to the neighbourhood.

(2) If the owner or person having control as aforesaid, fails or neglects to comply with any such requisition within the time required by or under the provisions of sub-section (1), the municipality may, and if in their opinion immediate action is necessary to protect the health or safety of any person, shall at once proceed to execute the work required by such notice, and all the expenses incurred therein by the municipality shall be paid by the owner of, or person having control over, such water-supply, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII;

[5]Remedy on non-compliance with directions issued.

[6]Provided that in the case of any well or private stream or of any private channel, tank or other source of water-supply, the water of which is used by the public or by any section of the public as of right, the expenses incurred by the municipality or necessarily incurred by such owner or person having such control, may, if the municipality so direct, be paid from the municipal fund.

1 **Origin of section.**—This was not in the old Act which only had sec. 135 as the provision on this subject which is now very much more amplified in this section.

See sec. 126, Panjab Act. Sub-section (1) (*a*) (*b*) and (*c*) are taken with somewhat altered wording from Madras Act, sec. 156 (1). See the Police Act, sec. 39 (1) (*k*).

Clause (*g*) is taken from sec. 228 (2) of the Madras Act, clause (1) of which also provides for the cleaning and filling up of tanks and wells.

2 **Written notice.**—See note 9 sec. 113.

3 **Repair, protect, enclose water-supply.**—This clause is adopted from sec. 185 of the Madras Act.

Compare the Bengal Act, sec. 209, which provides for the securing of dangerous wells, &c, and for a temporary board or fence being, if necessary, forthwith put up by the municipality, and notice given to owner or occupier to secure, &c., within 7 days.

The municipality of Howrah enclosed a tank, alleged to be dangerous to passengers under sec. 76, Act III of 1864, and sued the owner for Rs. 117, the costs incurred. The Court of first instance awarded Rs. 30 only on the ground that a very expensive enclosure had been put up. On appeal, the High Court granted a decree for the full amount claimed and held that the municipality must be authorised to execute the necessary repair, &c., in a sufficient and durable manner, and that, provided the expenses they incur is made out and does not exceed the bounds of reason, they are entitled to recover.—*Unreported case.*

The municipality sued to recover expenses incurred in cleaning a tank belonging to defendant. *Held* that even if the rates charged were higher than those which could be obtained by other persons, the Court could not interfere with the wide discretion which the municipality had in the matter provided that they were incurred. (*In re Jogesh Chunder Dutt*, (1874) 16 W. R. 285.)

It is not strictly legal for a municipality to order the owner of a well to protect it, under sec. 74, C. P. Municipal Act 18 of 1889, unless it were dangerous to persons passing by or dwelling or working in the neighbourhood. (*Imp.* v. *Zorawar*, 5 C. P. 57.)

Under section 133 Criminal Pro. Code 1898 a District Magistrate &c., may make an order for the fencing of any tank, well or excavation adjacent to any way, river, or channel which is or may be lawfully used by the public, or in any public place, so as to prevent danger arising to the public.

4 **Prohibition of drinking water from water-supply.**—This and the next clause are taken from Madras Act section 156 (2) which refers to water-supply "unfit for drinking, bathing or washing clothes."

People cannot be prevented from drinking dangerously impure water from a prohibited well, but under this section, as also under the special powers given by section 144 (2) (*c*), the removal of water for drinking may be prohibited and if necessary further action taken under clause (*f*). The terms of the section give the municipality a very wide discretion and would seem to include even cases where the injury arises, not from the act of the owner, but from the act of the public who may use the water even though against the wishes of the owner. The likelihood of injury to health from whatever cause would seem to justify action under this section. See G. R. 2479 of 26 June 1889, Gen. Dep., where a different opinion was expressed under the old Act which did not contain such provisions nor did it define 'nuisance.'

The prohibition by written notice under this section is to the 'owner or other person' having control from drinking or allowing others to drink the water, the prohibition under section 144 (2) (*c*) is to the public not to use the water.

5 **Municipal action in event of non-compliance.**—The owner, &c., is also liable to punishment for non-compliance under section 155.

6 **Private wells, &c., used by public.**—This is taken from Madras Act V of 1884, sec. 99. The marginal note should be "Private sources of water-supply used by the public."

121. (1) Whoever displaces, takes up, or makes any alteration in the pavement, gutter, flags, or other materials, of any public street, or the fences, walls, or posts thereof, or any municipal lamp, lamp-post, bracket, water-post, hydrant, or other such municipal property therein, without the written consent of the municipality, or other lawful authority, shall be punished with fine which may extend to one hundred rupees.

[1]Displacing pavements, &c.

Penalty for failure to replace after notice.

(2) Any person who, having displaced, taken up or made alteration in any such pavement, gutter, flags, or other materials, or in the fences, walls, posts, municipal lamps, lamp-posts, brackets, water-posts, hydrants, or other municipal property of any public street, shall fail to replace or restore the same to the satisfaction of the municipality after notice to do so, shall be punished with fine which may extend to fifty rupees, and shall pay any expense which may be incurred in restoring the street, and such expense shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

1 **Displacements of pavements, &c., of public streets.**—This is section 47 of the old Act of 1873, somewhat amplified. See Bombay City Act, secs. 322 to 325; Madras Act, section 168.

The penalty would be incurred even in cases where the displacement, &c., had been made with permission.

Restoration of the street can be carried out by the municipality under section 154 (6).

[1]Obstructions and encroachments upon public streets and open spaces.

122. (1) Whoever in any place after it has become a municipal district, [2]shall have built or set up, or shall build or set up, any wall or any fence, rail, post, stall, [4]verandah, platform, plinth, step, or any projecting structure or thing, or other encroachment or obstruction, in any [5]public street, or shall deposit or cause to be placed or deposited any box, bale, package or merchandise, or any other thing in such street, or in or over or upon any open drain, gutter, sewer, or aqueduct in such street, shall be punished with fine which may extend to twenty-five rupees.

[6](2) The municipality shall have power to remove any such obstruction or encroachment, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any [3]open space not being private property, whether such space is vested in the municipality or not, provided that if the space be vested in His Majesty the permission of the Collector shall have first been obtained, and the expense of such removal shall be paid by the person who has caused the said obstruction or encroachment, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

[7](3) Whoever, not being duly authorised in that behalf, removes earth, sand or other material from, or makes any encroachment in or upon, any [3]open space which is not private property, shall be punished with fine which may extend to fifty rupees, and, in the case of an encroachment, with further fine which may extend to ten rupees for every day on which the

encroachment continues after the date of first conviction for such offence.

[8](4) Nothing contained in this section shall prevent the municipality from allowing any temporary occupation of or erections in any public street on occasions of festivals and ceremonies, or the piling of fuel in by-streets and spaces for not more than four days, and in such manner as not to inconvenience the public or any individual.

(5) Nothing contained in this section shall apply to any projection duly authorised under sub-section (1) of section 113, or in any case where permission has been given under sub-section (4).

1 **Origin of section.**—Sub-sec. (1), (2) and (4) are reproduced from sec. 48 of the old Act of 1873.

See sec. 92 which provides for the removal of all such external projections at any time and all other projections and encroachments when the building is burned, fallen or taken down.

Compare sec. 113 which applies to projections *from buildings* on public streets, whether before or after the land became a municipal district; whereas this section applies to *all* obstructions, &c., in such streets, *after* inclusion in a municipal district.

See the corresponding sections 312 and 313 of the Bom. City Act, which however apply to 'any street' and not only to a 'public street.' Compare Bengal Act, sec. 202, and Police Act, sec. 39 (1) (*d*) (*g*), 61 (*f*), 53 (1) (*a*).

Obstruction &c. must be proved before conviction.—A notice was issued under section 215, Bengal Act V of 1876 (corresponding to section 202, Bengal Act), requiring A to remove an alleged obstruction. The notice not being complied with, A was prosecuted under section 216 before a Magistrate. *Held* that the Court had power to enquire whether the alleged obstruction was, in point of fact, an obstruction or not (I. L. R. 9 Calcutta 38, *The Municipality of Dacca* v. *Someer*.) This ruling was in spite of the fact that A omitted to prefer the objection which he could under section 180 of the Act have made in the first instance. See note 1 section 119, notes 4 & 6 section 131 and other rulings, sec. 161.

Limitation of suits for encroachments.—Article 146 A of the second schedule to the Indian Limitation Act, 1877, gives thirty years from the date of dispossession or discontinuance for a suit by or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.

This enactment was in consequence of the decision in I. L. R. 19 Mad. 154, (*vide*, note 8 section 113) where it was held that local authorities, to whom the Crown has ceded the custodianship of public highways cannot claim, under Article 149 of the Limitation Act, the benefit of the sixty years' rule applicable to suits instituted by, or on behalf of, the Secretary of State for India in Council. There was a susbtantila consensus of opinion that, more especially in connection with encroachment upon highways, the position of the Crown and of local authorities as defined in section 3 (28) of the General Clauses Act, 1897, towards the immoveable property entrusted to them is similar though not identical. While the difficulty of detecting gradual and insidious encroachments is in both cases greater than that experienced by a pryiate individual, the highways supervised by a local authority ordinarily lie in a narrower compass, and are consequently more easily controlled, than the wide and often unoccupied areas forming portion of the Crown-lands. Under these circumstances a preponderating opinion has been expressed in favour of extending the period of limitation, from twelve years as enjoyed by private individuals, to thirty in the case of a local authority."

Time limit for suit by municipality to recover land encroached on.—The municipality sued to recover a strip of land covered by a *pial* and pavement in front of defendant's house on a public street, and which had been erected at least 45 years before the suit and 18 years before the municipality existed. The municipality claimed the land as being originally a part of the public street which was vested in the municipality. *Held* that whether or

not the land did originally form part of a public street, defendant by adverse possession for over 12 years (Article Limitation Act) had acquired a legal title to the land and the suit was barred. A corporation is not entitled to claim the benefit of Article 149 of the Limitation Act which gives 60 years for a suit brought by or on behalf of the Secretary of State. The municipality did not stand in the shoes of the Secretary of State, for when the Crown has once ceded its property to an individual or corporation, it does not also cede at the same time any right or privilege inherent in the Sovereign Power.

The English maxim "once a highway always a highway" is based on the theory that the property in a highway is in the owner of the soil subject to an easement in favor of the public. In the present case the legal fiction peculiar to English law cannot arise, for there is no question of easement whatever. The street itself and the soil thereof is vested in the municipality in trust for the public, so that there is no question of a dominant or servient heritage. Both are united in the same person, the proprietor, and the municipality, no more than a private proprietor, is not exempt from the consequences of its own laches. The principles laid down in *Maun* v. *Brodie.* (L. R., 10 App. cases, 387) are entirely applicable. This is not a continuing wrong, but a completed trespass. There is no evidence of any user by the public as a highway of this portion covered by the pavement and pial. (*The Municipial Commissioners of Madras* v. *Sarangavani Mudaliar*, I. L. R. (1895) 19 Mad. 154.)

Note.—In I. L. R. 25 Mad. 635 (note 7 s. 113) it was said that if this decision is to be understood as proceeding upon the supposition that the site and soil of streets vested in the municipality which thereby became the proprietor in trust for the public this was wholly irreconcilable with the decisions both English and Indian.

I. L. R. 38 Mad. 6 (*Ibid*) says that the decision in this case was that the street, which on the findings must be taken to include the drain, was vested in the municipality for the purposes for which the Board was constituted. Their right was not a mere right of easement but was a special kind of property in the site previously unknown to the law but created by statute This was also the view in *Rolls* v. *Vesting of St. George the Martyr Southworth* (1880) 14 Ch. D., 785.

Municipality cannot sell the land encroached upon.—A person in re-building his house built upon land which was part of a public street. After 5 years delay the municipality took no action and eventually decided to sell the land so encroached upon to the person, as apparently to take action with a view to the removal of the encroachment would affect the stability of the building and this was not considered expedient after all the delay that had taken place.

The Legal Remembrancer said that, following the opinions expressed in G. R. 2875 of 3 April 1886 and G. R. 1890 of 13 March 1891, the municipality had no power to sell the land encroached upon. All it can do is to require the removal of the encroachment. If this was considered inexpedient under the circumstances above set forth, the alternative was to let matters be. (G. R. 2461 of 10 July 1891. Gen. Dep.) See note 2 sec. 50, and note 4 sec. 90.

Land encroached on cannot be resumed by Government.—On the question whether Government can resume Government lands vested in a municipality for a public purpose when the use for that purpose has ceased the Legal Remembrancer replied in the negative saying:—

"There is no provision in the Act allowing such resumption. All public streets are vested in the municipality, and belong to the municipality, and it is laid down that they shall be held and applied by them as trustees subject to the provisions and for the purposes of this Act. Section 90 (1) lays down what is to be done when land formerly used by the municipality for the purpose of a street is no longer required for any public street or other purpose of this Act. Such land may be sold, subject to the sanction of the Commissioner. There being this definite provision for dealing with land which originally vested in the municipality under section 50 (2) as a public street, it cannot be held that Government have a general power to resume. If the municipality abuse this or any other of their powers, Government have a remedy under section 179 of the Act. G. R. 448 of 17 January 1912 Gen. Dep. accordingly ruled that no sanction could be given to any such sale. Usually the Commissioner should insist on the fining of the encroacher and removal of the encroachment but in cases where this was clearly inexpedient matters should be allowed to remain as they were without being regularised in any way."

N. B.—But see I. L. R. 25 Mad. 635; 38 Mad. 6, and 38 Mad. 456, noted sec. 113 page, as to the effect of an encroachment in a public street acquired by adverse possession.

Encroachment on public streets must be dealt with by the municipality under the Act and not by Government under the Revenue Code.—In G. R. 447 of 17 Jany. 1912 Rev. Dep. the Legal Remembrancer expressed the opinion that in a municipal district public streets, except such as are reserved by Government under sec. 50 (2) of the Act, vest in the municipality and

therefore must be considered to be 'alienated' so that the provisions of section 61 of the Land Revenue Code as to eviction of encroachers by the Collector were inapplicable. Sec. 122 of the Act provides for unauthorised occupation of municipal lands and there is no provision giving power to the Collector to proceed against such encroachments under the Land Revenue Code.

Powers of District Magistrate under Crim. P. Code.—The Criminal Procedure Code provides for action being taken by the District Magistrate, &c., for the removal of any unlawful obstruction or nuisance from any way river or channel which is or may lawfully be used by the public, or from any public place.

Obstruction to private individual's right of way.—In the case of a public road, a private action cannot be maintained in respect of an obstruction to it by a person unless he suffers particular damage beyond what is suffered by him in common with all other persons affected by the nuisance. I. L. R., 31 A. 444; 6 A. L. J. 499; 2 Ind. Cas. 365; 2 B. 469 referred to.

The stopping of a public road and thereby rendering it necessary for a person to make a detour is such special damage as justifies him in instituting a suit for the removal of the obstruction. 13 Jones Reports 156; 1 H. and N. 369; 26 L. J. Ex. 57 referred to. (*Ramchandra* v. *Joti Parshad*, 8 A. L. J. 19; 1910, 8 Ind. Cas. 808.)

2 **"Shall have built or set up, or shall build or set up."**—These words had been substituted for the words "shall build, or erect, or set up" in the old Act, sec. 48, of which was held (*Kahi Govind* v. *The Municipality of Thana*—I. L. R. 23 Bom. 248), to refer to the erection of a thing for the first time, and not to the erection of an old structure which had been taken down for a temporary purpose only. In that case, the ruling in which is no longer applicable, the accused was the owner of a shop in a public street at Thana. The shop had planks attached to it in front, overhanging a public gutter. These planks had been in existence before the District Municipal Act came into operation at Thana. In April, 1897, the planks were temporarily removed under the orders of the plague authorities. The plague having ceased, the accused replaced the planks in October 1897, without permission of the municipality, and was convicted.

"*Held*, reversing the conviction—that the refixing of the planks was not an "erection" within the meaning of the Act.

For this reason the following also no longer apply:—Bom. H. C. Crim. ruling No. 63 of 30 Aug. 1888. *Imp.* v. *Tipanna bin Shidapa. Krishnaji Narayen* v. *Municipality of Tusgaon.* I. L. R. 18 Bom. 547. So also the rulings under sec. 204 Bengal Act which only applied to erections in the future. *Eshan Chander* v. *Banhu Behari Pal*, I. L. R. 25 Cal. 160.

The section now makes punishable the re-erection of even an old projection or obstruction existing prior to the birth of the municipality.

If it is not re-erected it may be dealt with under sec. 92 if there is a regular line of a public street or under sec. 113.

The ruling in 6 Ind. Cas. 431 (noted s. 175) does not apply as it is under s. 67 (1) Central Provinces Municipal Act 1903 which is similar to the section in this old Act.

3 **Open space.**—See note 7, sec. 54.

As this marginal note applies only to sub-sec. (1), the words "and open spaces" should be expunged.

The words "open space not being private property" in sub-sec. (2) though exempting such obstruction &c. from the operation of this section, they would nevertheless come under sec. 96 which see and notes thereto.

The expression 'private property' does not imply that all the rights of ownership are vested in a private individual, otherwise a lessee from Government for 999 years would be liable to eviction by a municipality.

4 **"Verandah, platform, plinth, projecting structure."**—There words were not in the old Act. They are apparently wide enough to include 'otas,' 'otlas,' dikis, &c.; but sec. P. J. 1894, 427 note 3 s. 92.

Moveable step in front of house in public street an obstruction and a continuing offence.—"Sec. 48 of Bom. VI of 1873 extends to structures which, though moveable, are intended and adapted to stay or stand by themselves till removed by human agency, such as a moveable step in front of a house to enable persons coming out of it to step down into the street. And the sanction is not limited to structures which project so as to cause obstruction. The bare fact of the structure being in the street constitutes the offence.

The implied permission of a municipality under section 33 justifies only such erections as are not in any respect contrary to the provisions of the Act, and would not legalise any structure penalised under section 48.

On the plea of time bar being raised in a prosecution for an offence under section 48 for putting up a moveable step in front of a house.

Held that the offence was committed every time the step was set up, and a prosecution for it under section 82 of the Act was not barred, unless it was shown that it had not been set up within 3 months before the institution of the prosecution. (*Imp.* v. *Rozarimal.* S. S. C. Rep., Vol. I. Crim. Rul. p. CXII.)

Projecting structure.—See note 1 sec. 113. The erection of a shop board projecting to a distance of 3 feet 5 inches into the street was held punishable (*Queen Empress* v. *Jamnadas*, Bom. H. C. Cr. R. 45 of 1894). The Judges remark "The Municipal Act is intended to check many offences, petty in their nature, but which may cause grievous injury to the neighbourhood as by facilitating fires or serious annoyance as when a house-holder blocks up a street. The sentences passed ought not only to be punitive, but also deterrent, and the fine should also bear some proportion to the amount awardable by the law. Fines of from two annas to eight annas do not fulfil these conditions at all. The District Magistrate points out that the fines of this sort merely hamper the municipality, and the Court is of opinion that they have a tendency to increase the number of prosecutions to an extent which would be avoided if severe fines were inflicted in order to check the prevalent offences."

One projection to 2 parts of same shop is one offence.—"Accused was the lessee of a shop which had in front of it a projecting board along its entire length. He occupied a portion of this shop and sub-let the other portion to a tenant. A First Class Magistrate separately tried and convicted the accused under sec. 122 in respect of the projecting portion of the board relating to each compartment of the shop and sentenced him to fines of 5 and 3 Rupees, respectively. *Held*, that the Magistrate erred in trying the two cases as two distinct offences. The facts constituted only one offence, because they related to one board only. (*Imp.* v. *Atmaram Manor*, 1902, 4 Bom. L. R. 942; Bom. H. C. Cr. Ruling No. 20 of 1902.)

Obstruction placed under a projection.—Accused was convicted under sec. 31, Bom. VII of 1867, in respect of a box and 2 boards desposited on the public foot path. It appeared that these articles were placed under a fixed projection from accused's shop, in respect of which there was no complaint. *Held*, that because there was no such complaint as to the projection, was no ground for holding that the deposit of the said article was any the less an obstruction. (S. S. C. Crim. Rep. No. 114 of 1898.)

It was held under sec. 173 of the Madras Act that the depositing by any one of any article on the high road, except with permission, is an obstruction. The public are entitled to the whole width of the road unimpeded by any article deposited thereon. The deposit might not be very great, but in law it was an obstruction. (I. L. R. 11, Mad. 342, *Imp.* v. *Bolappa.*)

Carriage with horses attached.—Accused having allowed his carriage to stand half an hour on a public street thus causing obstruction to passers-by, was convicted and sentenced under this section and sec. 74. *Held* that a carriage, with horses attached, is not one of the things contemplated in this section 48; the conviction and sentence were therefore reversed. (Bom. H. C. Crim. ruling No. 11 of 24 Feb. 1887, *Imp.* v. *Ladha bin Kushaba.*)

Tethering cattle.—"The mere tethering of cattle on ground belonging to a municipality is not an offence under this section." (Sind S. C. Cr. No. 12 of 1902. *Imp.* v. *Tikio.*) But see sec. 137 note.

Fallen house, tree, &c.—Bengal Act, sec. 207, provides for the removal of any private house, wall, &c., or any tree fallen down and obstructing any public drain or highway, in default of the owner, and at his expense. This overrules the case 3 W. R. 33 under the old Act.

5 **'Public Street'.**—See definition, sec. 3 (13)

Held, that an open space of waste land belonging to a municipality, though a street within the meaning of sec. 3, (Bom. VI of 1873) is not a 'public street' within the meaning of Sec. 48. (*Reg.* v. *Ruman*, S. S. G. Crim. Rep. No. 6 of 1884.)

Erection of a 'landhi's or shed.—Such an erection comes within the more general words of clause (3) but the more specific and particular words of clause (1) cover the case. As a principle of construction the clause containing the more specific and particular words should be regarded as governing the case. (*Imperator* v. *Hasomal*, S. L. R., Vol. I. Crim. Cas. p. 88.)

6 **Sub-section (2).**—The marginal note should be "Removal of obstruction, &c., from public streets and open spaces."

This provision meets the objection raised in Sind Sadar Court Cim. Ruling No. 30 of April 1903 on this point under the old Act. These words "and shall have the like" to "first been obtained" were not in the old Act.

Removal.—The Act does not require issue of notice prior to removal. The Bengal Act, sec. 202 does, and moreover requires the order of removal to be made by a Magistrate, on the application of the municipality. Sec. 203 provides that if the person who erected the obstruction cannot be found, a notice may be put up in the neighbourhood of the obstruction requiring any person interested in it to remove it and on failure to do so, the Magistrate may order removal and costs recovered by sale of the materials.

This sub-section read with new sub-section (5) shows that both aerial and surface encroachments as contemplated also in section 113 are here referred to.

Removal not legal after acquittal of accused.—This power of removal could not be exercised where the person had been prosecuted under sub-section (1) and had been acquitted.

A municipality claimed a strip of land as part of the public road, and prosecuted accused for encroachment, but he was acquitted. The Municipal Officers next went to the place and tried to remove the goods stocked on the land, but were obstructed by accused. He was then prosecuted under sec. 186, Indian Penal Code. *Held*, he was not guilty, inasmuch as the existence of a *bona fide* dispute between himself and the municipality as to the land prevented his obstruction to the Municipal officers being wrongful. The Municipal Officer in acting wholly outside his authority was not discharging any public function, however honest his intentions might have been. *Queen-Empress* v. *Sagan* (1888). Unrep. Cr. C. 336 followed. (*Emp.* v. *Shivdas Omkat* (1912) 15 Bom. L. R. 315.)

7 **Sub-section (3).**—This sub-sec. was not in the old Act. See Madras Act I of 1884 sec. 331.

The marginal note should be "Penalty for unauthorised removal of earth, &c., from or encroachments in open spaces."

Removal of earth, &c.—See note sec. 51, page 162.

Further fire.—See note sec. 94, page 270.

8 **Sub-section (4).**—The marginal note should be "Certain temporary erections &c., permissible." This sub-section was added by section 9 of the Amending Act of 1894, Section 48 (1) (*n*) provides for by-laws regulating the conditions on which such permissions may be given. See also sec. 70 and notes.

See Madras Act I of 1884, sec. 331 ; Panjab Act, sec. 87.

The Act does not provide for the hoarding and fencing of such obstruction, but this may, and should be provided in the by-laws under 48 (1) (*n*).

The Bengal Act, sec. 234, provides also for permission "to enclose the whole or any part of any road," provided provision is made for traffic, and hoards, fences and lights are put up.

"The fact that a person who is given permission for such temporary occupation undertakes to erect and light such fences, does not relieve the municipality from the legal liability for any damage which may result from his neglect to do so in an efficient manner.—(*The Corporation of the Town of Calcutta* v. *Anderson.* I. L. R. 10 Cal. 445.)

The first part of this sub-section up to "ceremonies," corresponds with sec. 317, Bom. City Act, and sec. 170, Madras Act.

For not more than 4 days.—G. R. 8555 of 5 November 1915 Gen. Dep. directed that these words should be read as applying only to the piling of fuel in by-streets and spaces and not to the temporary occupation of, or erection in, any public street, the duration of which was discretionary with the municipality. The concensus of opinion was that the sub-section is badly worded, and though opinion was divided as to the desireability of having any limitation even in the case of piling fuel (such being dealt with more appropriately under by-laws sec. 48 (1) (*n*)) it was generally admitted that this was undesireable in the other cases.

Neither sec. 317 Bom. City Act nor sec. 170 Madras Act, provide any limitation for such permissions.

9 **Sub-section (5).**—This is new and was added by sec. 9 of Bom. Act IV of 1904.

123. (1) Every person intending to build or take down any building, or to alter or repair the outward part of any building, in such a position or in such circumstances as that the work is likely to cause or may cause obstruction, danger or inconvenience in any street, shall before beginning such work,

[1]Hoards to be set up during repairs, &c.

[2](*a*) first obtain a license in writing from the municipality so to do, and

[3](*b*) cause sufficient hoards or fences to be put up in order to separate the building where such works are being carried on from the street, and shall maintain such hoard or fence standing and in good condition to the satisfaction of the municipality during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night, and shall remove the same when directed by the municipality.

[4](2) Whoever contravenes any of the provisions of this section shall be punished with fine which may extend to fifty rupees, and with further fine which may extend to ten rupees for every day or night, as the case may be, on which such contravention continues, after the date of the first conviction.

1 **Licenses for, and hoards, &c., during repairs, &c.**—This section is a re-enactment of section 49 of the old Act of 1873, with some slight alterations. Compare sec. 326, Bombay City Act, and sec. 171, Madras Act. See Police Act, sec. 39 (1) (*b*).

The Bombay City Act applies only to "any case in which the *foot-way in any adjacent street* will be thereby obstructed, &c." Madras Act, section 171, provides "where *any street or foot-way* is likely to be obstructed, &c." Bengal Act, section 235, "if any public road will be obstructed or rendered inconvenient."

2 **License.**—See section 70 and notes.

This license is not necessary where permission, implied or express, is given for the erection of a new building under section 96. See I. L. R. 29 All. 737, noted page 282.

3 **Hoards, fences, &c.**—The Bombay City Act adds "that in addition to the hoards there shall be a convenient platform and hand rail, if there be room and this be considered desirable, as a foot-way outside such hoards, &c."

4 **Penalty.**—The marginal note should be "Penalty." See "Contents."

Continuing offence.—This last sentence is taken from the old Act, section 74, but the words "or night" are new. See section 94, note 3, page 270.

124. (1) The municipality shall, during the construction or repair of any of the streets, sewers, drains or other premises vested in them, take proper precaution for guarding against accident, by shoring up and protecting the adjoining buildings, and shall cause such bars, chains, or posts to be fixed across or in any of the streets to prevent the passage of carriages, carts, or other vehicles, or of cattle or horses, while such works are carried on, as to them shall seem proper; and the municipality shall cause any sewer or drain or other works in streets, during the construction or repair thereof, to be lighted with a sufficient light and guarded during the night.

[1]Fencing and lighting during repairs, &c.

[2](2) Whoever takes down, alters or removes any of the said bars, chains or posts, or removes or extinguishes any such light, without the authority or consent of the municipality, shall be punished with fine which may extend to fifty rupees.

1 **Origin of section.**—This is a re-enactment of sec. 50 of the old Act, and corresponds with sec. 172, Madras Act, and sec. 321 of the Bom. City Act. See also the provisions of that Act, sec. 318 and 320 as to restoring street without delay and providing for traffic.

2 **Penalty.**—This should be the marginal note.

125 (1) No person shall, without the written [2]permission of the municipality or otherwise than in accordance with such conditions as may therein be prescribed, make a hole in any street or erect or deposit thereon, any timber, stone, brick, earth or other material that has been, or is intended to be, used for building; and such permission shall be terminable at the discretion of the municipality; and when such permission is granted to any person, he shall, at his own expense, cause such materials or such hole to be sufficiently fenced and enclosed until the meterials are removed, or the hole is filled up or otherwise made secure, to the satisfaction of the municipality, and shall cause the same to be sufficiently lighted during the night.

[1]Timber not to be deposited or hole made in a street without permission.

[3](2) Whoever contravenes any of the provisions of sub-section (1) shall be punished with fine which may extend to twenty-five rupees, and with further fine which may extend to ten rupees for every day or night, as the case may be, on which such contravention continues, after the date of the first conviction.

1 **Origin of section.**—This is sec 51 of the old Act re-enacted, with some slight alterations; and corresponds with sec. 173, Madras Act. Compare also sec. 87 of the Panjab Act. The marginal note should read "Timber, &c., not to be deposited" &c. See Police Act, sec. 39 (1) (*g*), 40.

2 **Permission.**—See sec. 70 and notes.

The words "or otherwise * * * be prescribed," were not in the old Act. These will be prescribed by by-laws, under sec. 48. (1) (*n*).

Person doing the act, not his employer liable.—Where a person had a permit for the deposit of building materials within a certain area, but the contractor employed by him stored things outside that area, and the person was convicted under sec. 125, *Held*, that he could not be responsible for the criminal act of his contractor, who or the offending cartmen should have been prosecuted. (*Crown* v. *Tyabji Mulla Mahomed Bhoy*, II S. L. R. 15.)

3 **Penalty.**—The marginal note should be "Penalty."

Further fine.—See sec. 94, note 3 p. 270.

126. If in the opinion of the municipality the working of any quarry, or the removal of stone, earth or other material from the soil in any place, is dangerous to persons residing in or having legal access to the neighbourhood thereof, or creates or is likely to create a nuisance, the municipality may, by written notice, require the owner of the said quarry or place, or the person responsible for such working or removal, not to continue or permit the working of such quarry or the removing of such material, or to take such order with such quarry or place as the municipality shall direct for the purpose of preventing danger or of abating the nuisance arising or likely to arise therefrom:

[1]Dangerous quarrying.

Provided that if such quarry or place is vested in His Majesty, or if such working thereof or removal therefrom as aforesaid is being carried on by or on behalf of Government, or any person acting with the permission or under the authority of Government or of any officer of Government acting as such, the municipality shall not take such action unless and until the Collector has consented to their so doing :

Provided further that the municipality shall immediately cause a proper hoard or fence to be put up for the protection of passengers near such quarry or place, if in any case referred to in this section it appears to them to be necessary in order to prevent imminent danger, and any expense incurred by the municipality in taking action under this section shall be paid by such owner or other person as aforesaid, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

1 **Origin of section.**—This section was not in the old Act. It, with the exception of the provisos, is a reproduction of section 382 of the Bombay City Act. Section 52 of the old Act of 1873 applied to any place dangerous to passengers. See section 119 as to dangerous, &c., buildings.

The Panjab Act, section 144, provides for by-laws regulating or prohibiting in hilly tracts, excavation or removal of soil or quarrying in certain circumstances.

Bengal Act, section 232, provides for the prohibition of "making of excavations for taking earth or stone therefrom, or for storing rubbish or offensive matter therin, and the digging of cesspools, tanks or pits without special permission," and for requiring such excavations, &c., to be filled up.

No suit will lie against the Commissioners for damage alleged to arise from a refusal to permit excavation of a tank, (*Bhyrub Chander Banerji* v. *Makgill*, 215. C. R., 17 W. R.)

"*In the opinion of the municipality*:—See note 6 section 131, note 18 p. 283 and note 1 p. 321.

Written notice.—See note 9 s. 113.

Quarry.—"A place, cavern or pit where stone is taken from the rock or ledge, or dug from the earth, for building or other purposes; a stone-pit." (Webster.)

A quarry-hole, not being a tank (*vide* sec. 50 (1) (*b*)) does not vest in a municipality in the absence of an express grant. See notes to sec. 70 page 236.

Nuisance.—See definition sec. 3 (15).

(6)—*Powers for the prevention of nuisances.*

127. (1) Whoever deposits, or causes or suffers any member of his family or household to deposit any dust, dirt, dung, ashes, garden, kitchen or stable refuse, or filth of any kind, or any animal matter, or any broken glass or earthen-ware or other rubbish, or any other thing that is or may be a [2]nuisance, in any street or in any arch under a street, or in any drain beside a street, or on any [3]open space or on any quay, jetty or landing-place, or on any part of the sea-shore or the bank of a tidal river, whether above or below high-water mark, or on the bank of any river, water-course or nullah,

[1]Depositing dust, &c.

[4]except at such places, in such manner, and at such hours as shall be fixed by the municipality, and whoever [5]commits, or suffers any member of his family or house-hold to commit, nuisance in any such place as aforesaid, shall be punished with fine which may extend to twenty-five rupees.

[6](2) Whoever throws or puts, or causes or suffers any member of his household to throw or put, any of the matter above described, or, except with the permission of the municipality, any night-soil into any sewer, drain, culvert, tunnel, gutter or water-course, and whoever commits nuisance, or suffers any member of his family to commit nuisance, in any such drain, culvert, tunnel or water-course, or in such close proximity thereto as to pollute the same, shall be punished with fine which may extend to twenty-five rupees.

1 **Origin of section.**—This section is reproduced from sec. 53 of the old Act of 1873, with some slight alterations. It is on the lines of sec. 152 of the Panjab Act which applies to "any street or place or any public sewer or drain communicating therewith."

Compare sec. 219 of the Madras Act which provides for punishment of improper disposal of such filth "after due provision has been made by the municipality for disposal and removal of the same." That section also applies to a deposit "on the verandah of any building, or any unoccupied ground alongside of any street, or without the consent of the owner or occupier thereof, in or any private property."

See also sec. 372 (*c*), Bom. City Act, and section 39 (1) (*i*), Police Act, which makes similar acts punishable under certain circumstances. See Penal Code, sec. 291.

Whoever.—The person who actually deposits, &c. or causes or suffers any member of his family or household to deposit, &c., is the only person liable under this section.

Under sec. 67 of the Bengal Act III of 1864, the *owner* of his ground was held to be answerable, whether the ground was made dirty by himself or some one else. (Anon. 3, W. R. Cr. 33.)

The *owner* is punishable if his land is made filthy by nuisance committed by other persons. But if he has let his land to others the *actual occupiers* of the land are liable. (*Purbuthy Churn* 3, W. R. 57.) See note 1, sec. 128.

Sec. 373, Bom. City Act, provides that if it shall in any case be shown that such matter has been deposited therein, &c., it shall be presumed, until the contrary is proved, that the said offence has been committed by the *occupier* of the said building or land.

"*Member of family or household.*"—*Held*, that cattle are not members of a family or household within the meaning of clause I of this section, and that the accused was wrongly convicted for having tied his bullocks near the drain in front of his house so as to allow their dung, &c., to drop there. (Bom. H. C. Crim. Ruling No. 78 of 27 Sept. 1888. *Imp.* v. *Hari Khusal.*)

The Panjab Act says "permits his servants or members of his household under his control."

2 **Nuisance.**—See definition, sec. 3 (15).

This sentence "or in any arch under * * * or on any open space" was not in the old Act, hence the ruling in *Imp.* v. *Digambar Khandu.* Bom. H. C. Crim. Ruling No. 24 of 3 July 1890 that to obey the call of nature elsewhere than in a street is not an offence against this section, does not now apply.

Suit by 3rd parties for nuisance.—Under the Municipal Law no private person can claim a right to foul an ordinary drain by discharging into it what it was not intended to carry off.

Where the defendant, the owner of a shellac factory, discharged into the municipal drain, which was not constructed or intended for carrying off such stuff, refuse liquid of an offensive character, which interfered with the ordinary comfort of the plaintiff's occupation of property and caused him special injury, *Held*, that the plaintiff was entitled to restrain

him. *St. Helen's Smelting Company* v. *Tipping* ((1865) 11 H. L. C. 642); *Crump* v. *Lambert* ((1867) L. R. 3 Eq. 409) referred to.

Where, moreover, the defendant discharged the liquid into the drain knowing from the condition of the drain and the nature of the liquid that it could not be efficiently carried away, but must stagnate, decompose and create a nuisance: *Held*, that the defendant must be responsible for the necessary consequences of his action, and was not entitled to shift the responsibility on to the municipality by contending that, if the latter would improve the drain, there would be no nuisance. *Ogston* v. *Aberdeen District Tramways Company* ((1897) A. C. 111) referred to.

Held also that an injunction for the permanent stoppage of the nuisance was the only effectual remedy in the case. Substantial damages should be awarded against a defendant, who has persisted in a nuisance causing material injury to the plaintiff. (*Galstaun* v. *Doonia Lal Seal* I. L. R. (1905) 32 Cal. 697.)

The fact that the drain is fouled by others is not a defence to a suit to restrain the fouling by the defendant. *St. Helen's Smelting Co.* v. *Tipping*; *Crossley & Sons* v. *Lightenter* (1867) L. R. Ch. 478), even if the Act of any one of them taken singly does not amount to a nuisance, *Laubtion* v. *Mellist* ((1894) 3 Ch. 163.) It is not necessary to show that it was injurious to health, it is enough to show that the house cannot be comfortably occupied, *Walter* v. *Selfe* ((1851) 4 De. G. and Sm. 315); offensive odour alone is sufficient. *Crump* v. *Lambert*; *Rapier* v. *London Tramways Co.* ((1893) 2 Ch. 588).

3 **Open space.**—See note 1 sec. 54. This doubtless refers to other than private property.

Depositing dust on the back-ground of one's own house is not punishable under sec. 53, since it is not deposited in "any street * * river, &c." (*Imp.* v. *Sham* Bom. H. C. Cr. Ruling No. 37 of 1889.) Nor within the meaning of "open space."

If however the deposit is such as is referaed to in sec. 136 it must be done with permission.

4 **"Except * * * fixed by the municipality."**—This may be done by by-laws under section 48 (1) (*m*) "regulating sanitation and conservancy." See the Bombay City Act, sections 365—372 as to scavenging and cleansing. The duty of occupiers to collect and deposit dust, &c., and collect and remove excrementitious and polluted matter accumulating on premises is laid down. The ruling in I. L. R. 23 Mad. 164 has no application to this Act.

5 **"To commit nuisance."**—The nuisance here referred to is something different from nuisance caused by depositing any of the things mentioned in the first part of this sub-section. It ordinarily means obeying a call of nature.

6 **Sub-section (2).**—Compare with section 224, Madras Act.

The marginal note should be "Throwing dust, &c., or night-soil into sewers, &c."

A proposal to insert a word qualifying "permission" such as "specific" or "written" was not adopted.

128. Whoever causes or allows the water of any sink or sewer, or any other liquid or other matter which is, or which is likely to become offensive, from any building or land under his control, to run, drain, or be thrown or put upon any street or [2]open space, or to soak through any external wall, or causes or allows any offensive matter from any sewer or privy to run, drain or be thrown into a [3]surface drain in any street, without the permission in writing of the municipality, or who fails to comply with any condition prescribed in such permission, shall be punished with fine which may extend to twenty-five rupees.

[1]Discharging sewage, &c.

1 **Origin of section.**—This is section 54 of the old Act of 1873, with some slight alterations.

The section seems to contemplate 2 cases; (1) allowing, &c., offensive water, &c., to run, &c., into street, &c., or soak through external wall; (2) allowing offensive matter from a sewer, to run, &c., into surface drain or any street without permission, or failing to comply with conditions of permission.

Compare Panjab Act, sec. 153, which saps "knowingly or negligently allows."

Whoever.—The Madras Act, sec. 222, in place of "whoever" says "every occupier of a building or land."

The Bom. City Act, sec. 372 (*f*), says "the owner or occupier of any building or land."

Is owner or tenant liable? In the case of *Abhoy Charandas* v. *Municipal Ward Inspector*, (I. L. R. 25, Cal. 625) decided under the Calcutta Act, it was held "If a person grants a lease of his land or house, he can have no direct possession of, or control over the same; and if the lessee thereafter, without taking any license, keeps any animals on the premises the penalty for doing so ought in reason and justice to attach to the lessee and the lessee alone. The penalty attaches to the owner for permitting animals to be kept thereon when he has direct possession of the land in question, but not when he has leased the same to another." See note 1, sec. 127, and note 1 sec. 129.

Liquid or other matter likely to become offensive.—In *re Gulabdas* I. L. R. 20, Bom. 83, it was held that for a conviction, the liquid must be 'offensive' and run into a public street, but the alterations now made in this section by the new words "or which is likely to become," and "or open space," extend the provisions.

The wording under the old Act was "any other offensive liquid or other matter."

"*Any building or land under his control*" is substituted for "his premises or his land" in the old Act.

Offence committed though no municipal drain provided.—Under the corresponding secton 222, Madras Act, it was held that it was not essential to a conviction that the municipality should have supplied side drains in the street. The municipality are not bound to provide drains, whereas every person is bound to keep his offensive liquid from running into the street. (*Imp.* v. *Sevudappayyar*, I. L. R. 15, Mad. 91.)

The obligation imposed on house-owners by section 222 of the Madras Act, of not letting dirty water pass into the street is not conditional on the existence of drains made by the municipality.

The hardship which may be inflicted on house-owners where the municipality has provided no drains is a matter to be considered in graduating the penalty. I. L. R. 15 Mad. 91 followed. (*Emperor* v. *Nagan Chetty*, I. L. R. ((1906) 30 Mad. 221; 17 Mad. L. J. 372.)

2 **"Or open space."**—These words are new. See note 7, sec. 54. The provision as to failure to comply with conditions of permission were not in the old Act.

3 **"A surface drain in any street."**—This section is very similar to section 270 of the Bengal Act where the corresponding expression is "a surface drain near any road." *Held* that this must refer to a road or drain belonging to the municipality and no by-law under the section could authorise the municipality to interfere with the use of any private drain by a private individual. (*Mahesh Chandra Pandey* v. *Basanta Kumari Das* (1905) 10 C. W. N. 667.)

See section 50 (2) (*e*) which vests all drains * * * in alongside or under any street" in the municipality.

Municipality liable for damage by drain—contributory negligence.—In a suit against a municipality for damages for injury to plaintiff's wall, it was found that the damage was contributed to by plaintiff's letting his domestic refuse water into the drain and so caused corrosion and pressure on the walls. The damage not being caused solely by any acts or omission of the defendants, *held* plaintiff was not entitled to any relief. (*The Karur Municipal Council* v. *K. Srinivasa Aiyangar* (1904) 14 Mad. L. J. 466.)

129. Whoever, being the owner or occupier of any building or land, keeps or allows to be kept for more than twenty-four hours, or otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil, filth or any noxious or offensive matter, in or upon such building or land, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to remove the filth from, and to cleanse and purify, such receptacle, or keeps or allows to be kept in or upon such building or land any animal in such a way as to cause a nuisance, shall be punished

[1]Non-removal of filth, &c.

with fine which may extend to twenty-five rupees, and with further fine which may extend to five rupees, for every day on which such offence is continued, after the date of the first conviction.

1 **Origin of section.**—This is sec. 55 of the old Act re-enacted, and is—the first half only—on the lines of sec. 154 of the Panjab Act which extends the fine to Rs. 50, but does not provide for a continuing breach. Compare Madras Act, sec. 221, Bombay City Act, sec. 372 (*a*).

"*Owner or occupier.*"—See notes 4 and 5 sec. 63, note 2 sec. 131, and note 1, sec. 128.

The Madras Act refers to "occupier" only. So does the Bengal Act, sec. 217.

"The occupier who suffers the land to be in a filthy state is liable, because the words "owner and occupier" only qualify the main proposition which is "whoever suffers any house building or land in or near any public highway to be in a filthy state." Therefore when the land has been leased by the owner to some one else who is the occupier, the municipality ought to proceed against the occupier." (*Queen* vs. *Brojo Lal Mitter*, 8 W. R. Crm. Ruling 45.)

"*Allows*"—The Panjab Act says "knowingly or negligently allows.

'*Proper receptacle.*'—A municipality cannot insist upon a particular kind of receptacle but may notify what they will consider to be proper.

Nuisance.—See s. 3 (15).

Further fine.—See note 3 page 270.

130. (1) The municipality may, from time to time, fix the hours within which only it shall be lawful to remove any night-soil or other such offensive matter.

[1]Removal of night-soil.

(2) Whoever,

(*a*) when the municipality have fixed such hours, and given public notice thereof by beat of drum, removes, or causes to be removed, along any street any such offensive matter at any time except within the hours so fixed, or

(*b*) at any time, whether such hours have been fixed by the municipality or not,

(i) uses for any such purpose any cart, carriage, receptacle or vessel not having a covering proper for preventing the escape of the contents thereof, and of the stench therefrom, or

(ii) wilfully or negligently slops or spills any such offensive matter in the removal thereof, or

(iii) does not carefully sweep and clean every place in which any such offensive matter has been slopped or spilled, or

(iv) places or sets down in any public place any vessel containing such offensive matter, or

(v) drives or takes or causes to be driven or taken any cart, carriage, receptacle or vessel used for any such purpose

as aforesaid, through any street or by any route, other than such as shall from time to time be appointed for that purpose by the municipality by public notice,

shall be punished with fine which may exted to twenty-five rupees.

1 **Origin of section.**—This is a re-enactment of sec. 56 of the old Act. Sec. 48 (1), (*m*) provides for by-laws for regulating sanitation and conservancy. See Police Act. sec. 39 (*e*).

Compare secs. 216—218, Madras Act; sec. 97, Panjab Act; and sec. 369, Bom. City Act, Madras Act, sec. 217, as to provision of night soil receptacles by occupiers, and sec. 220, penalty for failure to deposit in such receptacles.

Clauses (i), (ii), (iii), and (iv) follow Madras Act, sec. 223. See also Bom. City Act sec. 372 (*b*) (*c*) (*d*).

[1]Filthy buildings, &c.

131. (1) Whoever, being the [2]owner or occupier of any building or land, whether tenantable or otherwise, suffers the same to be in a filthy and unwholesome state, [3]or in the opinion of the municipality a nuisance to persons residing in the neighbourhood, or overgrown with prickly-pear [4]or rank and noisome vegetation, and who shall not, within a reasonable time after [5]notice in writing by the municipality to cleanse, clear or otherwise put the same in a proper state, have complied with the requisition contained in such notice, [6]shall be punished with fine which may extend to twenty-five rupees, [7]and with further fine which may extend to five rupees for every day on which the failure to comply with the said notice is continued, after the date of the first conviction.

[8](2) Should the state of the building be such as [3]in the judgment of the municipality to render it unfit for human habitation, they may further [9]by written notice prohibit the using thereof for that purpose until it is so rendered fit.

Deserted and offensive buildings.

[10](3) If any building, by reason of dilapidation, neglect, abandonment, disuse or disputed owner-ship, or of its remaining untenanted and thereby

(*a*) becoming a resort of idle and disorderly persons, or of persons who have no ostensible means of subsistence, or who cannot give a satisfactory account of themselves, or

(*b*) coming into use for any insanitary or immoral purpose, or

(*c*) affording a shelter to snakes, rats or other dangerous or offensive animals,

is open to the objection that it is a [3]nuisance, or so unwholesome or unsightly as to be a source of discomfort, inconvenience or annoyance to the neighbourhood or to persons passing by such building, the municipality, if they consider such objection cannot under any other provision of this Act be otherwise removed, may, if there is any person known or resident within the munici-

pal district who claims to be the [2]owner of such building, by [3]written notice directed to such person, require such person, or in any other case by written notice fixed on the door or any other conspicuous part of the building, require all persons claiming to be interested in such building, within a period which shall be specified in the notice and shall not be less than seven days from the date of such notice, to cause such building to be taken down and the materials thereof to be removed, and in the event of non-compliance with such requirement, the municipality, on the expiration of the period specified as aforesaid, may forthwith cause the building to be taken down and the materials to be removed, and may sell such materials and apply the proceeds to defray any expenses incurred by them in so doing, and all such expenses not thereby defrayed shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

1 **Origin of section**.—Sub-sections (1) and (2) are re-enacted from section 58 of the old Act.

Compare Madras Act, section 186 (1) and (2) give power to require occupier to lime wash internally and externally, or otherwise cleanse in manner and time specified. Panjab Act, section 131, fixes the time at 24 hours. The Bombay City Act, section 377 adds, "or by reason of their (*i. e.*, premises) not being properly enclosed, or resorted to by the public for purposes of nature * * * require the owner or occupier * * * to * * * enclose the same, or, * * * may require him to take such other order with the same as the Commissioner thinks necessary."

Bengal Act, section 195, provides for any land by reason of thick or noxious vegetation or jungle, or inequalities of surface, afford facilities for commission of a nuisance, or by want of drainage, injurious to health, or offensive to neighbourhood.

The Panjab Act, section 129, requires the owner or occupier of any land to clear away any thick vegetation or undergrowth which may be injurious to health or offensive to neighbourhood.

2 **"Owner or occupier."**—See note 1, sec. 129,

Where 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 Commissioner fined his Mukhtar under sec. 67 (District Municipal Act (Ben.) III of 1864), which empowered him to fine either the owner or occupier, held that the discretion which that section gave had not been properly exercised. Proceeding quashed, and refund of fine directed. (*Imp.* v. *Dwarkanath Hazra.* 16 W. R. 60; 8 B. L. R. Ap. 9.)

Joint conviction, illegal.—The owner and an occupier of a house who both resided therein were jointly convicted of disobedience of an order under s. 444 of the Calcutta Act prohibiting the further use of the premises as being unfit for habitation, and a joint penalty of fine was imposed upon them :—*Held*, that the joint conviction and the joint penalty were illegal, each of the accused being guilty of a separate offence. (*Bhairab Chandra Kolay* v. *Corporation of Calcutta*, (1910) I. L. R. 37 Calc. 895; 14 C. W. N. 911; 1910, 6 Ind. Cas. 874.)

3 **In the opinion of the municipality a nuisance, &c.**—*Nuisance* :—See definition, section 3 (15).

The building of a wall, however, high on a man's own property for the purpose of preventing his neighbour from acquiring rights of easement over his land, is not in itself a nuisance under the Calcutta Act. 14 C. W. N. 637; 6 Ind. Cas. 595 (noted p. 276) referred to and commented on.

But although the height of the wall may not be a nuisance, yet the accumulation of filth and want of space between it and the neighbour's house may cause it to be a nuisance.

The Court should not pull down the wall to a lesser height, but should consider whether the nuisance may not be abated by some means of clearing the space, such as building

arches under the lower part of the wall. (*Khagendra Nath* v. *Bhupendra Narayan*, 15 C. W. N. 316, 1910, 8 Ind. Cas. 530.)

Municipal discretion..—See note 4, 5 and 6 *infra.*

4 **Rank and noisome vegetation.**—See note 4, section 129.

This section renders the owner liable for non-compliance with a notice issued under it, not when the municipality consider vegetation to be rank or noisome, but only when it is actually so. To support a conviction the prosecution must establish affirmatively the objectionable character of the vegetation. (*Emp.* v. *Anandrao* (1907) 9 Bom. L. R. 247.)

See also notes below, and note 1, section 135; note 1, section 122.

5 **Notice.**—See note 9, sec. 113.

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

Otherwise put the same in a proper state.—This sub-section corresponds mainly with sec. 220 of the Bombay Municipal Act, 1872, (now sec. 377, Bom. City Act, III of 1888.) The Municipal Commissioner issued a notice requiring the owner of a range of buildings to put it in a proper state by providing ridge ventilation within 7 days; the owner not complying was prosecuted and convicted. On appeal Mr. Justice West in delivering judgment said :—We think that section 220 would be unduly extended if it were so construed as to enforce structural alterations. It is obvious that most occupiers of the less wholesome houses in Bombay would be quite incapable of effecting structural alterations. Supposing tenants, for instance, paying Rs. 2 per month were asked by the Commissioner to make such alterations, they could not of course comply with the demand, specially within the twenty-four hours contemplated by the section. We must, therefore, suppose that something less exacting and more praticable for the tenants, and therefore also for the landlords (there being no difference made by the sec. in their position), was meant by the use of the expression "filthy or unwholesome state." When a person is asked to cleanse, clear, or otherwise put a building which is in a filthy or unwholesome state in a proper state, what is meant is that he is to remove the objectionable accidents, such as filth and nuisance, leaving the essence of the building the same as before. Without proper safeguards, unlimited license is not to be given to a Commissioner to command or effect alterations in a structure, and we can well understand that the Legislature refrained from giving this power when conferring the power of causing nuisances to be removed. We are therefore of opinion that the Legislature in enacting section 220 could not have intended, and did not intend, to invest the Municipal Commissioner with the power of directing structural alterations. As regards the question of notice, we think that when a notice is rsquired by law, it cannot prescribe something which the law itself does not contemplate or involve. Mr. Jardine, on behalf of the Commissioner argues that the notice errs only by excessive indication; but the section appears to leave it to the owner or occupier to adopt such measures as he pleases to carry out the demand of the Commissioner. It is not open to the Commissioner to prescribe his own measures and deprive the owner or occupier of his option. If this were not so, the Commissioner might order expensive painting, or papering, or other costly alterations beyond the means of the person concerned, and beyond the intentions of the Legislature. We hold, therefore, that it was not competent to the Commissioner to require ridge ventilation in the notice; and as the notice was thus framed, no offence was committed by failing to do what it did not call on the owner to do. We accordingly reverse the order of the Presidency Magistrate, and direct the fine paid by the accused to be refunded to him. (I. L. R., 8 Bom. 151. *Emp.* v. *Sadanand Shrikrishnaji.*)

6 **Shall be punished.**—*Municipal discretion.*—It is only in case of "a nuisance to persons residing in the neighbourhood" that the matter is left to the opinion of the municipality; in all other cases in which a notice may issue under this sub-section the ruling (note 4) would apply and the Magistrate must enquire as to whether the premises is in a filthy and unwholesome state or overgrown with prickly-pear or rank and noisome vegetation. Sec. 377 of the Bom. City Act starts with "If it shall appear to the Commissioner" which qualifies the entire section.

See note 1 s. 122; also note 6 sec. 151.

The accused was served with a notice of requisition under section 377 of the Bombay City Act, requiring him to remove filth, rubbish, heaps of *cutchera* and stable refuse from a large piece of vacant land belonging to him. He failed to comply with the requisition, and a prosecution was instituted against him. The Magistrate viewed the premises; and having so viewed them, but without hearing any evidence, acquitted the accused, as the premises

did not appear to him to be in a filthy condition:—*Held*, that the premises having appeared to the Commissioner in a filthy condition, the notice was validly issued under section 377 of the City of Bombay Act, and that there having been a non-compliance with the notice, the offence was complete.

Held, further, that the Magistrate was wrong in acquitting the accused on the sole ground that the premises did not appear to him to be in such a condition as to justify the issue of a notice under section 377. That section enacts that the only condition precedent to the valid issue of a requisition is that it shall appear, not to the Magistrate, but to the Commissioner, that the premises are in the condition specified in the section. (*Emperor* v. *Raja Bahadur Shivlal Motilal* I. L. R. (1910) 34 Bom. 346; 12 Bom. L. R. 126; 5 Ind. cas. 860.)

7 **Further fine.**—See note 3, sec. 94 page 270.

Held that an order imposing prospectively a daily fine in the event of failure to comply with the notice under this sub-section is illegal. (*Imp.* v. *Gobindram*. Sindj Sadar Court Crim. Ruling No. 5 of July 1902.)

8 **Sub-sec. (2).**—The corresponding sec. 378 (1) of the Bom. City Act says "any building intended for or used as a dwelling * * * the Commissioner may apply to the Magistrate, who after enquiry may prohibit." Further that it is not to be used for human habitation until the prohibition is withdrawn by a written order made by the Magistrate.

See I. L. R. 25 Cal. 492 note 4 sec. 150.

The marginal note should be "Power to prohibit use of building," (*vide* "Contents.")

The sub-sec. follows the C. P. Act, sec. 79, and sec. 91 gives right of appeal against such order to the Deputy Commissioner or Commissioner. So also the Panjab Act, sec. 132.

9 **"By written notice."**—These words were not in the old Act. See note 5 above.

Disobedience would be punishable under sec. 155, and the Magistrate has no discretion to go into the question whether the building is really unfit.

10 **Sub-sec. (3).**—This sub-sec. was inserted to fill a want that had often been represented. The Sanitary Board suggested that the word "land" should be added after the word "building" wherever it occurs, and in the case of land, the municipality might be given power to cause it to be properly enclosed. These suggestions were however not adopted.

It is a question, however, whether sub-sec. (1), does not give the municipality sufficient power over land in an insanitary condition.

The sub-section is somewhat on the lines of the Bom. City Act, sec. 376, which uses the term 'premises,' and provides only for "taking such order as the Commissioner thinks necessary." Compare also sec. 133, Panjab Act, which provides only for "securing and enclosing same." So also Madras Act, sec. 184.

132. It shall be lawful for the president, vice-president, or any councillor or officer authorised by the municipality in this behalf, at any time between sunrise and sunset, on giving such notice as hereinafter provided, to enter into and inspect all buildings and lands, and by written notice to direct all or any part thereof to be forthwith internally and externally limewashed or otherwise cleansed for sanitary reasons.

[1]Power to enter and inspect, &c., buildings.

1 **Origin of section.**—This is sec. 59 of the old Act re-enacted with slight alterations. It corresponds with Panjab Act, sec. 107, which adds that no previous notice necessary if the building is a stable for horses or a house or shed for cows or other cattle. See Bom. City Act, sec. 374—375.

133. (1) The municipality may set apart sufficient public places, or any part of the sea-shore, not being private property, for the purpose of being used as bathing places, and may also provide or set apart a sufficient number of convenient tanks or runs of water for the inhabitants to bathe in; and may also set apart tanks or reservoirs or runs of

[1]Bathing places.

water for washing animals or clothes, and for all purposes connected with the health, cleanliness and comfort of the inhabitants, and may prohibit the use, for any purpose mentioned in this section, of any or all other public places within the municipal district.

[2](2) Copies of all orders passed and notices issued by the municipality and for the time being in force under this section, shall be kept at the municipal office and shall be open for inspection by the public at all reasonable times.

1 **Origin of section.**—This sub-section is sec. 60 of the old Act re-enacted with the addition of the last clause as to prohibition which is new. Sec. 48 (1) (*l*) provides for by-laws regulating the use of public bathing and washing places. Compare Bengal Act, sec. 199.

This corresponds with Madras Act, sec. 154; Panjab Act, sec. 96, and Bom. City Act, sections 386—388 and 397. It is open to question whether the requirements of this section are satisfied by setting apart places available only during specified portions of the year.

See Police Act, sec. 53 (1) (*b*) and (*c*), sec. 61 (*j*) (*l*) (*n*) (*o*).

The last clause is new, and follows Panjab Act, sec. 96, and Bom. City Act, sec. 386. It is open to question whether this allows the prohibiting of *all* washing within 10 feet of *all* wells.

Inhabitants.—See note 7 page 27.

2 **Sub-sec (2).**—This was not in the old Act. The suggestion that the publication should also be by a placard affixed at the place prohibited was not adopted. But this may perhaps be done by the by-laws.

The marginal note should be "Copies of orders open to public inspection." (*Vide* Contents).

Inspection.—See note 8 sec. 46 page 121.

134. (*a*) Whoever, in disobedience of any order of the municipality under section 133, or of any by-law, bathes in any stream, pool, tank, reservoir, well, cistern, conduit or aqueduct belonging to the municipality, or washes, or causes to be washed, therein any animal or any thing whatever, or throws, puts or casts or causes to enter therein any animal or any thing, or causes or suffers to run, drain or be brought therinto any thing that is, or may become, a nuisance, or does any thing whatsoever whereby any water therein shall be in any degree fouled or corrupted, and

[1]Fouling water.

[2](*b*) whoever without permission of the municipality, steeps in any tank, stream, or ditch within, or on the boundary of, the municipal district, any animal, vegetable or mineral matter likely to render the water of such tank, stream or ditch offensive or a nuisance,

shall be punished with fine which may extend to fifty rupees.

1 **Origin of section.**—This is sec. 61 of the old Act re-enacted and follows Madras Act, sec. 155, and Bom. City Act, sec. 388, which extends to drying of clothes; also sec. 395, as to corruption of water by chemicals, &c., from factories, &c.

The marginal note should be "Fouling water by bathing, &c., in municipal stream, &c."

See sec. 39 (1) (*k*), 53 (1) (*b*) (*c*) and 61, (*j*) (*l*) (*m*) (*n*), Police Act. Penal Code, sec. 277.

Where a Magistrate convicted a person under this section on account of his wife's having washed some dirty clothes in a river, without finding (1) that the river in question was a stream, &c., belonging to the municipality or (2) that the accused caused the clothes to be washed by his wife in such stream, and it appeared that he had simply told his wife to wash the clothes without saying where they were to be washed, the High Court reversed the conviction and sentence as illegal. (Bom. H. C. Crim. Ruling No. 59 of 20 Aug. 1888. *Imp.* v. *Fateh Mahomed Nur Mahomed.*)

"*Any by-law*"—See sec. 48 (1) (*k*).

Nuisance.—See definition, sec. 3 (15).

"Where a low-caste woman drew water from a cistern notwithstanding the repeated direction of her high caste neighbour not to touch it, *Held* that the conviction under sec. 61 (*m*) of the Bom. District Police Act was illegal, as the defiling of water referred to in the section, and the voluntarily corrupting or fouling of water referred to in sec. 277 of the Indian Penal Code, both meant some act which physically defiled or fouled the water." (*Imp.* v. *Bhagikom Nathiaba*, Bom. H. C. C. R. No. 20 of 1900.)

2 **Clause (b).**—Steeping offensive matter is punishable *wherever* it takes place. This follows Bom. City Act, sec. 389 (*a*).

The marginal note should be, "and by steeping animal, &c., in any stream, &c."

135. When any pool, ditch, tank, pond, well, hole, or any waste or stagnant water, or any channel or receptacle of foul water or other offensive or injurious matter, whether the same be within any private enclosure or otherwise, shall appear to the municipality to be likely to prove injurious to the health of the inhabitants or offensive to the neighbourhood, the municipality may by written [2]notice require the [4]owner of the same to cleanse, fill up, drain off or remove the same, or to take such measures as shall, in their opinion, be necessary to abate or remove the [5]nuisance.

[1] Abatement of nuisances.

1 **Origin of section.**—This is section 32 of the old Act, with the addition of the "words or any channel or receptacle of foul water" and "or other offensive or injurious matter."

See notes to section 120.

See Madras Act, section 156 (2), as to power to require private well, &c., to be closed, &c., if unfit for use. Also section 228. See also Bengal Act, section 200.

The discretion to act is left entirely to the municipality and the Civil Courts cannot interfere unless it is clear that the municipality has acted capriciously or perversely. The words used here are "shall appear to the Municipality." See note 6, section 131.

By sec. 317 of the Madras City Municipal Act, 1878, the President of the Municipality was invested with the discretion as to the necessity of cleansing and filling up tanks and wells and draining off stagnant water likely to prove injurious to the health of the neighbourhood: and by section 318 was empowered, on neglect of the owner to comply with a requisition to get the work done and to recover the costs. No appeal was allowed by the Act against the President's decision.

Held, in a suit by the municipality to recover from the defendants the cost of draining and cleansing a tank, that it was not open to the defendants to prove that the tank was not likely to prove injurious to the health of the neighbourhood. (*Municipal Commissioners, Madras City* v. *Parthasaradi.* I. L. R. (1882) 4 Mad. 341.)

2 **By notice * * * require.**—To support a conviction for non-compliance with a notice under this section it must be shown that there is some pool, &c., of the kind mentioned, the filling up, cleansing, &c., of which the municipality has directed by notice, or with regard to which the municipality has directed such measures to be taken as it considers necessary (9 Bom. L. R. 247, note 4, section 131.)

If there is such a pool, &c., then the Court cannot enter into the question whether it is "likely to prove injurious &c," as this is entirely in the discretion of the municipality, the words being "shall appear to the municipality." See note *supra.*

Nature and extent of requirement.—The Bombay City Act, old section 381, which is very similar contains the words "low-ground" in place of "waste." Under that section defendant was served with a notice to fill in with sweet earth the low-lying ground of which he was owner, to the level of the road, and slope it towards the new drain on the road side. *Held*, reversing the conviction, that the words are "low-ground," which is not the same as low-lying ground; the section does not permit the Commissioner to issue an order that an indefinite extent of low-lying ground shall be filled up, much less that it should be filled up to a particular level, or with sweet earth, or given a particular slope. (*The Bombay Municipality v. Hari Devarkoji.* Bom. H. C. Crim. R. No. 27 of 1899. I. L. R. 24, Bom. 125.)

See the amended section 381, and the added section 381-A requiring permission to be obtained before any new well, tank, &c., is made.

136. Whoever, except with the written permission of the municipality, and in the way, if any, enjoined in such permission, stores or uses night-soil or other manure or substance emitting an offensive smell, shall be punished with fine which may extend to twenty-five rupees.

Using offensive manure, &c.

Origin of section.—This is sec. 63 of the old Act. Sec. 134 of the Panjab Act gives power to the Local Government to prohibit certain kinds of cultivation, use of manure, or irrigation within municipal limits. So also does sec. 228-A, Madras Act.

137. Whoever tethers cattle or other animals, or causes or suffers them to be tethered by any member of his family or household, in any public street or place so as to obstruct or endanger the public traffic therein, or to cause a nuisance, or who causes or suffers such animals to stray about without a keeper, shall be punished with fine which may extend to twenty-five rupees.

[1]Tethering cattle, &c.

1 **Origin of section.**—This is sec. 64 of the old Act, except that "suffers" is substituted for "permits," and the addition of the words "or place" and "or to cause a nuisance." The Panjab Act sec. 161, punishes the person in charge of elephant, camel or bear, who does not remove it as far as practicable to a safe distance on the approach of a horse; sec. 162 for taking elephant along a street contrary to orders, and sec. 163 for suffering annoying dogs to be at large without a muzzle; and sec. 166 for picketing animals or collecting carts on any public ground or using it as a halting place for vehicles or animals or as an encampment.

See sec. 39 (1) (*g*), see 56 and 61 (*g*) (*k*), Police Act.

Place.—For definition see note 3, sec. 139.

'*Nuisance*'.—See sec. 3 (15).

Madras Act, sec. 230, provides for destruction of stray pigs and dogs, and the Bombay City Act, sec. 384, of stray swine, and Panjab Act, sec. 138, of mad dogs.

The Panjab Act, sec. 157, prohibits the keeping of swine or any other animals so as to be injurious to the health of inhabitants or animals or so as to be a nuisance. Madras Act, sec. 230-A, prohibits keeping of pigs so as to be a nuisance.

The Bom. City Act, sec. 384, prohibits keeping of swine without permission, or any animal so as to be a nuisance or danger.

Sec. 167 of the N. W. P. Act provides that "whoever wilfully lets loose any horse or other animal, so as to cause injury, danger, alarm or annoyance to any person, shall be punished." This does not apply to a case where a buffalo was released from a pound and trespassed into a compound. A punitive enactment should always be strictly construed. (*Patandin v. King Emperor*, (1904) 2 A. L. J. 26.)

137-A. Whoever feeds any animal which is kept for dairy purposes or is intended for human food on excrementitious matter, stable refuse, filth

Feeding animals on filth.

or other offensive matter, or permits such animal to feed or to be fed on such matter, shall be punished with fine which may extend to fifty rupees.

Origin of section.—This was inserted by section 22 of the Amending Act of 1914, and is a very necessary provision in the interest of the public health.

See the Bombay City Act, sec. 384 (*c*); Panjab Act, sec. 158; Central Provinces Act, sec. 98; Bom. City Act, sec. 384 (1) (*c*); and Madras Act, sec. 225-A.

[1]Consumption of smoke.

138. (1) It shall be lawful for the municipality to direct by public notice that every furnace employed, or to be employed, in any works or buildings used for the purpose of any trade or manufacture whatsoever within the limits of the municipal district, whether a steam engine be or be not used or employed therein, shall in all cases be constructed, supplemented or altered so as to consume or burn, or reduce as far as may be practicable, the smoke arising from such furnace.

[2](2) If any person shall after such direction use, or permit to be used, any such furnace not so constructed, supplemented, or altered, or shall so negligently use, or permit to be used, any such furnace as that the smoke arising therefrom shall not be effectually consumed or burnt as far as may be practicable, every person so offending, being the owner or occupier of the said works or buildings or, being an agent or other person employed by such owner or occupier for managing the same, shall be punished with fine which may extend to fifty rupees, and upon any subsequent conviction to five hundred rupees:

[3]Provided that nothing in this section shall be held to apply to locomotive engines used for the purpose of traffic upon any railway or for the repair of roads.

1 **Origin of section.**—This is reproduction of sec. 65 of the old Act of 1873. See Bom. City Act, sec. 391.

2 **Sub-section (2).**—This should have as marginal note "Penalty."

Owner—occupier.—See notes 4 and 5, sec. 63, page 174. Also note 3 sec. 154

Further fine.—See note 8, sec. 91.

3 **Proviso.**—This should have as marginal note "Exemption of locomotives."

(7.)—*Regulation of Markets, sale of Food, &c.*

[1]Licensing markets and slaughter-houses.

139. (1) It shall be lawful for the municipality [2]to direct that no [3]place shall be used [4]as a market for the sale of animals, meat, fish, fruit or vegetables [5]intended for human food, or as [6]a slaughter-house, excepting the public markets or slaughter-houses constructed or opened by the municipality, or such other markets or slaughter-houses as may have been [7]licensed in writing by the municipality, who may,

[8]at their discretion, from time to time grant, suspend, withhold or withdraw such licenses, either generally or in individual instances.

[9](2) No person shall, in any municipal district in which by-laws are in force prescribing the conditions on and subject to which, and the circumstances in which, licenses for shops for the sale of such commodities may be granted, refused, suspended or withdrawn, use without a license from the municipality granted in accordance with by-laws made under clause (*b*) of sub-section (1) of section 48 any place as a shop for the sale of animals, meat, or fish intended for human food, except in a municipal or licensed market.

[10](3) Whoever contrary to such direction, or without the license required as aforesaid, or otherwise than in accordance with the conditions on or subject to which such license was granted, sells or exposes for sale any such animals or commodities, or uses or permits the use of a place as a shop for the sale thereof, or uses any place as a slaughter-house, shall be punished with fine which may extend to twenty-five rupees.

[11](4) Upon a conviction being obtained in respect of any place which has, without, or during the suspension or after the withdrawal of, a license, been used or permitted to be used as a shop for such sale as aforesaid, the Magistrate shall, on the application of the municipality, but not otherwise, order such place to be closed, and thereupon appoint persons, or take other steps, to prevent such place being so used, and every person, who so uses or permits the use of a place after it has been so ordered to be closed, shall be punished with a fine which may extend to five rupees for each day during which he continues so to use, or permits such use of, the place after it has been so ordered to be closed.

(5) Nothing contained in this section shall apply to the use of any hotel or eating house for the sale of food served for consumption on the premises.

1 **Origin of section.**—Sub-section (1) is reproduced from sec. 66 of the old Act of 1873.

Permission under old Act did not prevent operation of section.—The plaintiff alleged that, in 1862, the municipality sold the shop in dispute for the express purpose of being used as a shop for selling meat, and that by virtue of section 2, clauses (*a*) and (*b*), of the District Municipal Act III of 1901, the municipality was barred from exercising the right conferred on them under section 139 of the Act of preventing the plaintiff from using the premises for the sale of meat.

Held that section 8 of Act XXVI of 1850, which was then in force, authorized the Commissioners to make all necessary contracts for the purposes of the Act, but as the Act conferred no authority on the Commissioners to grant or withhold licenses for the sale of meat or to make rules or by-laws prescribing the places in respect of which licenses might be granted for the sale of meat, no agreement that the shop was to be used for selling meat

could have been a valid contract under the Act. The plaintiff had, therefore, acquired no right which was saved from the operation of section 139 by virtue of section 2 of Act III of 1901, and the plaintiff was entitled to no relief. (*The Shikarpur Municipality* v. *Vasaio*, 3, S. L. R. 49; 2 Ind. Cas. 368)

2 **To direct.**—Before any direction can legally issue under this sub-section, prohibiting the use of any place—

(1) as a market for the sale of animals, &c., the municipality must have had constructed or opened public markets, or must have licensed other markets for such purposes,

(2) as a slaughter-house, the municipality must have had constructed or opened public slaughter-houses, or must have licensed other slaughter-houses.

"The accused sold a small quantity of fish on the road-side on her way to the market and was convicted, under Bombay II of 1884, of using for sale a place other than that licensed by the municipality:—*Held*, that, as it did not appear that any direction was issued by the municipality to the effect that no place should be used as a market, except the one licensed by them, the conviction was illegal." (*Queen-Emp.*v. *Santu*, Bom. H. C. C. R. 24 of 1892.)

Under the corresponding section 98 of the Panjab Act, the municipality may fix premises for the slaughter of animals for sale, and may grant, &c., licenses for such use. When any such premises have been fixed, "no person shall slaughter any such animal for sale within the municipality at any other place."

The Municipal Committee of Kinjah issued a notice to the accused, calling upon him to close his slaughter-house at its present position and remove it to another specified place. There was nothing to show that the Committee had fixed this latter as the only place for the slaughter of animals. On refusal to comply with the notice, the accused was convicted under sec. 92 of Act XIII of 1884. Held, that the Municipal Committee had no power to issue such an order, that they had not by issuing it established a slaughter-house, and that no offence punishable under section 92 had been committed. (No. 22 P. R. 1889 Crim.)

3 **Place.**—This is not defined in this Act, and must be taken to be used in the ordinary sense which includes any area from the universe, in its widest sense, to a room in its narrowest, and includes any portion of space as measured off or distinct from all others, or as appropriated to some definite object or use; ground, site or spot. See note 6 s. 151.

Bom. Act VI of 1873 defined "place" to mean "any city, town, suburb, station, bazar, or (with the previous consent of the Governor in Council) any cantonment, with any village or lands immediately adjacent thereto, which shall be constituted a municipal district under the Act." This definition was repealed by Bom. II of 1884 and no definition substituted. The following rulings founded on that definition have now therefore no force—*Emp.* v. *Raja Paba Khoji*, I. L. R. 9 Bom. 272, Bom. H. C. C. Ruling of 5 Feb. 1885.

In the corresponding section of the Panjab Act, sec. 98, the word "premises" which therein appears was substituted for "places" (which appeared in sec. 292 of the older Act XIII of 1884) in order to make it clear that the building (if any) as well as the site was included.

In the Panjab Record, No. 106 of 1888, Civil, it was held that the word place in sec. 92 of Act XIII of 1884 was wide enough to include a site with its buildings and must be construed to mean one or the other, according to the circumstances of the particular case.

The Bengal Act, sec. 337 says, "within such limits as may be fixed, no land shall be used as a market."

Sale from a basket on the sea-shore is sale from a place.—The accused, a fisherwoman, was charged under section 410 (1) of the Bombay City Municipal Act with selling or exposing for sale, without a license, fish intended for human food, on the Chowpatti foreshore, in the City of Bombay. The sale was from a basket, which the accused had placed on the sand, at some distance from the water, between the high and low water mark. The fish sold was fresh fish and was brought from one of the boats then in the Back Bay. The Presidency Magistrate acquitted the accused on the grounds that (1) the Act did not apply as the place was outside the limits of the City of Bombay as laid down in the Act; (2) section 410 of the Act had no application because the place was a private market established from time immemorial; and (3) the sale fell within section 410 (2) of the Act. On appeal, against the order of acqittal by the Government of Bombay:—

Held, reversing the order of acquital and convicting the accused, that the accused was not protected by section 410 (2) of the Act since it was impossible in the present case to say that the fish had been sold from a vessel, when as a matter of fact it had been sold from the basket on the shore, it having brought from the vessel which was in the water.

Held, also, that the onus of proving that the place in question was a "private market" lay upon the accused.

Held, further, that the Act applied to the spot in question because it came within the expression "City of Bombay" as defined by the Bombay General Clauses Act (Bom. Act I 1904). (*Emperor* v *Budhoobai*, I. L. R. (1905) 30 Bom. 126; (1905) 7 Bom. L. R. 726.)

4 **As a market.**—Selling vegetables at a private house is not using it as a market. (*Emp.* v. *Raja Khoji*, I. L. R. 9 Bom. 272. Bom. H. C. C. Ruling—of 5 Feb. 1885.) See note 4 sec. 140.

The municipality of Ahmedabad, in March 1885, issued a notification to the effect that no one was to use, within 600 yards of the Municipal Market, any place as a market for the purpose of selling vegetables or fruits without a license, and that if any one acted in contravention of this notification, he would be dealt with according to law.

The accused hired a house and opened a shop within 600 yards of the municipal market to sell fruit without a license. He was convicted. The District Magistrate, relying on *Raja Paba Khoji* (I. L. R., 9 Bom. 272) reversed the conviction.

On appeal to the High Court on the ground that the definition of the word "place" as in Bom. Act VI of 1873, having been repealed, the municipality were at liberty to say that any place whatever should not be used for the purpose of selling any such commodity and the decision referred to by the District Magistrate did not apply.

Held that what the municipality had authority to direct, under section 66 of Bombay Act IV of 1873, was that no place other than the Municipal Markets or other places licensed as markets should be used by any body as a market. But they had no authority to issue a notification affecting other places which might be useful for selling vegetables, &c., otherwise than as a market That on the authority of the following opinions, the accused did not make use of this shop as a market for selling vegetable in the sense of the notification. (1) *The Mayor, &c., of London* v. *Low and another* in Queen's Bench, 49 L. J. 144—149 Cockburn C. J.'s opinion. (2) *In Mayor of Manchester* v. *Lyons*, L. R., 22 Ch. D. 287, Jessel M. R.'s opinion. (3) 309 and 310, Cotton L. J.'s opinion. (4) 311 Bowen L. J.'s opinion. The case of *Raja Paba Khoji* explained (*Gov. of Bombay* v. *Magan Harjiwan and another*. Bom. H. C. C. Ruling No. 48 of 12 Aug. 1886: and I. L. R. 11 Bom. 106.)

Such a sale would apparently be using a place 'as a shop' and so would come under the provisions of sub-section (2).

Under the Madras Act. section 193-A, the municipality may declare any place ordinarily used for the sale of meat, fish, fruit, grain, vegetables or other perishable articles of food, or for the sale of live stock or poultry, to be a market; provided no such declaration shall be made in respect of any shop or of any group of shops not being more than 3 in number, and any such declaration may be cancelled. And section 196 provides for prohibition of private markets other than those licensed.

"The by law—"No person shall expose for sale within the bazaar limits any meat or fish in any other place, except the market built for the purpose"—purporting to be made under section 70 of Bom. VI of 1873, is *ultra vires* of the section and also of section 33 of Bom. II of 1884. It cannot be treated as a direction under section 66 (1) (now 139 (1)) that no place shall be used as a market, as it does not allude to any such use, there being no evidence that the road in question was used as a market." (*Imp.* v. *Gooki*, Bom. H. C. Cr. R. No. 55 of 1895.)

Neither would this now be held to be using the road as a shop. See note 9.

It should be noted that the prohibition applies only to the class of markets here referred to; markets for sale of animals, &c., not intended for human food, cannot be interfered with, nor are licenses necessary in such cases. See note 5 sec. 139.

The Bengal Act, sec. 336, provides that "no place shall be deemed a market unless at least 30 shops, stalls or standings are erected thereon for the sale of goods."

Private property is used as a market when it is used as a public place for buying and selling.

Where a private market had been ordered to be closed, a person using the place for selling fish and flesh after a license had been refused is guilty of an offence under section 197 of the Madras District Municipalities Act, or at any rate, of an offence under section 191, for selling without a license. (*Abu Baker* v. *The Municipality of Negapatam*, I. L. R. (1905) 29 Mad. 185.)

The provision that public markets vest in the municipality does not contemplate the confiscation of private rights existing in them; it would not therefore authorise the levy of

a rent on stalls &c., standing in the markets, as the usual rules for the interpretation of statutes prohibits any violence to existing rights, but a tax would certainly be within the power of a municipality to levy.

5 **"Intended for human food."**—See note 7, page 140.

The Bom. City Act, sec. 402, says "for the sale of, or for the purpose of exposing for sale, animals intended for human food, or any other articles of human food."

Bengal Act. sec. 337, says "for the sale of meat, fish, butter, ghee, fruits, vegetables, and similar provisions," the words "similar provisions" being construed to mean provisions of an equally perishable nature as those specified, and not provisions generally.

6 **As a slaughter-house.**—A person who kills a goat in his own house for his own consumption cannot be said to use the place as a slaughter-house. The term "slaughter-house" clearly means a place used generally for the express purpose of slaughtering animals. (*Queen Emp.* v. *Bhiwa.* Bom. H. C. C. *Ruling* No. 298 of 1888.)

Defendant was charged under Madras Act X of 1865 with having used a place not licensed as a slaughter-house, in that he slaughtered a sheep on his own premises for his own private purpose. *Held,* no evidence of offence charged, (6 Madras H. C. Ap. 18.)

Sec. 1, Act VII of 1865 enacted that "no place shall be used as a slaughter-house, unless a license for the use thereof as a slaughter-house has been obtained, &c. *Held* that no person is liable to any penalty under the section except a person—either owner or occupant of the premises—who without a license uses a place or building as a slaughter-house either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house, or a butcher resorting accidentally or occasionally to slaughter-house for the purpose of killing an ox or sheep there, does not use the place as a slaughter-house within the meaning of the section. If a number of butchers were to combine together and hire a slaughter-house for the purpose of carrying on business and slaughtering cattle there, at a weekly, monthly or even daily rent, each and all of them might be punished.

Held, also, that the knowledge that no license has been taken out is not a necessary ingredient of the offence. If the Legislature had intended that servants or butchers resorting to such places unconnected with the ownership of the place, should be made liable to a penalty for killing cattle in an unlicensed slaughter-house, we should have found words to the following effect.—"Whosoever knowing that no license has been taken out for the use of the place as a slaughter-house uses it for such a purpose shall be liable," &c., (*Municipal Commissioners, Calcutta* v. *Zamir Sheikh.* 16. W. R. Cr. R., 4.)

The Bom. City Act, sec. 403, prohibits "use of any place as a slaughter-house *or for the slaughtering of any animal* intended for human food" Special permission may be given for festivals, &c.

The Madras Act, sec. 191, reqnires the provision of public slaughter-houses and provides for licensing of any place used as a slaughter-house or for the slaughtering of any animals intended for food, or for selling or storing for sale any flesh or fish intended for food, except preserved in a tight receptacle. Special permission may be given for festivals, &c. Sec. 192 also prohibits drying of skins so as to cause a nuisance.

Fees at public slaughter-houses are not to exceed Re. 1 for every head of cattle, and 2 annas for every sheep, goat or pig.

In Bengal, slaughter-houses are governed by the provisions of Bengal Act No. VII of 1865, "The slaughter-house Act" which are very similar to those in this Act.

The Bengal Municipal Act, sec. 261, classes slaughter-houses among "offensive and dangerous trades and occupations" for which licenses may be required to be taken out, and may be ordered to be closed. See sec. 151.

Panjab Act, sec. 143 (1) (k), provides for by-laws "in any municipality where a reasonable number of slaughter-houses has been provided or licensed, for controlling and regulating the admission within municipal limits for purpose of sale of the flesh (other than cured or preserved meat) of any cattle, &c., slaughtered at any slaughter-house or place not maintained or licensed under this Act," and sec. 171 provides for its seizure and destruction.

The Panjab Act, sec. 98, makes it clear that it applies to places used "for the slaughter of animals *for sale.*"

Places for slaughter of animals not for sale.—The Panjab Act, sec. 99, provides that places for this purpose may by by-laws be fixed, and prohibited elsewhere, except in case of necessity, but this does not apply to animals slaughtered for any religious purpose; and the section is to take effect only in municipalities to which it is specially extended by Govt. at the request of the committee. So far the section has been extended only to Simla.

As to the liability of a municipality for erecting a slaughter-house which was a nuisance see notes page 132 sec. 54.

7 **Licenses for markets &c.**—Under section 70 fees may be charged for these licenses, and the fees are to be prescribed by rules under section 46 (i). See notes 3 and 5, sec. 140. Licences under this section are not necessary in the case of either markets or shops for sale of animals, meat, fruit or vegetables *not* intended for human food, though section 48 (1) (*b*) (*ii*) by placing the words immediately after 'animals' instead of 'fish' seems to imply that licences may be issued in respect of markets or shops for the sale of meat or fish whether intended for human food or not. See note 4 *supra* and end of note 9 *infra*.

The conditions, &c., of these licenses themselves are to be prescribed by by-laws under sec. 48 (1) (b).

See the Bengal Act, sections 341 and 342, as to registration of such licenses for markets, and of the transfer of interest therein.

See Madras Act, secs. 200 and 201, as to requiring private licensed markets to be properly drained, &c. Also Bom. City Act, sec. 405, and Bengal Act, sec. 249.

As to new markets or fairs not being established in certain places without the permission of the District Magistrate, see Bom. Act IV of 1862 set out at page 476 of the previous edition of this Manual.

8 **"May at their discretion".**—This discretion does not seem to be absolute but fettered by the conditions prescribed in the by-laws to be made under sec. 48 (1) (b). A difficulty, however, arises in as much as the making of such by-laws is discretional and not obligatory. Doubtless no direction can issue under this section until the municipality have provided public or licensed markets, but it does not seem necessary that any license should at all issue for a private market. Even should a municipality decide to license a market, it does not seem obligatory that by-laws should be made, though of course if they are made, the licenses would have to be granted in accordance with the conditions therein laid down. It is however open to doubt whether the Courts would, in view of the cases hereafter cited, construe the law as giving a municipality such an absolute discretion. In the case of old established private markets existing at the time the land became a municipal district, it does not seem equitable to arbitrarily close them altogether, and the cases referred to show that the High Courts have always striven to place a construction on the law in favour of the protection of private rights.

Madras Act, sec. 196 (3), also says "may at their discretion grant a license."

The Bom. City Act, sec. 403, while prohibiting unlicensed private markets, provides that—"(*d*) the Commissioner shall not refuse, cancel or suspend any license for keeping open a private market for any cause other than failure of the owner to comply with some provision of the Act or some regulation or by-law framed thereunder."

Municipal discretion to renew license for an ancient market.—The Bengal Act while prohibiting certain unlicensed private markets, provides (sec. 339) that a license, on payment of a fee not exceeding Rs. 25, *may* be granted on a certificate from the Chairman that the land is fit to be used as such market. Sec 340 provides that the chairman *shall*, upon the application of the owner of any land, grant such certificate, unless the land is defective for the purposes of a market in drainage, &c. In the case of markets existing at the time the Act is extended to a municipality this section compels the municipality to grant a license for the current year without a certificate. In subsequent years the certificate is absolutery necessary.

On the point, however, whether if the certificate is given, the municipality can refuse to grant the license, some doubt has been expressed, for the words in sec. 340 "but in subsequent years the license shall not be renewed without such certificate," were said to have been intended to imply that the license must be renewed if the certificate has been obtained.

In the case of *Moran* v. *The Chairman, Motihari Municipality* (1889) (I. L. R. 17 Calc. 329), it was held that the words in sec. 339 "*may* grant such license year by year," precluded such a construction, and that the effect of the words in sec. 340 is merely to relieve persons using land as a market at the time the Act is made applicable, from the necessity in that year of obtaining a certificate; the words are merely of caution to avoid the very unreasonable supposition that the one year's holding without a certificate involved the right to a license for subsequent years without a certificate. The Court held that it had no power to compel mofussil municipalities who are beyond the local limits of its ordinary original jurisdiction to do their duty or to restrain them from doing that which it is not in their province to do, and that it was not obligatory on the municipality to grant the license. The Judges in commenting on the injustice of closing such an old private market in the interests of a new municipal market remark. "We think that it is most lamentable that

Acts should be drawn without that intelligent consideration of or that anxious regard for private rights, which ought to be the study of any Legislature that springs from English authority."

In the case of *Queen Emp.* v. *Mukunda Chunder* (1893) I. L. R. 20 Cal. 654, the Judges say "We accept the opinion laid down in the case cited (Moran's case) that it is entirely within the discretion of the municipality to grant or refuse a license, and the Courts have no longer jurisdiction to curtail such power, however, arbitrarily exercised. The Legislature has thought proper to enact such stringent provisions seriously affecting private property, and it is difficult to believe that they could have had before them the full consequences of such a measure. Fortunately we have the satisfaction in the present case of being able to set aside the orders passed on other grounds."

The N. W. P. and Oudh Act (25 of 1883), section 55, provides that rules may be made "(*c*) for prohibiting or controlling the establishment or maintenance of markets, &c., and controlling the management of the same." *Held* that this was not intended to empower a Municipal Board to make rules which would enable it to confiscate private rights without making any compensation, or to treat as nuisances, acts which are not in law or with regard to public health or convenience capable of being considered nuisances. The clause was meant to give to Municipal Boards power to make rules for prohibiting the establishment of markets, that is, to prevent new markets being established, and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction. By "maintenance" is meant the keeping up of a market in such a manner as would make it a fit place for the carrying on of a market having regard to public health and public convenience. We must construe the law in such a manner as not to cast a slur upon the Legislature of having worked a gross injustice.

Accordingly the Court granted an injunction restraining the municipality from interfering with the plaintiff's market for the sale of vegetables, fruit, and other articles (*Ganga Narain* v. *Cawnpore Municipality* (1897). I. L. R. 19 All. 313.)

9 **Sub-section (2).**—This was not in the old Act. The marginal note "Licensing shops for sale of animals, &c., for human food" has by an error been omitted. See "Contents."

Rents and other charges.—By sec. 140 (1), a municipalty may take stallage or other rents or fees for the use by any person of any public market or slaughter-house, or sell by auction the privilege of such use.

Fees.—By section 70 (2) fees may be charged, as may be fixed by these bye-laws, for the use of any of these places as belong to the municipality.

The provisions of the Bengal Act, II of 1888, on this subject are as follows:—

"356. No person shall without a license from the Commissioners, use any place as a shop for the sale of fresh meat or fish, except in a municipal, registered or licensed market, and the Commissioners in meeting, may fix a scale of fees for licenses to be taken out annually for such shops.

"Provided that no fee for a license to use any place for a shop for the sale of meat shall be less than twelve rupees. This section shall not apply to any place licensed as an hotel or eating-house."

Section 357 made punishable "whoever wilfully or negligently permits any place in Calcutta (not being a registered market) to be used as a market for the sale of meat, fish, fruit or vegetables, or as a shop for the sale of fresh meat or fish, without a license under this Act."

Madras Act, sec. 203, merely provides for prohibition of sale or exposure for sale of any articles in or upon any specified public street; and Bom. City Act, sec. 411, prohibits without a license, the use of any place in the City, for the sale of the flesh of any animal for human food, or any place without the City for the sale of such flesh for consumption in the City."

The Bom. City Act, sec 410, prohibits the sale or exposure for sale of any four-footed animal or any meat or fish intended for human food, in any place other than a municipal or private market. This does not apply to sale of fresh fish from a vessel which has brought it direct from the sea.

Before the use of a place as a shop for the sale of animals, &c, can be brought under this sub-section, the municipalty must have framed and had in force by-laws prescribing the conditions, &c, of licenses for shops for such sales.

It should be noted that *shops for sale of fruit or vegetables* whether intended for human food or not, as also shops for sale of animals, meat or fish *not* intended for human food *are not affected by the Act*, and no restrictions can be placed on them. (See notes 4, and 7 *supra*.)

As a shop.—Further as to places used for the sale of animals, meat, or fish, intended for human food, the usage must be "as a shop." There is no definition of shop in this Act, but Webster defines it as "a building or apartment in which goods, &c., are sold by retail." Consequently sales of animals, &c., elsewhere than in a place used as a market or as a shop cannot be restricted under this Act. Hawkers of meat or fish intended for human food are apparently not affected by the Act and need not take out any licenses.

The C. P. Act, sec. 84 (*l*) provides for rules for prohibiting the offering of meat or any specified description of meat for sale, except at a shop, or stall, or in a market place.

10 **Sub-section** (3).—This is from sec. 66 of the old Act, except the clause "or otherwise than * * * was granted," and "or permits the use of a place as a shop for the sale thereof," See Bom. City Act, sec. 404.

The marginal note should be "Penalty." See "Contents."

The Bengal Act says "Whoever, being the owner or occupier of any land wilfully or negligently permits the same to be used as a market, &c."

11 **Sub-section** (4)—This is taken from sec. 345 of the Bengal Act.

Marginal note should be, "Magistrate may order place to be closed." See "Contents." See note 3, sec. 94.

12 **Sub-section (5).**—This was not in the old Act.

Marginal note should be, "Exception in cases of hotels, &c." See "Contents."

140. (1) The municipality may from time to time open or close any [2]public market or slaughter-house. They may also either take [3]stallage or other rents or fees for the use by any person of any such market or slaughter-house, or from time to time sell by public auction or otherwise the privilege of occupying any stall or space in, or of otherwise using, any such market or slaughter-house.

[1]Opening closing and letting of markets and slaughter-houses.

[4](2) Any person who, without the [5]permission or license of municipality, shall sell or expose for sale any [6]article in the said markets, or use the said slaughter-houses, shall be punished with fine which may extend to twenty-five rupees.

1 **Origin of section**—This section is a reproduction of sec. 67 of the Act of 1873.

See Madras Act, secs. 191 (1), 193-A. and 194 (1). By sec. 194 (2), the sanction of the Governor in Council is necessary to the closing of a public market. So also Bom. City Act, sec. 400, which applies to public slaughter-houses also.

Compare the Bengal Act, sec. 335, and Bom. City Act, secs. 399 and 400.

The establishment of a public market does not give the municipality any power to prohibit rival markets in the neighbourhood. The only markets that can be prohibited are of the class referred to in sec. 139.

Under Bom. Act IV of 1862 no new market or fair can be established without the permission of the District Magistrate. See the Act printed at end of the previous edition of this Manual.

In the marginal note.—The word 'public' should be inserted between "of" and "markets."

2 **Public Market or slaughter-house:**—This is not defined. See sec. 139 (1) which refers to "the public markets or slaughter-houses constructed or opened by the municipality." Sec. 398, Bom. City Act, says all markets and slaughter-houses which belong to or are maintained by the municipality are "municipal markets and slaughter-houses, the others are private. The Madras Act, sec. 3 (12), defines "a 'public market' to mean any market belonging to the municipality or constructed, repaired or maintained out of the municipal fund." All others are private. The Bengal Act, sec. 3 6, provides that "no place shall be deemed a market or municipal market, unless at least 30 shops, stalls or standings are erected therein for the sale of goods."

Market here is not limited to the kind of markets referred to in sec. 139. This section authorises all kinds of public markets, and licenses, &c., to be issued for their use by the public.

3 **"Stallage or other rents or fees":**—These have to be prescribed by by-laws under sec. 48 (1) (*a*). Sec. 70 (2) having already provided for charging such fees as may be fixed by these by-laws the necessity for the repetition of this provision here is not apparent. Perhaps it was meant that "they may, instead of taking stallage and other fees for the use by any person of any such market or slaughter-house, from time to time sell by auction, &c."? Compare Bom. City Act, secs. 407—408. See notes p. 138.

Lease (or farming out) of right to recover slaughter fees illegal.—The municipality gave defendant a lease of the right to collect fees on the slaughter of animals which fees the municipality were entitled to levy under section 191 of the Madras Act and filed a suit in the Small Causes Court to recover the balance due under the lease. *Held*, that the suit was void. Farming out, by a municipality, of its right to collect fees on the slaughter of animals, is unauthorised and *ultra vires*. A contract of lease which has the effect of farming out such a right is void and unforceable under sections 11 and 23 of the Contract Act (IX of 1872) as being beyond the competency of the Municipal Corporation to enter into, and therefore prohibited. *Held* that any amount due to the municipality under such a contract cannot be recovered. Decision of WALLIS, J., in *Corporation of Madras* v. *Musthan Sait*, [C. S. No. 244 of 1907; S. C. (1909) 21 M. L. J., 788] and *Marudomuthu Pillai* v. *Rangasami Moopan*, [(1901) I. L. R., 24 Mad., 401], applied. Halsbury's Laws of England, Vol. VIII, Article 805, Corporation's Title, referred to. *Abdulla* v. *Mammod*, [(1903) I. L. R., 26 Mad., 156], distinguished. *Per curiam.*—The right of farming out is not necessary to the exercise of the right of levying, as such fees may be naturally and easily collected by municipal subordinates. The fact that there is an express power to farm out tolls, negatives an implied power to farm out other kinds of fees The fact that the Municipal Account Code contains provisions for the farming out of slaughtering fees and other taxes besides tolls, is no guide to the interpretation of the Act in this respect. *Quœre.*—Whether section 11 of the Contract Act is not exhaustive and does not deal with the competency of a corporation to contract? (*Municipal Council, Kumbakonam* v. *Abbahs Sahib.* (1913) I. L. R., 36 Mad., 113) See sec. 81 A.

4 **Sub-section (2).**—Marginal note should be "Penalty for unauthorised sale, &c."

The Bom. City Act, sec. 401, provides for summary removal of the person, and sec. 409 for preventing his again using the market or slaughter-house and concelling lease, &c.

So also Madras Act, sec. 194 (3), besides a penalty under sec. 195.

The accused was convicted under sec. 67 of Bom. VI of 1873 for selling meat at his house without permission or license from the municipality. *Held*, that as the accused sold the meat at his own house and not in a public market, the section did not apply, (Bom. H. C. Crim. Ruling No. 57 of 2nd Aug. 1888, *Imp.* v. *Lakshman Sadashiv.*) Now, however, this sec. 139 (2) would apply if such sale amounts to using it as a shop. See end of note 9 sec. 139.

5 **Permission or license.**—This Act no where expressly provides for granting licenses or permissions for use of public markets and slaughter-houses. This is done only indirectly by this sub-section.

By sec. 70 (1) "when any license is granted * * * the municipality may charge a fee *for such license*," and by sec. 46 (*i*) rules must be framed prescribing these fees. By 70 (2), the municipality may also charge such fees as may be fixed by by-laws under sec. 48 (1) (*a*) *for the use of such municipal markets and slaughter-houses.* See note 3.

6 **Article.**—Does this include animal? It may in the sense that an animal may be an article of food or of sale, &c. The Bom. City Act, sec. 401, expressly states "any animal or article."

"*Shall be punished.*"—See note 3, sec. 91. By sec. 409, Bom. City Act, he may also be expelled.

141. It shall be lawful for the municipality, with the sanction of the Commissioner or, if authorised by him, of the Collector, [2]to establish slaughter-houses, or [3]places for the disposal of carcasses of animals, beyond the limits of the municipal district, and all provisions of this Act and [4]of by-laws in force thereunder relating

[1]Slaughter-houses, &c., beyond municipal limits.

to such places within municipal limits, shall have full force therein, as if such places were within the municipal limits.

1 **Slaughter-houses &c. outside limits.**—This is sec. 71 of the old Act of 1873, except that the words "Commissioner or, if authorised by him, of the Collector" is here substituted for "the Governor in Council or any officer authorised by him" in the old Act.

See sec. 52. proviso, which makes it lawful for a municipality to incur expenditure on these objects beyond municipal limits, "with the sanction of the Governor in Council or any officer duly authorised by him in this behalf."

This power used formerly to be exercised by the Commissioners, and the Governor in Council is pleased to authorise them to exercise it. (G. R. 1393 of 7 May 1887, Gen. Dep., and 720 of 8 March 1887, Fin. Dep.)

2 **Establish Slaughter-houses.**—This may be by either constructing its own (municipal or public) slaughter-houses or licensing private ones.

3 **"Disposal of carcasses of animals."**—No similar express provision is made for such places *within* municipal limits. Sec. 54 (1) requires a municipality to make provision for "(*h*) acquiring and maintaining, changing and regulating places for the disposal of the dead," but this apparently applies to human dead and not animals, as sec. 48 (1) makes a distinction between by-laws for (*g*) "the disposal of the dead" and (*m*) for disposal of carcasses of dead animals." Nevertheless under this last provision the by-laws may apparently provide places for such disposal.

See note 25, page 144. The Bom. City Act, sec. 385, provides that the occupier of any premises on which any animal dies or carcass is found, or person having charge of any animal dying in a street or open place, shall, within 3 hours of death, or if at night, 3 hours after sunrise, either remove it to an appointed place or report to officer of health department. A fee for removal is to be paid by the owner of the animal, or, if not known, then by the occupier of the premises or the person in charge.

4 **"Of by-laws".**—Should not there be added here the word "and rules"? For the grant of licenses is to be in accordance with rules under sec. 46 (*i*).

142. (1) The president, vice-president or any councillor or officer authorised by the municipality in this behalf—

[1]Search for and inspection of unwholesome articles.

[2](*a*) may at all reasonable times enter into any place for the purpose of inspecting, and may inspect, any animals, carcasses, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter or other articles intended for human food or drink or for medicine, whether exposed or hawked about for sale, or deposited in or brought to, any place for the purpose of sale or of preparation for sale, or may enter into and inspect any place used as a slaughter-house, and may examine anything which may be therein; and

[3](*b*) in case any such animals, carcasses, or other articles before mentioned appear to be diseased or unsound or unwholesome or unfit for human food or drink or medicine may seize the same.

[4]Any article which is of a perishable nature may, under the orders of the president, vice-president or chairman of the managing committee or of a committee appointed under section 29 to exercise all or any of the powers vested in the municipality under this sub-chapter, or of the Municipal Commissioner, if any, if in

his opinion it is diseased, unsound, unwholesome or unfit for food, drink and medicine, forthwith be destroyed.

[5] Every animal and every article which is not of a perishable nature, if seized as aforesaid, shall be taken before a Magistrate.

[6]If it appear to the Magistrate upon sufficient evidence that any such article is diseased or unsound or unwholesome or unfit for human food, drink or medicine, the owner or person in whose possession it was found, not being merely bailee or carrier thereof, shall, [7]if in such case the provisions of section 273 of the Indian Penal Code do not apply, be punished with fine which may extend to one hundred rupees, and the Magistrate shall cause such article to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for food or drink or medicine

[8](2) In every municipal district in which this sub-section is, by virtue of a notification issued under the Bombay Prevention of Adulteration Act, 1899, as if the sub-section were part of section 5 of that Act, for the time being in force, and applicable to food of all kinds or of any specified kind,

Adulterated articles for food or drink.

If any article to which this sub-section is applicable as aforesaid, is intended for food or drink, and is in any place mentioned in sub-section (1), the president, vice-president or offices authorised as aforesaid, in case such article appears not to be what it is represented to be, may seize the same, and if it appears to a Magistrate upon sufficient evidence that such article is not what it is represented to be, such Magistrate may order the same to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for food or drink, and the owner thereof or the person in whose possession the same was found, not being merely carrier or bailee thereof, shall, if in such case, the provisions of section 273 of the Indian Penal Code do not apply, be punished with fine which may extend to one hundred rupees.

[9]EXPLANATION:—If such article having been exposed or stored in, or brought to any place mentioned in sub-section (1) for sale as ghee, contains any substance not exclusively derived from milk, it shall be deemed to be, for the purposes of this sub-section, an article which is not what it is represented to be.

Provided that when any article of food referred to in this sub-section appears to the Magistrate not to be what it is represented to be, solely by reason of the fact that there has been added to it some substance not

[10]Protection to persons acting in good faith.

injurious to health, no offence shall be deemed to have been committed by the owner of the article or the person in whose possession the same is found, if such owner or person proves to the satisfaction of the Magistrate—

(*a*) that such substance has been added to the article of food, because the same is required for the production or preparation thereof, as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the food or conceal the inferior quality thereof, or

(*b*) that in the process of production, preparation or conveyance of such article of food, the extraneous substance has unavoidably become intermixed therewith, or

(*c*) that, by a label distinctly and legibly written or printed on or with the said article of food or by other means of public description, he has given sufficient notice that such substance has been so added, or

(*d*) that—

(i) the said article was purchased by him with a written warranty that it was of a certain nature, substance and quality,

(ii) he had no reason to believe that it was not of such nature, substance and quality as aforesaid, and

(iii) it was not exposed, hawked about, or brought for sale by him otherwise than as an article of the nature, substance and quality specified in the written warranty, and was in the same state in which he purchased it.

[11](3) In all prosecutions under this section, the Magistrate shall refuse to issue a summons for the attendance of any person accused of an offence against its provisions, unless the summons is applied for within a reasonable time from the alleged date of the offence of which such person is accused.

Application for summons to be refused if not applied for within reasonable time.

1 **Unwholesome articles for human food, drink or medicine.**—The provisions of sec. 68 of the old Act of 1873 are, with many considerable additions, embodied in this section.

The old section provided for any place used "for the sale, either wholesale or retail, or for the storing, of articles intended for food or drink, or, as a slaughter-house." The new section is very much more comprehensive—not only are some articles of food and drink specified, but the section extends to articles intended "for medicine" also.

Compare sec. 110 of the Panjab Act. G. R. No. 5570 of 9th October 1902, Gen. Dep., requested that the following suggestion by the British Congress on Tuberculosis for the prevention of consumption, should be brought to the notice of municipalities: *viz.*, "that medical officers of health should use all their powers to prevent the spread of tuberculosis by means of milk and meat. This is of importance in municipal areas, where some officer has the power to inspect materials of food and drink."

"*Or for medicine.*"—This was not in the old Act. See Bengal Act, sec. 252, as to the registration of shops, &c., for retail sale of drugs not being also articles of ordinary domestic consumption and for the certifying of fit dispensers of such drugs; and sec. 253 for the inspection of such places and the drugs.

Intended for human food, &c.—*Section not applicable to articles not intended for human food, &c.*—To justify an order under s. 505 of the Calcutta Act, the Magistrate must be satisfied, and there must be a finding in his judgment that the article directed to be destroyed comes within s. 502 of the Act, and it either was exposed or hawked about for sale or deposited in or brought to, any place for the purpose of sale or preparation for sale, and is intended for human food.

Where certain damaged rice which had been purchased by a person who intended to sell it as food for pigs, was ordered to be destroyed by a Magistrate under s. 505 of the Act, and the judgment of the Magistrate contained no finding that the rice was brought for the purpose of sale or that it was intended for human food, but contained a finding that there always was a risk that it might be sold for human consumption to poorer classes, or might be used in a flour mill worked by unscrupulous persons: *Held*, that the fact that this danger existed did not justify the order, and that until some attempt was made to sell the rice for consumption by the poorer classes, the Corporation was not justified in destroying the property of a man who was disposing of it in a way which was perfectly legitimate. (*Chundra Coomar Biswas* v. *Calcutta Corporation.* I. L. R. (1902) 30 Cal. 421.)

Prosecution by Secretary not authorized, illegal.—Where the Secretary of the municipality prosecuted the applicant for selling as ghi an article which was not ghi under the provisions of section 142 of the Bombay District Municipal Act. *Held* that, the Secretary not being one of the persons specified in the section and not having been specially authorized in that behalf, the prosecution instituted by him, and the conviction based thereon were illegal and without jurisdiction. (*Tikam* v. *Crown* 3 S. L. R. 14.)

2 **Entry for inspection.**—The Bom. City Act, sec. 413, provides that if the place is suspected to be used unauthorisedly for slaughtering or sale of flesh of animals intended for human food, the entry may be at any time, by day or by night, without notice; and no claim to compensation for injury caused to any person by such entry or for any force necessarily used. Sec. 414 provides that the Municipality should make provision for the constant and vigilant inspection of all articles exposed for human food, &c.

Bengal Act, section 281-B, is almost identical with the clauses 5 (*a*) and (*b*); and sec. 250 also provides for entry under warrant granted by a Magistrate on the application of the municipality in suspected cases.

Inspection of meat intended for sale, &c.—In the Panjab the Veterinary Assistant in charge of the Veterinary Hospital discharges this duty, the procedure being for the municipality to apply for permission to employ the V. A. subject to the ordinary rules of municipal control and in each case subject to the concurrence of the District Board when V. A. is paid by that body. This also with the consent of the Director of Agriculture. G. R. 2739 of 16 March 1911 Rev. Dep., shows that in the Panjab Commissioners are empowered to sanction allowances not exceeding Rs. 10 per mensem in each case to V. As. for such work.

3 **Seizure.**—This follows Bom. City Act, sec. 415 (2). Sec. 414 of that Act provides that "the proof that the same was not exposed or hawked about or deposited or brought for any such purpose or was not intended for human food or medicine resting with the party charged."

Diseased, &c.—Under the old Act it was only if "unfit for food or drink." This new provision is much more comprehensive, and is taken from the Bom. City Act.

4 **"Destruction of perishable articles."**—The marginal note should be to this effect.

Under the old Act only the Magistrate had power to order destruction of any articles.

This corresponds with section 416, Bombay City Act, which adds "destroyed in such manner as to prevent its being again exposed for sale or used for human food or medicine, and the expense thereof shall be paid by the person in whose possession such article was at time of its seizure."

Or if the Municipal Commissioner, if any.—These words were inserted by the Amending Act of 1914.

5 **"Disposal of non-perishable articles."**—Marginal note should be to this effect.

This corresponds with sec. 417 (1), Bombay City Act, which adds "and any utensil or vessel."

6 **"Penalty and destruction."**—The marginal note should be to this effect.

So much of this clause as relates to destruction corresponds with sec. 417 (2), Bomba y City Act, which adds "or is not what it was represented to be, or that such vessel or utensil is of such kind as aforesaid," and the destruction is to be "at the charge of the person in whose possession it was at the time of its seizure."

The rest of this clause as to punishment of owner, &c., is mostly new and is taken from section 417-A of the said Act. See note 1 *supra*.

7 **Penal Code.**—Selling, or exposing for sale, any food or drink, *knowing* the same to be noxious, is punishable under sec. 273, Indian Penal Code, with rigorous imprisonment for 6 months and fine of Rs. 1,000. Similarly sec. 275, I. P. C., applies to drugs.

The present section avoids the necessity of proving the *knowledge* of the offender, mere possession, &c., is punishable.

Adulterating food or drink intended for sale, so as to render it noxious, is punishable to the same extent under sec. 272, I. P. Code. Similarly sec. 274. I. P. C., applies to drugs.

Under sec. 521, Criminal Procedure Code, the Magistrate can also order the destruction of the articles.

8 **Adulterated articles.**—This sub-sec is a literal re-enactment of sec. 68-A of the old Act which was inserted by Bom. Act II of 1899, sec. 5 (2). Its provisions are based on the English Public Health Act, 1875 (38 and 39 Vic. c. 55, s. 115), and corresponds with the Bom. City Act, sec. 417-A and 417-B.

Compare Bengal Act, sec. 251, which provides that "no person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser;" then follow provisos (*a*) and (*b*). Food is defined "to include every article used for food or drink by men other than drugs or water," and it is provided that "in a prosecution it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale."

Sec. 251-D of that Act also provides that if the municipality apply to purchase any article of food exposed for sale, and tender the price for a quantity not more than is reasonable for purpose of analysis, and the person refuse, he shall be liable to a penalty of Rs. 50.

Where a Food Inspector purchased samples of Mustard oil from the manufactory of the accused, which on analysis were found to be adulterated with til oil, and the accused were convicted under section 495 of Bengal Act.

Held, that such adulterated oil not being what is commercially known as mustard oil, and the adulteration being to the prejudice of the purchaser, the accused had been rightly convicted. *Baishtab Charan Das* v. *Upendra Nath Mitra* (1898) 3 C. W. N. 66 (note 16 *infra*) distinguished as in that case there was no evidence to rebut the defence that what is commercially known as mustard oil is the adulterated oil. (*Moti Lal Pal* v. *Corporation of Calcutta*, I. L. R. (1903) 30 Cal. 643.)

Master or partner equally liable with employee.—Accused was prosecuted and convicted under sec. 495 and 574 Cacutta Act for selling adulterated ghee, in respect of two separate shops. Accused was the commission agent for certain up-country manufacturers of the ghee, which was sold at the shops bearing the names of Lalchand and accused. The actual seller was Lalchand who was also convicted. *Held* that whether the relationship between accused and Lalchand were master and servant or partners, accused was equally liable. See 495 of the Act, which appears to have been based entirely on sec. 6 of the English Act, (Sale of Foods and Drugs Act 38 and 39 Vict. c. 63) imposes a positive prohibition, and covers the case of an agent or firm as well as that of a master and servant. *Brown* v. *Foot*, (1892) 17 Cox C. C. 509 followed. In that case it was held that a servant, employed by his master to sell any article, who adulterates it, thereby renders his master liable although there is no connivance of the master; and non-connivance of the master is no defence, though the entire absence of connivance on his part might in the discretion of the Magistrate be a ground for mitigation of the penalty. (*Sew Karan* v. *Corporation of Calcutta*, I. L. R. (1912) 39 Cal. 682; 16 C. W. N. 455.)

Bengal Act, 251 C, provides that if the person consent, it may be destroyed at once without recourse to a Magistrate.

Notification under Adulteration Act.—"In the circumstances stated, His Excellency the Governor in Council is pleased to direct that sections 2, 3 and 4 of the Bombay Prevention of Adulteration Act, 1899, and sub-section (2) of section 142 of the Bombay District Municipal Act, 1901, shall come into force within the Municipal Districts of Karachi and Hyderabad with effect from the 15th August 1901, and that the provisions of the said Acts shall, for the time being, not be applicable in the said Municipal Districts to any food other than ghi." (G. R. 3842 of 5th July 1901, Gen. Dep.)

9 **Explanation.**—This is taken verbatim from sec. 415, Bom. City Act.

10 **Persons acting in good faith.**—"Where a person is accused of selling adulterated articles of food on the evidence of a Chemical Analyser, and alleges in defence that it is a mixture recognized in the market, he ought to be allowed to prove his allegation. So where an oil-seller was prosecuted for selling mustard oil mixed with other kinds of oil, and he succeeded in proving that what is known as mustared-oil in the market, was ordinarily prepared in the same manner as the specimen analysed, the case was held to be protected under the 1st proviso to sec 364. of the Calcutta Municipal Consolidated Act II of 1888. (*Baishtab* v. *Upendra*. 3. C. W. N. 66). See note 8 *supra*.

11 **Sub-section (3).**—This is taken from sec. 417 C. of the Bom. City Act.

False weights and measures.

143. The president, vice-president, or any councillor, or officer authorised by the municipality in this behalf, may at all reasonable times enter into any place used for the sale of articles used for human food, and inspect the weights and measures in use, and if the person in charge be found in possession of any false or defective weights or measures, or of weights and measures by the use of which the public may be defrauded, he shall be punished with fine which may extend to two hundred and fifty rupees.

Inspection of weights and measures.—This section was not in the old Act. See Bom. City Act, secs. 418—420 and 461 (*o*).

By sec. 48 (*e*) municipalities may make by-laws for the inspection of weights and measures under this section. See note page 140.

See Chapter XIII of the Indian Penal Code which treats of offences relating to weights and measures.

(8)—*Prevention of dangerous diseases.*

[1]Powers which may at any time be conferred.

144. (1) The Governor in Council in the case of City Municipalities and the Commissioner in other cases, may at any time confer by notification on any municipality designated therein, all or any of the powers specified in sub-section (2), and such municipality shall, subject to all such limitations, restrictions and conditions, if any, as the Governor in Council or the Commissioner as the case may be in the same or in any subsequent notification may prescribe in such behalf, exercise within the municipal district every power so conferred on them, for such period as may be specified in this behalf in any such notification, or if no period is so specified, then until such power is withdrawn.

(2) The powers, all or any of which may be conferred under the preceding sub-section, are:—

[2](*a*) power by orders, which may be either of special or general application, to direct that every medical practitioner, who knows or may have reason to believe that any person whom he has visited in his professional capacity in any dwelling not being a hospital, or that every manager of any factory or educational institution, or every head of a household, who knows

or has reason to believe that any person who resides in any dwelling under the management or control of any such manager or head of a household, is suffering from any illness which may reasonably be supposed to be a dangerous disease, shall give information of the same with the least practicable delay to such person as may be designated by the municipality in that behalf;

[3](*b*) power to direct or authorise the inspection, without notice, or with such notice as to the person directed or authorised to inspect, appears reasonable, any place in which any dangerous disease is reported or suspected to exist, and the taking of measures to prevent the spread of the disease beyond such place;

[4](*c*) power to prohibit the removal of water for the purpose of drinking from any well, tank or other place, which may appear to the municipality, on the advice of a medical officer, likely to engender or cause the spread of any dangerous disease;

[5](*d*) power to direct or cause the removal, on a certificate signed by any duly qualified medical practitioner authorised by the municipality in this behalf, of any person who is without proper lodging or accommodation, or who is lodged in a room or set of apartments occupied by more than one family, and who is suffering from a dangerous disease, to any hospital or place at which persons suffering from the said disease are received for medical treatment;

[6](*e*) power to require by written notice the owner or occupier of any building, or part of a building, or a person owning or in charge of any article therein, to cleanse or disinfect such building or part thereof or article, either at his own expense, or in case of poverty, or for other cause which the municipality in the circumstances of the case consider reasonable, at the expense of the municipality;

[7](*f*) power to provide the means, and to prescribe places, for disinfecting or washing bedding or other articles which have been exposed to infection from any dangerous disease, and to direct the destruction thereof;

[8](*g*) power—

(i) to provide and maintain suitable conveyances for the free carriage of persons suffering from any dangerous disease, and

(ii) when such provision is made, to prohibit the conveyance of such persons in all or any public conveyances, and

(iii) to direct that any conveyances that may at any time be used for conveying any such person shall be immediately disinfected;

[9](*h*) power to prohibit—

(i) any person suffering from any dangerous disease from wilfully exposing himself, without proper precautions against spreading the said disease, in any street or in any school or factory, or in any inn, dharmshala, theatre, market or other place of public resort: or

(ii) any person in charge of any person so suffering from so exposing such sufferer;

[10](*i*) power to prohibit any person from removing to another place, or transferring to another person, except for the purpose of disinfection, any article which the person prohibited knows, or has reason to believe, has been exposed to infection of any kind whatsoever from any dangerous disease;

[11](*j*) power to prohibit the letting of or the providing of accommodation in any hotel, inn, dharmshalla, or serai, in which a person has, or in which there is reason to believe that a person has, been suffering from a dangerous disease, unless and until the person desiring so to let or provide accommodation shall have had the building, or part thereof, and any article therein likely to retain infection, disinfected to the satisfaction of the municipality or of such officer as the municipality appoint in this behalf;

[12](*k*) power, with the previous permission in each case of a Magistrate exercising not less than second class powers, to destroy any insanitary huts or sheds in which there is reason to believe that persons have been suffering from dangerous disease.

[12](3) The municipality may, in their discretion, give compensation to any person who sustains substantial loss by the destruction of any property under this section, but, except as allowed by the municipality, no claim for compensation shall lie for any loss or damage caused by any exercise of the powers specified therein.

Penalties for disobedience to an order passed in exercise of such powers.

(4) Any person who in a municipal district disobeys any order which is for the time being in force therein, and which has been passed by the municipality in exercise of any power conferred on such municipality under this section, or obstructs any officer of the municipality or other person acting

under the authority of the municipality in carrying out executively any such order, shall be punished with fine which may extend to two hundred rupees.

1 **Origin of section.**—The whole of this section is new. Under the old Act of 1873, sec. 73, a municipality might, with the sanction of the Government, take measures to prevent, &c., an out-break of any epidemic disease. This section is much more explicit and enlarged as to what powers the municipality may now exercise in the circumstances.

The powers of municipalities under the old Act to cope with epidemic diseases, such as cholera and plague, were found quite inadequate; and the Bombay High Court having decided that the old sec. 73 did not authorise a municipality to "impose any limitation on the public right of citizens in their "relations of daily life," it became necessary to extend the provisions of the Act as has now been done, under careful limitation. It will be noted that all the powers are not necessarily conferred on a municipality, but only those which from time to time are considered necessary, and for such time only as they are required.

By-laws may be framed under sec. 48 (1) (*h*) for enforcing the supply of information as to any cases of dangerous disease, and carrying out the provisions of this section. See note 17, page 142. See Indian Penal Code, sections 269—271.

The provisions of sub-sec. (1) correspond with sec. 142, Panjab Act.

Governor in Council.—In Sind means the Commissioner in Sind. (Sec. 3 (3) note.)

Commissioners of Divisions were authorised to exercise the power conferred on the Governor in Council under this section of the old Act. (G. R. 720 of 8 March 1887, Fin. Dep., 1893, of 7 May 1887, Gen. Dep.)

The words "in the case of City Municipalities and the Commissioner in other cases" and "or the Commissioner, as the case may be" were inserted by Bom. Act 3 of 1915.

Notification.—This is duly made if published in the *Bombay Government Gazette.* (Gen. Clauses Act sec. 23.)

Policy of Government in regard to Plague measures.—See Government of India No. 79—95 of 17-1-1906 San. Plague republished G. R. 116-P of 22-1-1906, G. D., in Bom. Govt. Gazette of.

2 **Medical practitioner, manager &c. to give information.**—This clause is new. Sec. 421 of the Bom. City Act provides only for information being given by a "medical practitioner who treats or becomes cognizant of the existence of any dangerous disease in any private or public dwelling other than a public hospital."

The provisions of this clause are very much stricter and wider. See also Panjab Act sec. 139.

"*Dangerous disease*," see definition, sec. 3 (16).

3 **Inspecting place.**—This clause is taken from sec. 422 of the Bom. City Act, secs. 38 and 39 Vic., chap. 55, sec. 137. Madras Act, sec. 231 (1), authorises entry only between sunrise and sunset, after 2 hours notice.

"*Taking measures to prevent spread of disease*"—*Caste feasts.*—*Held* (under the old Act) that this did not empower a municipality to prohibit the holding of caste feasts. The words imply something actively to be done by a municipality rather than any limitation to be imposed on the public right of the citizens in their relations of daily life. (*Emp.* v. *Harilal*, I. L. R. 14 Bom. 180: Bom. H. C. C. R. No. 42 of 30 July 1889) *N. B.*—This may, however, now be done under sec. 145 (3) (*c*).

4 **Prohibiting removal of water.**—This is taken from sec. 423 of the Bom. City Act, and follows Panjab Act, sec. 141. Compare Madras Act, sec. 232-A. See note 4 p. 319 and sec. 135.

May appear to the municipality.—See note 3 sec. 149.

5 **Removal of diseased person.**—This is taken from sec. 424 of the Bom. City Act, and secs 38 and 39 Vic. Chap. 55, sec. 124. Also Madras Act, sec. 233. Panjab Act, sec. 140, contains almost identical provisions regarding cholera and small-pox only. The authorisation is to be given "by a medical officer of rank not inferior to that of an Assistant-Surgeon;" and it includes a person "living in a sarai or other public hostel," or "living in a room or house which he neither owns nor pays rent for;" and the lodging "in premises occupied by members of 2 or more families" is qualified by the condition "and any of such occupiers objects to his continuing to lodge in such premises."

6 **Disinfection of building.**—This clause is adapted from sec. 425 of the Bom. City Act, 1888, which also provides for requiring, if necessary, such owner or occupier "to vacate the said building for such time as shall be prescribed in the said notice." See sec. 145 (3) (*a*). Compare Madras Act, sec. 231 (3).

7 **Disinfection of bedding, &c.**—This clause is adopted from sec. 427, Bom. City Act, which also provides for the prohibition of articles being disinfected or washed elsewhere or washed at such places before being disinfected. It also provides for the option of charging fees for disinfection.

Compare Madras Act, sec. 232.

The proposal to add after "exposed" the words "or are likely to have been exposed" was not adopted.

Destruction.—The Bom. City Act provides for destruction of "articles likely to retain infection."

"In order to prevent the unnecessary destruction of property and the submission of claims for compensation, the Government of India directed that the procedure prescribed for adoption among European troops, as given in the rules below should, with the addition of the foot-note, in future be carefully observed.

"2. It should be impressed upon all Government officers that if destruction of property is ordered as calculated to cause infection, and enquiry subsequently shows in any particular case that such destruction was not absolutely necessary, but that purification would have sufficed, the officer ordering such destruction must be held responsible for the loss occasioned thereby to the owners of the property." (G. R. 1772 of 17 May 1886, Gen. Dep.)

Purification of Bedding and Clothing.—"56. The straw of the barrack bedding used by persons attacked prior to admission into hospital will be burnt. The stuffing of mattresses and pillows used by cholera patients in hospital will be opened out, exposed to the air, and beaten, and when practicable, submitted to a dry heat of not less than 250° Farenheit for at least an hour (in an oven or otherwise)* before being used again; the remainder of the barrack and hospital bedding, clothing, &c., and such of the clothing worn by patients on their admission as is not liable to injury thereby, shall be boiled, exposed to the air, beaten, and afterwards washed with soap and water.

"Cots and punkah fringes which have been used by cholera patients, or in wards set apart for them, should also be subjected to the action of boiling water when they are no longer required for such cases.

"Such articles of a soldier's kit as cannot be treated in the above manner, will be removed to hospital, and there fumigated and exposed to the air and sun for a week, beaten and brushed.

"Burning only to be resorted to when purification cannot be at once carried out.

"57. When circumstances are such that the above processes of purification cannot be at once carried out, such articles as body linen, bedding, cots and punkah fringes, may be burnt; but with proper arrangements the necessity for this destruction will rarely arise."

8 **Conveyances for diseased persons.**—Clauses (i) and (ii) are taken from sec. 429, and clause (iii) from sec. 431 of the Bom. City Act. Also 38 and 39 Vic. c. 55 sec. 123.

Sec. 428 provides that the diseased person should notify disease to driver of public conveyance before entering it, and the driver may make special terms to compensate for loss and expenses of disinfection. See Madras Act, secs. 233-A, 233-B.

Sec. 430 makes punishable both the person, who so diseased, allows himself to be carried in a public conveyance as well as the owner or driver of the conveyance.

A driver of a public conveyance in the City of Bombay, who drives in his conveyance a person suffering from small-pox, offends against sec. 430 (3) of the Bom. City Act. (*Emp.* v. *Myaji* (1905) 7 Bom. L. R. 460.)

9 **Exposure of diseased person.**—This is a re-enactment of clauses (*a*) and (*b*) of sec. 68 of the Public Health (London) Act, 1891, (54 and 55 Vic. c. 76.) Sec. 430 of Bom. City Act prohibits a person so suffering from travelling or being carried or accompanied on a public conveyance. So does Madras Act, sec. 233-A.

10 **Removal of diseased person.**—This is adapted from section 432, Bombay City Act, which is taken from clause (*c*) of the Public Health Act, 1891. Compare Madras Act, section 231-A.

* Or if means are not at hand to enable this to be done, it should be boiled.

11 **Letting of building occupied by diseased person.**—This is adapted from section 433, Bombay City Act, which is identical with Madras Act, section 233-C.

12 **Compensation when payable.**—This should be the marginal note. See "Contents."

This clause and sub-section are adapted from section 426 (2) and 427 (4), Bombay City Act. Madras Act, section 232 (2), makes compensation obligatory.

145. (1) In the event of the municipal district or any part thereof being at any time threatened or visited with an outbreak of any dangerous disease, the municipality shall take all such measures as they deem necessary for the purpose of preventing, meeting, mitigating or suppressing such outbreak.

[1]Duties of municipality on threatened or actual outbreak of dangerous disease.

[2](2) In such event as aforesaid the Governor in Council in the case of City Municipalities and the Commissioner in other cases, may, by special notification, declaring that such municipal district is threatened or visited with an outbreak of a dangerous disease, confer on the municipality all or any of the additional powers specified in the following sub-section, and such municipality shall, subject to such limitations, restrictions and conditions, if any, as the Governor in Council or the Commissioner, as the case may be in the same or in any subsequent notification may prescribe, exercise every such power so conferred on them until the same is withdrawn by means of a like notification.

[3](3) The powers all or any of which may be conferred under the preceding sub-section are—

(*a*) power to order, subject to the conditions,

(i) that the permission of a Magistrate exercising not less than second class powers shall be in each case first obtained, and

(ii) that accommodation for all persons to whom the order refers is available, or shall be provided, elsewhere,

the evacuation of an infected building used as a dwelling, or of any part thereof, or of any building so used adjacent to such building, by the person or persons residing, whether habitually or temporarily, therein;

(*b*) power to direct the examination by a medical officer of persons, and if necessary, the disinfection of the clothing, bedding or other suspicious articles belonging to persons, either arriving from places outside the municipal district, or residing in any building adjacent to any infected building, and to direct that any such person shall give his address and present himself daily for medical examination at such time and places as may be prescribed, for a period not exceeding ten days;

(*c*) power to prohibit either generally, or by special order in any individual case, assemblages consisting of any number of persons exceeding fifty, in any place whether public or private, or in any circumstances, or for any purpose, if in the opinion, recorded in writing, of the Civil Surgeon of the District or other medical officer appointed by the Governor in Council on this behalf, such assemblages in such place, in such circumstances or for such purpose, would be likely to become a means of spreading the disease or of rendering it more virulent.

[4](4) The municipality may, in their discretion, give compensation to any person who sustains substantial loss by the destruction of any property under this section ; but except as allowed by the municipality, no claim for compensation shall lie for any loss or damage caused by any exercise of the powers specified therein.

Penal clauses.

(5) If in any municipal district in which such declaration under sub-section (2) as aforesaid is for the time being in force, any person—

(*a*) knowingly disobeys any order which for the time being is in force in such district and which has been passed by the municipality in exercise of any power conferred on them under section 144 or under this section, or

(*b*) obstructs any officer of the municipality or other person acting under the authority of the municipality in carrying out executively any such order,

such person shall be punished with fine which may extend to one thousand rupees.

1 **Origin of section.**—The whole of this section is new, and it is meant *specially* to be used when there is danger of cholera, plague or other dangerous disease breaking out in municipal limits. The provisions are based principally on recent sanitary experience.

Similar powers have existed for years in Madras, *vide* Madras Act, secs. 231 to 233. See "the Public Health Act, 1875" (38 and 38 Vic. Chap. 55, secs. 134 to 140) as to, prevention of epidemic diseases.

See sec. 48 (1) (*h*) for by-laws for carrying out the provisions of this section.

2 **Government to give municipality additional powers.**—This should be the marginal note. See "Contents."

Governor-in-Council.—Throughout the section means in Sind the Commissioner in Sind. (Sec. 3 (3) note.)

The words "in the case of City Municipalities, and the Commissioner in other cases," and "or the Commissioner as the case may be" were inserted by Bom. Act III of 1915.

Notification.—See end of note 1 sec. 144.

3 **The additional powers.**—This should be the marginal note. See "Contents."

It should be observed that the provisions of these clauses (*a*) and (*b*) extend also to a building adjacent to infected buildings and to persons resident in such adjacent buildings. Very frequently the evacuation of an entire row of tenements or block of buildings, where disease has broken out in parts of them, is even more important than the evacuation of the infected tenements or rooms themselves.

During a severe outbreak of cholera for instance, the spread of the disease, it is frequently found, is largely attributable to gatherings of persons, at the instance of would be hospitable or religious minded individuals, to consume *gratis*, in hot and in sanitary places, large quantities of cheap and unwholesome food specially purchased for the occasion. The law now empowers a municipality to prohibit this.

4 **Compensation when payable.**—This should be the marginal note. See "Contents."

[1]Withdrawal and modification of powers and orders.

146. (1) The Governor in Council may at any time

(*a*) withdraw any power conferred under section 144 or under section 145;

(*b*) cancel or modify any limitation, restriction or condition prescribed in respect of any such power; or

(*c*) cancel any order passed by a municipality in exercise of any such power.

(2) Every order passed by a municipality in exercise of any such power as aforesaid shall, on the withdrawal of such power, cease to be in force in the municipal district.

1 This section was not in the old Act.

Governor-in-Council.—This in Sind means the Commissioner in Sind (sec. 3 (3)).

Duties of Municipality in respect of disease among cattle, sheep or goats.

147. If in any municipal district any infectious disease amongst cattle, sheep or goats breaks out, or if the introduction of any such disease appears to be likely, the municipality shall take all such measures as they deem necessary for the purpose of preventing, meeting, mitigating or suppressing the disease or the outbreak or introduction thereof.

Cattle diseases.—This is adapted from sec. 434 (1), Bom. City Act. See also sec. 461 (*j*).

It is obviously desirable to deal with such diseases which are calculated greatly to spread disease amongst human beings and to cause widespread mischief, all which the organisation of a municipality is specially qualified to deal with and suppress, in the interests of the rate-payer generally, and also the rate-payer's agricultural customers.

The proposal to include "horses and camels" was not adopted.

See the Compilation of Standing Orders of Government in the Financial and Revenue Departments, Part VII, page 819, for rules for the repression and prevention of contagious animal diseases.

[1]Proceedings to abate the overcrowding of the interiors of buildings.

148. (1) Whenever the municipality consider the interior of a building is so overcrowded as to be, or to be likely to become, dangerous or prejudicial to the health of the inhabitants of that or of any neighbouring building, the municipality may cause proceedings to be taken before a Magistrate of the First Class for the purpose of obtaining an order to prevent such overcrowding.

[2]Procedure of Magistrate.

(2) Such Magistrate may, on the production of a certificate by a medical officer stating his opinion that the overcrowding complained of is likely to cause disease or risk of disease, and after such further enquiry, if any, as may appear to such Magistrate necessary, require the [3]owner of the building within a reasonable time, not being more than six weeks or less than ten days, to abate the number of lodgers, tenants or other inmates of the said building to such extent as he shall deem necessary to prescribe, or may pass such other order as he shall deem just and proper.

(3) If the [3]owner of the said building shall have sublet the same, the landlord of the lodgers, tenants or other actual inmates of the same shall for the purposes of this section be deemed to be the owner of the building.

(4) It shall be incumbent on any [3]owner, to whom a requisition is issued under sub-section (2), forthwith to give to so many of the lodgers, tenants or other actual inmates of the said building as may be necessary to fulfil the conditions prescribed thereby, written notice to vacate the said building within the period specified in such requisition, and any such lodgers, tenants or inmates receiving such notice shall be bound to comply therewith.

[4](5) Any [3]owner who after the date specified in any requisition issued under sub-section (2) permits the overcrowding of any building in contravention of such requisition, and any person who omits to vacate any such building in accordance with notice given to him under sub-section (4), shall be punished with fine which may extend to ten rupees for each day subsequent to the date specified in such requisition during which such overcrowding, or such omission to vacate, continues.

1 **Origin of section.**—The whole of this section is an elaboration of section 379 of the Bombay City Act, and Madras Act, section 226. It was suggested that provision be made in this section rendering it *obligatory* on the municipality to take under consideration the desirability of instituting these proceedings on a report being made by the Civil Surgeon of the district or other officer authorised by the Commissioner in this behalf, drawing attention to any case of overcrowding, for some backward municipalities might dislike putting the clause into action, and in any case overcrowding might go on without its being brought to the municipality's notice. The suggestion has, however, not been adopted.

The Bombay City Act says "so as to endanger the health of the inmates thereof."

The Panjab Act, sec. 143 (1) (*d*) provides that a municipality may by by-law "fix, and from time to time vary, the number or persons who may occupy a building or part of a building which is let in lodgings or occupied by members of more than one family; and provide—

(i) for the registration and inspection of such buildings;

(ii) for promoting cleanliness and ventilation in such buildings;

(iii) for the notices to be given and the precautions to be taken in the case of any infectious disease breaking out in such buildings; and

(iv) generally for the proper regulation of such buildings."

2 **Sub-section (2).**—The proposal that the medical officer should be "of not lower rank that an Assistant-Surgeon" was not adopted.

3 **Owner of the building.**—*Landlord of lodgers, &c.*—See I. L. R. 36 Bom. 81 noted section 3 (8).

4 **Penalty for neglect of Magistrate's order.**—Sub-section (5) is taken from Madras Act, section 226 (2) with extensions and gives as marginal note the above heading.

Further fine.—See note 3, p. 270.

149. (1) If the [2]Governor in Council is of opinion that risk of disease has arisen or is likely to arise, either to any occupier in, or to any inhabitants in the neighbourhood of, any area by reason of any of the following defects, namely—

[1]Special powers which may be conferred by the Governor in Council, in respect of overcrowded areas notified by the Governor in Council.

(*a*) the manner in which either buildings, or blocks of buildings, already existing or projected therein, are, or are likely to become, crowded together; or

(*b*) the impracticability of cleansing any such buildings, or blocks of buildings, already existing or projected or

(*c*) the want of drainage or scavenging, or the difficulty; of arranging therein for the drainage or scavenging of any such buildings or blocks or area as aforesaid; or

(*d*) the narrowness, closeness, bad arrangement or bad condition of the streets or buildings or groups of buildings;

he may by notification confer on the municipality, to which such area is subject, all or any of the powers specified in sub-section (2), and may, if he deem necessary, at any time make rules prescribing any limitations, restrictions, modifications, conditions or regulations, subject to which the municipality shall exercise within that area all powers so conferred, unless and until those powers are withdrawn by a subsequent notification of the Governor in Council.

[3](2) The powers all or any of which may be conferred on a municipality under sub-section (1) are as follows:—

(*a*) power, when any building or block already existing or in course of erection, by reason of any defect specified in sub-section (1) has given or is in the opinion of the municipality likely to give rise to such risk as aforesaid, to require by a [4]written notice, to be fixed upon some conspicuous part of such building or block, and addressed as the municipality deem fit either to the owners thereof, or to the owners of the land on which such building or block is erected or is in course of erection, that the persons so addressed shall, within a reasonable time as shall be specified in the notice, either pull down or

remove the said building or block, or execute such works or take such action in connection therewith as the municipality deem necessary to prevent all such risk of disease;

(*b*) power by municipal or other agency, to pull down or remove the said building or block, or to execute such works or take such action, if the persons addressed in the said notice neglect so to do within the time specified therein;

(*c*) power, subject to a right of appeal to the Commissioner, whose decision shall be conclusive, to prohibit by [4]written notice addressed to the [5]owner and occupier of any such site or space, and by general notice published in the manner provided in sub-section (3) of section 154, the erection of any building or of any building exceeding such dimensions as may be specified,

(i) on the site of any building which has, in whole or in part, in exercise of the power specified in clause (*a*), been pulled down, or

[6](ii) on any space not occupied by buildings, whether such space is private property or not, and whether it is enclosed or not,

if the municipality consider that in order to prevent such risk as aforesaid, such site or space should not be build upon, and either

(*a*) to acquire such site or space, or

(*b*) to prescribe such conditions, as may be deemed necessary as to the use which the [5]owner or occupier may make or permit to be made thereof:

Provided that in every case compensation, the amount of which shall, in case of dispute, be ascertained and determined in the manner provided in section 160, shall be paid to any person whose rights are affected by such prohibition.

[7](3) When in pursuance of any notice under sub-section (2), any building has been pulled down, the municipality shall, unless it has been erected contrary to any provision of this Act or of any by-law in force thereunder, pay to such [5]owner or occupier as may have sustained damage thereby reasonable compensation, the amount of which shall, in case of dispute, be ascertained or determined in the manner provided in section 160.

[8](4) In making any rule under sub-section (1) the Governor in Council may prescribe a fine not exceeding five hundred rupees for every breach, [9]and a further fine not exceeding twenty rupees

a day for every continuing breach, of any order made or conditions imposed by the municipality in exercise of the powers conferred upon them under this section or in pursuance of such rules.

1 **Origin of section.**—The whole of this section is not in the old Act.

This marginal note should be, "Circumstances under which special powers may be conferred in respect of overcrowded areas."

The Madras Act, sec. 187, provides for removal of buildings in cases of overcrowding. See also Madras Act I of 1884, secs. 323-324.

The powers of municipalities to interfere with buildings for sanitary purposes have been more clearly defined, and provision has been made for payment of compensation to any person were rights are affected by such interference. As a matter of procedure, a right of appeal to the Commissioner has been substituted for the condition of the previous sanction of the Commissioner. No provision has, however, been made for the cost of such improvements being thrown on the owners of neighbouring properties who would be benefitted thereby. Sec. 156, proviso (*b*), provides for improvement expenses being recovered in certain cases, but does not include the works carried out under this section. The proposal was not adopted that when an improvement scheme was formulated, provision should be made for a betterment clause to enable a municipality to recover, at any rate, a portion of the expenditure incurred from owners of houses benefitted by such scheme, in accordance with by-laws to be framed.

See note sec. 3 (15) I. L. R. 38 Cal. 296.

For suggestions in regard to the improvement of congested and insanitary areas see Gov. of India resolution printed with G. R. 6179 of 20 Sep. 1912 G. D.

2 **Governor-in-Council**—This in Sind means, throughout this section, the Commissioner in Sind. (Sec. 3 (3)).

3 **Sub-sec. (2).**—The marginal note should be, "The special powers to be so conferred."

"*In the opinion of the Municipality.*"—The discretion thus vested if exercised properly cannot be questioned. See note 6 sec. 131.

Secs. 245 and 246 of Bengal Act contain somewhat similar provisions as to blocks of huts.

"*Held* that where a municipality having proceeded in accordance with the sections that decide that certain works are necessary, that conclusion in the absence of *mala fides* or fraud or considerations of that nature cannot be questioned in a Civil Court. *Stockton and Darlington Railway Co.* v. *Brown* 1860 9 H. L. C. 246 and the judgment of Sir George Jessel in *William* v. *Hull Railway and Dock Co.*, 1882 L. R., 20 Ch D. 323 (329) referred to.

"When the municipality in the said notice under sec. 246 also required plaintiff to remove a pucca privy. *Held* that the action of the municipality was, so far as the privy was concerned, not *ultra vires*, inasmuch as the municipality had a right to require the privy to be removed under sec. 224 and had actually served a notice on the occupier under that section. Because the municipality entitled their notice only under one section instead of two, does not make the whole *ultra vires*." (*Duke* v. *Rameswar Matra*, I. L. R. 26 Cal. 811.) 6 Ind. Cas. 431 noted sec. 175 is to be distinguished as noted.

4 **Written notice.**—If no rules made under sub-section (4) for a penalty, non-compliance will be punishable under sec. 155. (*Vide* note 3 p. 270.) But if rules made prescribe a penalty that penalty alone can be enforced.

A party failing to comply with a notice under sec. 187 of the Madras Act (corresponding to this section) renders himself only liable to the penalty provided in clause 2 of that section, and the municipality is not competent to visit upon the person the penalty provided in sec. 264 (corresponding to sec. 156 of the Act.) (*Esoof Sait Saheb, petitioner* (1907) Mad. L. J. 560).

5 **Owner-occupier.**—See notes 4 and 5 sec. 63.

6 **Prohibition of building even on private land.**—See note 1 sec. 96.

"*If the municipality consider.*"—See note 3 *supra*.

7 **Sub-section (3).**—The marginal note should be, "Compensation, when to be paid."

8 **Sub-section (4).**—The marginal note should be, "Fine may be prescribed for breach of rule."

9 **Further fine.**—See note 3 page 270.

150. (1) If the municipality be of opinion that any place used for the disposal of the dead is in such a state as to be, or to be likely to become, [2]injurious to health, they may submit their opinion with the reasons therefor to the [3]Commissioner and the Commissioner thereupon, after such further enquiry if any, as he shall deem fit to cause to be made, may by notification direct that such place shall cease to be so used from such [4]date as may be specified on that behalf in the said notification.

[1]Closing of places for disposal of the dead.

[5](2) A copy of the said notification, together with a translation thereof in the vernacular of the district, shall be published in the local newspapers, if any, and shall be posted up at the Municipal Office and in one or more conspicuous spots on or near the place to which the same relates.

[6](3) Any person who buries or otherwise disposes of any corpse in any such place, after the date specified in the said notification for closure of the same, shall be punished with fine which may extend to one hundred rupees.

1 **Origin of section.**—This section is new, and has been borrowed from sections 438 and 440 of the Bombay City Act.

Under the Panjab Act, section 101, the power of closing is vested solely in the municipality, subject to appeal to the Deputy Commissioner or Commissioner, and it is provided that if no other suitable place exists within a reasonable distance, the municipality must provide one.

The Bengal Act, section 256, vests the power in the municipality, subject to the condition that a suitable place for the purpose exists within a convenient distance and is open and available.

The Madras Act, section 240, provides that the notice for closing may be issued "with the previous sanction of the Governor in Council," and that, in the case of the closing of a public burial or burning ground, another convenient place has been provided.

See sections 48 (1) (*g*) and 54 (1) (*h*) and notes thereto.

On the subject of the disposal of the dead, see Bom. City Act, secs. 435—441; Bengal Act. secs. 254—260; Madras Act, secs. 234—242; and Panjab Act, secs. 101, 102 and 167.

Notification.—See end of note 1, sectioe 144.

If the Municipality be of opinion.—See note 3, sec. 149.

The Madras Act sec. 240 says "If the Municipal Council are satisfied," they may Act.

Municipality having no evidence of the facts acts ultra vires.—Sec. 79 of Madras Act III of 1864 does not authorise a municipality to close a burning ground which has been used for very many years, merely because they think that the burning of dead bodies is offensive. It allows them to interfere only when it shall appear to them, upon the evidence of competent persons, that any burning ground is in such a state as to be dangerous to the health of persons living in the neighbourhood. The condition precedent to their taking action under the law from which they derived their authority is wanting in this case. The Vice Chairman had before him no evidence as to the state of this burning ground. The reports of the medical officers say nothing as to the state of the burning ground. *Held* that therefore the municipality had acted in excess of its statutory powers and the order, though sanctioned by Government, was *ultra vires*, and should be cancelled. *Held further* that a Civil Court had power to interfere in the circumstance. (*Tinkler* v. *Wandsworth Board of Works*. (De G. & J., Vol. 2, p. 261) followed.)

In that case it was contended for defendants that the Board were the proper judges of the state of a particular property upon which they found what they considered a nuisance and were the proper persons to prescribe the remedy, and further that public bodies, while

acting within their statutory powers, could not be interfered with by the Courts, on the ground that they are not exercising a sound discretion. It was held that the Board had exceeded their statutory powers and had acted *ultra vires*. (*Brindaban Chunder Roy* v. *Chairman Municipal Commissioner Serampore*, 1873, 19 W. R. 309.)

2 **Injurious to health**.—Compare Madras Act, sec. 240; Panjab Act, sec. 101; and C. P. Act, sec. 58; which say "dangerous to the health of persons living in the neighbourhood"; and the Madras Act adds "or that any such place is over-crowded with graves." The Bengal Act, sec. 256, says "dangerous to the health or offensive to the tax-payers or to the inhabitants of the neighbourhood."

3 **Commissioner**.—This has been substituted for "Governor-in-Council" in both places by Bom. Act III of 1915.

4 **Date of closing**.—This, in most of the Municipal Acts, is a period of 2 months.

The municipal authorities issuing a certificate under sec. 381 of the Calcutta Municipal Act (Ben. II of 1888, prohibiting the use of a burial ground, must definitely specify the point of time from which the period fixed by them under that section is to run. (*Lutfur Rahman Naskur* v. *Municipal Ward Inspector*, I. L. R. 25, Cal. 492.)

5 **Sub-section (2)**.—Marginal note should be "Publication of notification."

6 **Sub-section (3)**.—Marginal note should be "Penalty."

(9)—*Nuisances from certain trades and occupations.*

151. (1) [2]If it be shown to the satisfaction of the municipality that any building or place [3]used or intended by any person to be used,

[1]Regulation of certain trades.

(*a*) for boiling or storing offal, blood, bones or rags;

(*b*) for salting, curing, and storing fish;

(*c*) for storing hides, horns or skins;

(*d*) for tanning;

(*e*) for the manufacture of leather or leather goods;

(*f*) for dyeing;

(*g*) for melting tallow or sulphur;

(*h*) for washing or drying wool or hair;

[3a](*i*) as a brick, pottery or lime kiln;

(*j*) for soap-making;

(*k*) for oil-boiling;

(*l*) as a manufactory of sago;

(*m*) as a distillery;

[4](*n*) for storing hay, straw, fodder, wood, coal, or other combustible material;

[5](*o*) as a manufactory or place of business of any other kind, [6]from which offensive or unwholesome smells arise, or which may involve risk of fire,

is, or is likely by reason of such use and of its situation to become, a [7]nuisance to the neighbourhood, or is so used or is so situated as to be likely to be dangerous to life, health or property, the municipality may by [8]written notice require the [9]owner or occupier—

[10](i) at once to discontinue the use of, or at once to desist from carrying out, or allowing to be carried out, the intention so to use, [11]such place, or

(ii) to use it in such manner, or after such structural alterations, as the municipality in such notice prescribes, so that it may not become, or may be no longer, a [7]nuisance or dangerous.

Liability to penalty after notice.

[12](2) Whoever, after notice has been given under sub-section (1), uses any place or permits it to be used in such a manner as to be a [7]nuisance to the neighbourhood or dangerous to life, health, or property, shall be punished with fine which may extend to two hundred rupees, and [13]with further fine which may extend to forty rupees for every day on which such use or permission of use is continued after the date of the first conviction.

[14](3) Upon a conviction being obtained under this section the Magistrate shall, on the application of the municipality, but not otherwise, order such place to be closed, and thereupon appoint persons, or take other steps to prevent such place being used for any purpose mentioned in sub-section (1).

Penalty for unlicensed places in district in which by-laws under sec. 48 (*b*) (iii) are in force.

[15](4) Whoever uses without a license, or during the suspension or after the withdrawal of a license, any place for any purpose mentioned in sub-section (1) in any municipal district in which [16]by-laws are for the time being in force prescribing the conditions on or subject to which, the circumstances in which, and the areas or localities in respect of which, licenses for such use may be granted, refused, suspended or withdrawn, shall be punished with fine which may extend to fifty rupees and with [17]further fine which may extend to ten rupees for every day on which such use is continued after the date of first conviction.

1 **Offensive or dangerous practises.**—Sub-secs. (1) and (2) are re-enacted in a somewhat different from form sec. 69 of the old Act of 1873, as amended with some additional provisions.

The Bombay City Act, sec. 390, provides that no factory, workshop or work place in which steam, water or other mechanical power is intended to be employed, shall be newly established without the written permission of the Commissioner, and this may be refused if the factory, &c., in the proposed position is objectionable by reason of density of the population in the neighbourhood, or will be a nuisance to the inhabitants.

Sec. 392 provides for the sanitary regulations of such factories.

The Bom. City Act, sec. 394, provides that no person shall use any premises for any of the purposes below mentioned without, or otherwise than in conformity with a license, namely—

(*a*) any of the purposes specified in Schedule M. which is as follows—

(1) Casting metals; (2) Manufacturing bricks or tiles;

(3) Packing, pressing, cleansing, preparing or manufacturing, by any process whatever, any of the following articles, *viz*:—

Clothes in indigo or other colours, Paper, Pottery, Silk.

(4) Storing, packing, cleansing, preparing or manufacturing, by any process whatever any of the following articles, *viz*:—

Blood, Bones, Candles, Catgut, Chemical preparations, China grass, Cocoanut fibre, Cotton* and Cotton refuse or Seed, Dammer, Dynamite, Fat, Fins, Fish, Fireworks, Flax, Fulminate of mercury, Gas, Gun-cotton, Gunpowder or blasting powder, Hemp, Hides, Horns, Hoofs, Hair, Jute, Kerosine oil, Lime, Matches for lighting, Manure, Meat, Nitro-glycerine, Oil, Oil-cloth, Offal, Petroleum oil, Parafine oil, Rags, Rosin, Rangoon or Burmah oil, Soap, Sulphur, Saltpetre, Spirits, Skins, Tallow, Tar or pitch, Tow, Turpentine, Wool.

(*b*) any purpose which is, in the opinion of the Commissioner, dangerous to life, health or property, or likely to create a nuisance;

(*c*) keeping horses, cattle or other four-footed animals for sale or hire, or for sale of the produce thereof;

(*d*) storing for other than domestic use or selling timber, firewood, charcoal, coal, coke, ashes, hay, grass, straw or any other combustible thing.

This sec. (394) does not apply to mills for spinning or weaving cotton, wool, silk or jute See the Panjab Act, secs. 135-136; the C. P. Act, secs. 82-83.

Madras Act, sec. 188, provides for the licensing of premises for certain purposes, among which are enumerated "for depositing or washing clothes; for boiling paddy, camphor or oil; for storing or otherwise dealing with manure; for making fish oil; as an oil-mill, or oil-press; or manufacturing of artificial manure; as a livery-stable, veterinary infirmary, cart-stand or cattle-shed, or as horse-lines; as a public halting place; for keeping together 20 or more sheep or goats or 10 or more pigs or head of cattle; for the preparation of flour or articles made for four; as a manufactory of ice or œrated waters; or for the sale or storage of milk or dairy produce."

The corresponding sec. of the Bengal Act, sec. 261, adds "any place used for skinning or disembowelling animals, or as a lodging house or serai, or as a shop for the sale of meat."

It was suggested that "for boiling sugar" be added to this list as the furnaces of 'Halwais,' worked as they usually are in small shops built of combustible material and large fires, in densely crowded streets, are a perpetual nuisance to all houses in their vicinity, but the proposal was not adopted, perhaps because such places are an absolute necessity in every large town and village. Such a place could, however, come under the last part of clause (*o*), and could be brought under more control by the exercise of the provision as to structural alteration in this section, sub-clause (ii).

Inspection of these places is to be regulated by by-laws, sec. 48 (1) (*b*). See also Bom. City Act, sec. 396.

Chapter X of the Criminal Procedure Code provides for action being taken by the District Magistrate, &c., if he considers that any trade or occupation, or the keeping of any goods on merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited. Also if the construction of any building or the disposal of any substance is likely to occasion conflagration or explosion.

Offensive trades.—If these trades are carried on so as to cause a public nuisance, they are of course liable to be stopped by injunction or indictment, wherever they may be situated and however old they may be: and the license of the local authority would be no answer to such a complaint.

In cases of trades carried on long enough to have gained a presumptive right to cause, private nuisances, individuals aggrieved can still maintain an action, if they can show that the original nuisance has become aggravated. (*R.* v. *Watts*, 1829, Mov. *and* M. 281).

Marginal note.—It was pointed out in Council that this should be "Offensive or dangerous practices" as the section refers to practices that are not trades. It was, however.

* The storing of pressed bales of cotton is excepted.

decided that though it might be possible hereafter to alter this note still it was not necessary to do so just then.

Railway company may store timber without license.—*Held*, that no license from the municipality was necessary. Section 7 (1) of the Indian Railways Act (IX of 1890) authorizes the Railway Administration to do all acts necessary for the convenient making, maintaining, altering, repairing and using the Railway notwithstanding anything in any other enactment for the time being in force.

The storing of timber was necessary for the convenient making, &c., of the Railway line.

Under section 7, (2) of the Railways Act the Governor General in Council and not the Municipal Commissioner has the control of the Railway Administration in the exercise of its powers under sub-section 1. (*Municipal Commissioner of Bombay* v. *G. I. P. Railway Company* (1908) 34 Bom. 252; (1909) 11 Bom. L. R. 1181, 1909, 4 Ind. Cas. 281.)

Place.—See note 11, *infra*.

2 **If it be shown to the satisfaction of the municipality.**—That is, if the municipality has on evidence or enquiry satisfied itself, then the Court will not enquire whether the evidence or enquiry is sufficient or not to satisfy *the Court*—it is enough that the municipality did make enquiry and did have before it some material for satisfaction. If it made no enquiry at all or there was no material whatever, then it acts *ultra vires* and the Court would have power to interfere. See note 6, *infra*, note 3 sec. 149 and note 1 sec. 150.

3 **Used or intended to be used.**—See note 12 *infra*.

This sentence, "or intended by any person to be used," was not in the old Act, and will enable a municipality to prevent a person going to unnecessary expenses to commence an objectionable trade before it can be stopped.

Used for storing.—See note 4.

Accused kept on his mill premises, used for grinding corn, about 115 gallons of lubricating oil for the machines; a supply sufficient for 10 to 15 days use. He was prosecuted for using the premises "for storing oil" without a license. *Held* confirming his acquittal, the wording of section 394 of the Bombay City Act requires that the premises, in order to attract the operation of the section, should be used for the purpose of storing. The phrase "for the purpose" indicates that it must be the intention of those using the premises to store; that storing must be the object aimed at;—the final cause for which the premises are used. There is nothing in the exemption which sub-section 3 declares in favour of the mills specified, to imply that sub-section 1 was intended, in the case of premises not so exempted, to include any use to which they might be put which was merely incidental or subsidiary to the paramount purpose to which the premises are devoted. Where articles are kept on the premises, not because of a purpose of storing them, but merely because they have not been consumed as rapidly as anticipated or for other similar reason, it cannot reasonably be said that the premises are used on purpose for storing. The purpose or intention is the test. No doubt the relative quantity of the article kept, in proportion to the exigences of the consumption, must in each case be important evidence as to the purpose or intention. But such an intention is negatived if the quantity retained is only reasonably sufficient for the varying exigencies of consumption. (*Emperor* v. *Wallace Flour Mill Co.*, I. L. R. (1904) 29 Bom. 193, (1904) 6 Bom. L. R. 735.)

3-*a*. **As a brick &c. kiln.**—Accused made and burnt bricks for his own use without a license. In support of the conviction, it was contended that no one was permitted to make bricks, whether for his own use or for sale without first taking out a license. *Held*, sec. 77 of Act III (B. C.) of 1864 refers to the burning of bricks for trading purposes, and not to cases where bricks are made for the par icular use of the person burning them; such person need not take out a license, for that purpose." (*Sriram Chunder* v. *Chairman, Howrah Municipality*, 20 W. R. Cr. R. 65.)

4 **Storing hay * * * or other combustible material.**—Madras Act, sec. 188 (1) (*q*), which uses very similar words, provides that "no license shall be required for the storage of timber, firewood, hay &c., &c., or milk or diary produce, *for private use*, in such quantities and under such restrictions for safety as the Chairman may direct." The Bom. City Act, sec. 394 (1), says "storing for other than domestic use, or selling timber, firwood, &c., &c." Bengal Act, sec. 261, says "as a yard or depot for trade in hay, straw &c.;" so also Panjab Act, sec. 135.

"*Combustible material*":—The Bengal, Panjab and C. P. Acts use the expression "dangerously inflammable material."

"Manufacturies of gunpowder or fireworks, and places for storing explosive," which appeared in the old Act have been omitted from this section in order to avoid possible

conflict with rules under the Indian Arms Act and Explosives Act. It is always open to a municipality, as it is to any private person, to represent to the District Magistrate dangers arising from possession of explosives.

"The Bom. City Act, sec. 394, aims at punishing people, who without a license or contrary to its terms, use premises in a way likely to endanger life, health &c., or create a nuisance. Where a baker having a bake-house in his dwelling, stores so much fire-wood in excess of his domestic requirements as may lead to such danger or nuisance, he may be punished, as the intention of the law about licenses is to bring trades, factories, &c., under the eye of the Commissioner in order that he may protect the public." (*The Bombay Municipality* v. *Proprietor Prince Albert Victor Bakery.* Bom. H. C. C. Ruling No. 51 of 1895.) See note 3.

5 **"Manufactory or place of business of any other kind, &c.**—This clause is taken from the Central Provinces Act, sec. 82, which does not however include the risk of fire, except in reference to explosives and inflammable oil, &c. So also the Panjab Act, sec. 135, and Bengal Act, sec. 261.

The wording of the old Act was "manufactory of sago, distillery, or other manufactory or place of storing hides, fish, horns, skins, and from which either offensive or unwholesome smells arise."

The words "or place of business of any other kind" were added to meet the objection raised in G. R. 4776 of 29 Dec. 1883 G. D. that the trades marginally noted are not amongst those specified in the section. A manufactory would include generally any building or place which is habitually used for the preparation from raw materials of any article of commerce. But although the word 'manufactory' means literally any place where any goods are manufactured, its application is usually limited to places of considerable size, 'factories' as they are otherwise called, where the making of goods is the principal purpose for which the premises are occupied, the sale thereof, if carried on upon the same premises at all, being a secondary purpose of their occupation. Ordinary shops in a bazar of which the principal object is the sale of goods are not 'manufactories' within the meaning of the section even though the goods sold there, or some of them, are made on the premises."

1. Halva's business places.
2. Grain-parchers' places.
3. Shops of dealers in chillies.
4. Manufacture of snuff.
5. Copper, brass and iron smiths' places of business.
6. The importation of long timber along thoroughfares.

The word 'manufactory' applies only to places exclusively used for the makings, *i. e.*, production from raw material, of new commodities, and not to places used for the sale of things made up on the same premises.

6 **"From which offensive or unwholesome smells arise."**—Sub-clauses (*a*) to (*m*) specify trades all of which are clearly what would be generally recognised as objectionable, and such that an offensive smell would certainly issue from the place where they are carried on. Sub-clause (*o*) first part, the manufactory must be such that offensive or unwholesome smells arise from it as the *natural* result of working the factory in the ordinary way. And there must be something more than an objectionable smell *inside* the factory; an offensive or unwholesome smell *must issue* from the premises so that there is at least a possibility of it causing a nuisance to the neighbourhood. If the offensiveness arises only from an improper use of the premises, then the smell must be actually dangerous to life, health or property before the municipality have a right to prohibit a further use of the premises as such manufactory.

If the manufactory be one within the terms of the section, then the question whether or not the place is a nuisance or is dangerous to health &c., is one for the municipality to decide. But they must be really satisfied; they must have material before them which might, at least conceivably, satisfy a reasonable man; they must not merely say they are satisfied.

Where therefore there was nothing before the municipality to show that the flour-mill worked by a camel came within the terms of the section, the notice of prohibition was held to be *ultra vires*, and an injunction was granted against the municipality. (*Pahulajrai* v. *Karachi Municipality*, (1911) 5 Sind L. R. 11; 1910, 9 Ind. Cas. 886.) See 8 S. L. R. 238 note 12.

7 **Nuisance.**—See definition sec. 3 (15).

8 **Written notice.**—See note 9 sec. 113.

9 **Owner or occupier.**—See notes 4 and 5 sec. 63 and note 1 sec. 129.

10 **Discontinue or desist.**—The words "or at once to desist * * * so to use" were not in the old Act.

The C. P. Act, sec. 91, gives the right of appeal against such order to the Deputy Commissioner or Commissioner.

"*Discontinue use.*"—Bengal Act, sec. 262, provides "that if any place licensed under sec. 261 is a nuisance to the neighbourhood" the municipality may, notwithstanding the license, give notice to the occupier to discontinue the use of such place within one month after the date of notice.

"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 to the neighbourhood.

"No one has a right to corrupt the air of a particular locality by the exercise of a noxious trade, simply because at the commencement of the nuisance, no person 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. (*Municipal Commissioner, Calcutta* v. *Muhammad Ali*, 16, W. R., Cr. R. 6; 7 Ben. L. R. 499. *Reg.* v. *Cross*, 3 *Camp*, 227.)

In that case, is was therefore held, that where it was proved that the trade as carried on in the slaughter-house in question was most injurious to the health and comfort of the community, it was no answer whatever to say that the business was one which, if proper arrangements had been taken by the defendants, might have been carried on without danger to the public; that though the municipality might have required defendants to remedy the defects that caused the nuisance by paving, draining, &c., it was quite within their discretion to order discontinuance instead; nor was it any defence that there existed other nuisances in the neighbourhood and which had not been stopped.

But in a neighbourhood where there were already established other trades, &c., emitting extremely offensive or insalubrious smells, which smells were not perceptibly increased by the alleged nuisance in questions, it has been held that a long acquiescence by the neighbourhood will prevent an indictment for a public nuisance of that particular nuisance; *Reg.* v. *Neville, Peape*, 91; *Reg.* v. *Wates, Moo and M.* 281. But the mere fact that there are other nuisances in the neighbourhood will not be a defence; *Reg.* v. *Neville Supra*, and see *Welch* v. *Homby*, 7 *East*, 197; 4 *Bing N. C.* 183.

11 **"Such place."**—To be consistent with the terms used in the first part of this section, the phrase here should be "any such building or place," but the word 'place' would include a building. See note 3, section 139. See next note.

The word 'place' has apparently been put here to meet the objection raised in the following case in respect of the word 'premises' used in the Bombay City Act.

Accused was charged with using a place for storage or sale of cotton without a license contrary to sec. 394 of the Bombay City Act. The Magistrate discharged accused, holding that no license was necessary as the ground in question was *open ground* and not premises referred to in the said section. *Held*, setting aside the order, that having regard to the nature of some of the articles dealt with in the section and in Schedule M. to the Act, it was impossible to restrict the meaning of the word "premises" in that section to buildings; it must also include open ground. (*Municipality Bombay* v. *Dharmsi Jetha*. Bom. H. C. C. R. No. 10 of 1901. *Master* v. *Dharamsi Jetha*, 3 Bom. L. R. 436.)

12 **Sub-section (2).**—This sub-section is an amplification of the last clause of the old section 69, and is a reproduction of section 121 of the Central Provinces Act, and follows Panjab Act, section 136 (2).

Whoever, after notice, uses in such a manner.—See note 2, *supra*. Though a Civil Court cannot question the discretion of the municipality to issue the notice so long as it has on some material satisfied itself, yet when action is taken under this sub-section to enforce the penalty, the Magistrate must satisfy himself that *after issue of the notice*, the place has actually been used in the manner stated.

Magistrate must be satisfied as to the using.—Mere non-compliance with a notice duly issued by the municipality is not punishable under this sub-section. The Magistrate must be satisfied by suitable evidence that the accused has been guilty of causing nuisance after receipt of notice duly issued by the municipality. The fact that a notice cannot issue under sub-section (1) unless the municipality are satisfied as to the nuisance, &c., cannot affect the construction of sub-section (2). If the opinion of the municipality was intended to be conclusive the Legislature would have used some such words as "in contravention of the terms of such notice." I. L. R. 34 Bom. 346, noted section 131 distinguished as under the Bombay City Act section 377 the words are "If it shall appear to the Commissioner" and not "to the Magistrate." 9 Bom. L. R. 156 (noted p. 282) deals with section 96 (5) under which mere disobedience (so long as such orders are not *ultra vires*) is punishable. (*Lunindaram* v. *Karachi Municipality*, (1914) 8 S. L. R., 238.)

"*Whoever uses any place.*"—The words "uses any premises" in section 77 of the Bengal Act means using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. (*Vide* 16 W. R. 4, note 6, section 139.)

Temporary use not an offence.—An offence under section 188 (*n*) of Madras Act is committed when a person keeps more than 10 head of cattle in a private place, though not for purposes of trade It is necessary however, that there must be regular user of the place for keeping more than 10 head of cattle; and a mere temporary user for such purpose will not constitute the offence, as when the usual number kept was less than 10 although such number was exceeded on a particular occasion. (*Emperor* v *Mayandi Konan*, I. L. R. (1906) 30 Mad. 220.)

"*Who liable for such use.*"—A owned certain premises which he leased to a tenant, who used them for keeping horses for sale or hire without a license.

Held that A, having transferred the use and occupation of the property to the tenant, was not liable under sec. 394 (*c*) (*vide* note 1, *supra*) of the Bombay City Act, for any use to which the tenant might turn it." (Bom. H. C. Cr. Ruling No. 22 of Dec. 1902. *Imp.* v. *Mirza Muhammad Shiraz.*)

Whoever uses any place or permits it to be used.—A leased his premises to B for a term of 3 years, and after the termination of the lease, B held over as a monthly tenant. A was convicted under sec. 394 (1) Bombay City Act for using the premises for the purposes of keeping horses for sale or hire without a license. *Held* reversing the conviction, that the use and occupation of the premises being clearly with B the tenant, and in the absence of any covenant to the contrary A had no power to enter on the property or to allow or disallow any use to which B might think proper to turn it, A was wrongly convicted. The breach was by B. It is immaterial that A was aware of the use to which B would put the premises. This is different from the case of where an owner allows cartmen to stable their carts and bullocks on the land and receive not rent for the premises but a fee of Re. 1 for each cart and pair of bullocks. In such a case the owner uses the premises and does what the tenant in the above case did. (*Emperor* v. *Mirza Muhamed Shiraji*, (1902) 4 Bom. L. R. 943.)

13 **Continuing offence.**—See note 3, sec. 94. A Magistrate convicted accused of using a place in a tannery, and also ordered that if the accused continued to so use it from the day following the conviction, he should pay 8 annas a day till the continuance ceased to exist. Held that an order could not under sec. 74 (2) of the Bom. Act VI of 1873 be made in respect of a possible future continuance of an offence for which an accused person has been punished. In respect of any such continuance, a fresh prosecution would be necessary. (*Queen Imp.* v. *Banerji.* B. H. C. Crim. R. 55 of 1888.)

Where a by-law provides for the taking out of a permit as a milkman for the ½ year, failure to do so might make him liable to conviction, but, unless the by-law also prohibited the carrying on of the trade without a license, he could not be convicted again during that ½ year if he continued to carry on his business. See I. L. R. 20 Cal. 605 noted sec. 70.

14 **Sub-section (3).**—This sub-section is new. The marginal note should be, "Order for closing, &c., such place."

15 **Penalty for unlicensed places.**—This sub-section is borrowed with some necessary extensions from the Central Provinces Act, sec. 120. Under the corresponding secs. 394 and 471 of the Bom. City Act, it was held that a person using a premises for any of these purposes without a license could be punished. The questions whether the Municipal Commissioners refused accused a license, and whether the refusal was legally justified are irrelevant to the determination of a case under the section. (*Imp.* v. *Oomer Essa.* Bom. H. C. Cr. Ruling No. 57 of 1894).

Sec. 82 of the Central Provinces Act requires that the owner or occupier of any such place "shall register the same in a list to be kept" by the municipality, and shall not use it for any of the said purposes without a license renewable annually. No license is, however, to be withheld, unless the municipality considers that the business would be "offensive or dangerous to persons residing in or frequenting the immediate neighbourhood." This accords exactly with Panjab Act, sec. 135, and Bengal Act, sec. 261. The Madras Act, sec. 188 (3), leaves the granting of the license at the discretion of the Chairman, subject to appeal to the Municipal Council.

No license necessary where no by-laws made.—Under section 261 of the Bengal Act local limits have to be fixed within which licenses are necessary, and a fee is to be levied for such license on a scale to be fixed by the municipality at a meeting.

Held that where no local limits had been fixed nor scale of fees, the levy of the fees in respect of a brick burning business was illegal. (*Chairman Bansberia Municipality* v. *Kurunamoy Genguli*, 10 C. L. J. 22; 1909, 2 Ind. Cas. 944.)

Held that the local limits need not necessarily be less than the whole limits of the municipality, still some limits must be fixed and since this was not done nor any resolution passed fixing a scale of fees, accused's conviction for not taking out a license for storing hides was illegal. (*Syed Mokran Ali* v. *Cuttak Municipality*, 17 C. W. N. 531.)

Separate licenses for lime business and for storing lime.—A lime-trader, who has obtained a license under section 198 and rules (1) and (2) of Schedule II of the Calcutta Municipal Act in respect of his lime business, is not exempted by rule (7) of the Schedule from taking out a separate license to store lime as required by section 466 (1) of the Act. The purposes for which the two licenses are made necessary are widely different, and there is no necessary connection between the two. The Act and Schedule contemplate a liability to take out licenses under both sections in respect of one business. (*Bivin Behari Ghose* v. *Corporation of Calcutta*, I. L. R. (1907) 34 Cal. 913; (1907) 11 C. W. N. 885.)

Separate licenses for 2 factories worked by same engine.—The accused obtained the Municipal Commissioner's permission (section 390 (1) of the Bom. City Act) to establish a handloom factory worked by an oil engine: but by means of this oil engine he also established a flour mill—without any permission. The accused was, therefore, charged with the offence under the Act.

Held, that the accused was guilty of a technical offence for although the accused had leave to establish the hand-loom factory, he had no leave to establish the flour mill factory, which was not the less another and a separate factory because it happened to be worked by the same power which it was proposed to employ in the permitted factory. (*Emperor* v. *Mulji Damodardas* (1909) 34 Bom. 344 (1910) 12 Bom. L. R. 122; 5 Ind. Cas. 859.)

Refusal of license even if illegal does not justify not having a license.—D was prosecuted by the Howrah Municipality for using a straw depôt without a license. He was acquitted 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 for the Court to decide was whether accused was carrying on his business without a license or not, and not whether his petition had been properly dealt with.—*Unreported case.*

16 **By-laws.**—These by-laws, as the marginal note shows, are to be under sec. 48 (*b*) (iii).

The by-law should be to regulate the conduct of business in a snuff manufactory, not a by-law declaring that no place shall be used for such purpose, unless a license has been taken out. The objections to which such a by-law is open, are stated in para. 3, G. R. 353 of 23 January 1890. (*Vide* note page 138.)

The regulation of such places must be by-laws duly published and considered, and not by the conditions of a license." (G. R. 751 of 14 February 1890, Gen. Dep.)

By sec. 48 (1) (*b*), by-laws may be made prescribing the conditions, circumstances and areas or localities in respect of which licenses may be granted, &c., for the use of any place referred to in this sub-sec. (1). This new provision of law invests a municipality with much greather powers for dealing with these trades and follows the Central Provinces Act, sec. 82. Under the old law, it was held that the use of a place for any of these purposes, was not dependent on a license nor could a license be refused, nor could it be prohibited unless it became such a nuisance as to justify issue of notice. Now, however, it is clear that such places can be controlled by license issued under by-laws, but unless such by-laws are in force, the Act leaves perfect liberty to the individual to use any place for these purposes, unless and until the mode of conducting the business becomes, or is likely to become, so dangerous or offensive as to justify the municipality in issuing a notice prohibiting the continuance of such use. (This disposes of G. R. 2011 of 8 Jan. 1893, Gen. Dep.)

DRAFT OF MODEL BY-LAWS *for licensing and inspecting places used for any of the purposes mentioned in section* 151, *and for regulating the conduct of business in any such places so as to minimise the injurious, offensive or dangerous effect thereof.* (Published under G. R. 1895, Gen. Dep.)

Short title. 1. These by-laws may be cited as the "dangerous and Offensive Trades By-laws."*

Defining clauses. 2. In these by-laws, unless there is something repugnant in the subject or context.

"Offensive trade" means the business

(*a*) of a brick, tile, pot, or lime-kiln,

(*b*) of a tannery ((&c., &c.)).

"Dangerous trade" means the business of

(*a*) manufacturing for sale,

(*b*) storing for sale,

* The draft is a mere skeleton, and might be amplified with reference to such trades other than those specified.

(*c*) selling

†(i) gunpowder,

(ii) fireworks ((&c., &c.)).

"Manager" means the person under whose authority or control or for whose profit a dangerous or an offensive trade is carried on, whether such person is the proprietor of the business or the gumasta in charge thereof.

Managers to apply for license.

3. (1) The manager of every place used for the purpose of a dangerous or offensive trade, shall, on or before the day of in every year, apply at the Municipal Office for a license in respect of such place.

(2) Every manager of a dangerous or offensive trade shall keep the place or building, use for the same, open at all times between the hours of and to inspection by the municipal , and shall afford the said officer every facility for inspecting the same and for ascertaining that all the requirements of these by-laws are duly observed.

(3) Every manager failing to make such application as is required by clause (1) or to keep any place or building open, or to afford facilities, for inspection as required by clause (2) of this by-law shall be punished with fine which may extend to Rs.

Regulating the conduct of business in dangerous trades.

Duties of manager.

4. Every manager conducting the business of a dangerous trade shall comply with the following requirements, *viz* :—

(*a*) He shall provide so many and such closed receptacles as may be necessary to contain the entire stock of † $\frac{\text{gunpowder}}{\text{firework}}$ in hand, (&c., &c.,) and shall at all times keep therein the whole of such stock.

(*b*) He shall not carry on or cause or permit to be carried on any process of manufacture in any room or enclosure in which † $\frac{\text{gunpowder}}{\text{fireworks}}$ $\frac{\text{is}}{\text{are}}$ stored (&c., &c.)

Duties of all persons in connection with such trades.

5. No person shall smoke, introduce any light or ignite any substance in any room or enclosure used for manufacturing or storing † $\frac{\text{gunpowder}}{\text{fireworks.}}$ (&c.)

Penalties.

6. (1) Every manager infringing any provision of By-law No 4 or 5 shall be punished with fine which may extend to

(2) Any person other than a manager infringing any provision of By-law No. 5 shall be punished with fine which may extend to

Regulating the conduct of business in offensive trades.

Duties of managers of offensive trades.

7. (1) Every manager of an offensive trade shall observe the following requirements, *viz* :—

(*a*) He shall not keep or cause or suffer to be kept in or on any premises under his control any dung, filth, sweepings or refuse whatsoever.

(*b*) He shall not use any matter as fuel which either before or after ignition emits any stench or fume injurious to health.

Special duties relating to lime kilns.

(2) Every manager of a lime kiln shall observe the following requirements :—

Times and manner of lighting kilns.

(*a*) He shall not light the kiln or cause or suffer it to be lighted, except

(i) between the hours of and

(ii) after taking the following precautions, *viz* :—‡

* * * *

Special duties relating to tanneries.

(3) Every manager of a tannery shall observe the following requirements :—

(*a*) He shall provide each tanning vat with a well-fitting lid and shall have such lid kept at all times on the vat in such a way as effectually to close it, excepting only whilst hides are actually soaking in the vat.

Lids to be provided for vats.

† Gunpowder and fireworks will now have to be ommitted, *vide* note 6.

‡ In lighting kilns it may or may not be desirable for instance that water or other means of extinction in case of accident should be at hand.

(*b*) He shall cause all refuse taken from every tanning vat to be forthwith removed to the ((place to be appointed by the municipality)) with the following precaution against the emission of offensive smells therefrom on the way, *viz*:—

Refuse of tanning vats how to be dealt with.

* * * *

(*c*) He shall cover all hides spread out for drying or cause them to be covered between sunset and sunrise with grass or straw or such other material as may prevent the emmission of stench therefrom.

Hides put out to dry to be covered at night

(*d*) He shall not store any tanned hides, except in an enclosure open to the sky and surrounded by an air-tight wall at least six feet in height.

Tanned hides how to be stored.

8 Any manager infringing any provision of By-law No. shall be punished with fine which may extend to

Penalties for infringement.

17 **Further fine.**—See note 13 *supra*.

151 A. (1) No person shall use or employ in any factory or any other place any whistle or trumpet operated by steam or mechanical means for the purpose of summoning or dismissing workmen or persons employed except under and in accordance with the conditions of a license from the municipality.

Prohibition of use of steam-whistles, etc.

(2) The municipality may grant such license subject to such conditions as they may deem fit and may at any time withdraw such license on giving one month's notice to the licensee :

Provided that where the licensee has contravened any of the conditions of the license, the license may be withdrawn without any such notice.

(3) Whoever uses or employes any such whistle or trumpet as aforesaid without, or in contravention of any of the conditions of, or after the withdrawal of, such license shall be punished with fine which may extend to fifty rupees.

Origin of section.—This was inserted by sec. 25 of the Amending Act of 1914. It is taken from the Bom. City Act of 1888 s. 393.

152. Whoever in any street or public place within the limits of a municipal district loiters for the purpose of prostitution, or importunes any person to the commission of sexual immorality, shall be punished with fine which may extend to fifty rupees.

[1]Soliciting for purpose of prostitution.

Provided that no Court shall take cognizance of an offence under this section, except on the complaint of the person importuned, or of a police officer not below the rank of an officer in charge of a Police Station and specially authorised in this behalf by the District Magistrate or by the municipality.

1 **Origin of section.**—This section is new, and is taken almost verbatim from rule 209 of the Cantonment Code, 1899. It, as well as the next, were introduced at the suggestion of the Government of India, which was primarily made in the interests of Cantonments adjoining municipal and other towns and villages, the insertion of these provisions as part of the municipal law was necessitated when it was found that the consensus of opinion was against the extension of the Cantonment rule 209 to municipalities under sec. 28 of the Cantonment Act, 1889.