

abode of such owner be unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him :

Provided that no arrear of rate which has remained due from the owner of any holding for more than one year shall be so recovered from the occupier thereof.

Note.

Resident.—The word “resident” in this section would appear to have been used in its ordinary sense. When an owner, therefore, does not ordinarily reside within the limits of a municipality the rate may be recovered from the occupier. Compare sec. 14 and notes thereunder.

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

Power of Commissioners in cases of excessive hardship.

Compare sec 91 and notes thereunder.

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

Application for reduction of assessment.

The law does not prescribe the procedure for the disposal of any application under this section. Probably the decision will rest with the Chairman.

108. The Commissioners may, at any time after the publication of the notice required by section 112, value and rate any holding which was without authority omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight or fraud; and may re-value and re-assess any holding the value of which has been increased by additions or alterations to any building thereon.

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

Re-value & re-assess.—For an explanation of these terms, see *Secretary of State v. Belchambers*, I. L. R. 33 Cal. 396 (404-5).

Mistake, oversight or fraud seems not to include want of proper judgment. Compare sec. 93 and notes thereto.

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

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

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

Remission or refund
on account of vacant
holdings.

Provided that the owner of such holding, or his agent, has given to the Commissioners notice in writing of the vacancy thereof, and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners.

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

Notes.

Vacancy of arable land.—In the case of *Mohadeb Aon v. Chairman, Howrah Municipality* (C. L. J. 524), **Carnduff J.** was pleased to observe as follows:—"We are not prepared to concede that it (this section) is inapplicable, but should rather hesitate to hold that the benefit of the provision could not be claimed, if a piece of arable land assessed with the tax in a municipality were to lie uncultivated, tenantless and unproductive of rent for the statutory period (527).

The provisions of this section have been made applicable to Part IX (The cleansing of private privies and cess-pools). See sec. 322.

For the meanings of 'year' and 'owner' see sec. 6 cls. (19) and (11) respectively.

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

Notes.

Owner.—See sec. 6 cl. (11).

There must be evidence to show the amount that is payable on account of the rate, *J. Wood v. The Corporation of Calcutta*, I. L. R. 8 Cal. 891, *cf. Emperor v. Sumer Chand*, I. L. R. All. 375.

Of General Provisions relating to the Tax on Persons and the Rate on Holdings and to the Recovery of the same.

111A. If at any time it appears to the Local Government, on the report of the Commissioner of the Division, that the assessment in any municipality is insufficient or inequitable, and if the Commissioners have not appointed an assessor under section 46, the Local Government may, by an order in writing, require the Commissioners of such municipality to revise and amend such assessment, or to show cause against such order within a time to be specified therein;

and if the Commissioners fail to comply with such order, or if, in the opinion of the Local Government, the revised and amended assessment is insufficient or inequitable, the Local Government may, by an order in writing, require the Commissioners to appoint an assessor of municipal taxes for such municipality, within a time and for a period to be specified in such order; and such assessor shall exercise all the powers of assessment except under sections 113, 114 and 115, vested by this Act in the Commissioners.

Such order shall fix the pay of the assessor and the cost of his establishment, and such pay and cost shall be paid monthly by the Commissioners.

This section is new and has been added by sec. 43 of Beng. Act IV of 1894.

Notes.

The object of this section is to guard against insufficient and inequitable assessments. It does not apply to a municipality in which there is an assessor appointed under sec. 46.

The authority conferred by this section should be exercised only when the necessity for action admits of no question (*See App. p. 10a, Govt. Lett., para. 20.*)

Inequitable.—The Hon'ble Mr. Allen said, "it (assessment) would be inequitable if my small house at Ballygunge was to be rated at a higher rate than the Advocate-General's large house in Park Street". (*Cal. Gaz., May 9, 1894, Sup. p. 783.*)

Insufficient.—The same Hon'ble member said, "if the Commissioners absolutely refuse to provide fund enough to keep the streets clean or to perform the other duties imposed on them under this Act while the wealth of the municipality is amply sufficient to provide those funds, in that case their assessment would be insufficient".—*Ibid.*

The last paragraph has been added with a view to prevent the provisions of the section from being made infructuous by the Commissioners fixing an inadequate salary.—(See *Cal. Gaz. May 9, 1894, Sup. pp. 784-7.*)

112. When the assessment list of the tax upon persons, or the valuation and rating list of the rate on the annual value of holdings, shall have been prepared or revised, the Chairman shall sign the same, and shall cause it to be deposited in the office of the Commissioners, and shall cause the notice in Form A or the notice in Form B of the third schedule (as the case may be) to be published in the manner prescribed by section 354.

Publication of notice of assessments.

Notes.

This section prescribes the preliminary procedure for the levy of the rate or tax, and any deviation shall make the assessment *null and void*. See *Leman v. Damodaraya*, I. L. R. 1 Mad. 158, *Joshi Kalidas Serakram v. Dukor Town Municipality*, I. L. R. 7 Bom. 399, and *Brindaban Chunder Roy v. Serampore Municipality*, 19 W. R. 309.

The Act, however, provides only incidentally for the appointment of a paid assessor and makes no provision whatever as to the method or means of assessment. It is wholly immaterial what machinery is used for arriving at the valuation (*e.g.* whether the assessor was legally qualified to make any assessment); all that is required is that there should be an assessment ready for publication and open to review under secs. 112 to 114, *Chairman of Chittagong Municipality v. Jogesh Chandra Rai*, I. L. R. 37 Cal. 44.

Form A is the notice of the preparation of the list of assessment on persons and Form B of that of the valuation and rating list of holdings.

113. Any person who is dissatisfied with the amount assessed upon him, or with the valuation or rating of any holding,

Application for review.

or who disputes his occupation of any holding, or his liability to be assessed or rated,

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

When an assessor has been appointed under section 111A, notice of every such application shall be given by the Commissioners to the assessor.

Change.

The last paragraph has been added by sec. 44 of Beng. Act IV of 1894.

Note.

Right of appeal.—This section provides for an appeal in the following cases and no other :—

(1) By a person who is dissatisfied with the amount assessed upon him,

(2) By a person who is dissatisfied with the valuation or rating of any holding,

(3) By a person who disputes his occupation of any holding,

(4) By a person, who, being the occupier of a holding, disputes his liability to be assessed,

(5) By a person who disputes his liability to be rated. (*See I. L. R. 21 Cal. 326*).

(1), (3) and (4) have reference to the tax upon persons, and (2) and (5) to the rate upon holdings.

Jurisdiction of Civil Courts.—Civil Courts can interfere in cases (3), (4) and (5), (*Chairman of the Barisal Municipality v. Adya Sundari Mitra*, I. L. R. 21 Cal. 319 and sec. 116), also when the assessment is *ultra vires* (*Nivadip Chandra Pal v. Purnananda Shaha*, 3 C. W. N. 73 and *Kameshwar Pershad v. The Chairman of the Bhabua Municipality*, I. L. R. 27 Cal. 849). See also notes under sec. 29.

In the other cases the decision of the Commissioners is final.—(*Maneswar Das v. Collector and Municipal Commissioners of Chupra*, I. L. R. 1 Cal. 409; *App. p. 10a, Govt. Lett. para (21)*).

114. Every application presented under the last preceding section shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting. The Commissioners so appointed, after taking such evidence and making such inquiries as they may deem necessary, may pass such order as they shall think fit in respect of such application.

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

Changes

By sec. 45 of Beng. Act IV of 1894 the words "Commissioners at a meeting" have been substituted for "Chairman" and the words "taking such evidence and" have been added.

Notes.

The substitution of the words 'Commissioners at a meeting' for 'Chairman' necessitates the appointment of Commissioners to hear appeals at a meeting and not by the Chairman as heretofore.

Taking such Evidence.—This section authorises the Commissioners to take evidence. They therefore constitute a court under section

3 of the Evidence Act and under section 4 of the Indian Oaths Act they are authorised to administer oaths.

Final—this is to say, as between the applicant and the Commissioners, no further appeal being allowed to the entire body of Commissioners or to any other authority,—it not being contended that the last clause standing alone would bar the interference of the Courts. *Per Beverly J. in Chairman of the Barisal Municipality v. Adya Sundari Mitra*, I. L. R. 21 Cal. 319 (326). Reading this clause with sec. 116, as amended, in the light of the interpretation given in this ruling, it is clear that questions other than those involving *merely the amount* of assessment or rating are cognizable by Civil Courts. See sec. 116 and the notes thereunder and notes to sec. 113.

It does not matter what method or means have been employed in making an assessment. All that the law requires is that it should be prepared and published under sec. 112; and when such an assessment has been confirmed by the Appeal Committee under this section, its validity cannot be impeached, *Chairman of Chittagong Municipality v. Jogesh Chandra Rai*, I. L. R. 37 Cal. 44.

115. Unless good cause shall be shown to the satisfaction of such Commissioners for extending the time allowed, and save as is otherwise expressly provided in this Act, no such application shall be received after the expiration of one month from the date of publication of the notice required by section 112 relating to the list containing the assessment, valuation or rating in respect of which the application is made, or after the expiration of fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire.

116. No objection shall be taken to any assessment or rating in any other manner than in this Act is provided.

Assessment to be questioned only under Act.

Changes.

The words 'nor shall the liability of any person to be assessed or rated be questioned' and 'or by any other authority' after the words 'rating' and 'manner' respectively have been omitted by sec. 46 of Bom. Act IV of 1894.

Notes.

Result of the change—The omission of these words removed the doubt raised by the High Court in the *Barisal* case (*Chairman of the Barisal Municipality v. Adya Sundari*, I. L. R. 21 Cal. 319) as to whether the section as it stood would be a bar to the entertainment of any suit against the Municipal Commissioners.

The Hon'ble Moulvi Serajul Islam Khan Bahadur in moving the amendment said, "the result will be that, as far as the question of the amount or assessment of rating is concerned, the adjudication of the Commissioners will be final; but if there be any question as to the liability to assessment, or questions which go to the root of the matter, persons agrieved should have some remedy."—Cal. Gaz. May 9, 1894, Sup. 788. See App. p. 10a, Govt. Lett. para. 21 and notes to sec. 114.

Jurisdiction of Civil Courts.—The law having placed the determination of the annual value of a holding in the hands of the municipal authorities, the Court must accept as conclusive the amount fixed by them and find the legal liability to pay the tax based on this amount, *Municipality of Wai v. Krishnaji Gangadhar*, I. L. R. 23 Bom. 446 and *Morar v. Borsad Municipality*, I. L. R. 24 Bom. 607. Even in a case where a Civil Court ordinarily has jurisdiction to interfere on the ground that the local authority has acted *ultra vires*, the jurisdiction may be withdrawn by express legislation; e. g., as regards the amount of assessment made by the Commissioners under the Act. It was accordingly held that even if the Commissioners, fixing the assessment, had taken into consideration the means of the owner without confining their attention to the annual value of the holding, they might have acted improperly and exceeded their powers under the Act, but the Civil Court had no jurisdiction to question the assessment in view of the special provision of the law contained in the old section, corresponding to 116 of the Act, *Maneswar Das v. The Collector and Municipal Commissioners of Chupra*, I. L. R. 1 Cal. 409. In the recent case of the *Chairman, Municipal Board, Chapra v. Basudeb Narain*

(11 C. L. J. 400, 14 C. W. N. 437, I. L. R. 37 Cal. 374) the ruling in this case was held to be binding; and it was further held (*per Holmwood & Chatterji JJ.*) that where a municipality have the power to make a fresh assessment, as they have every three (five?) years, and merely raise the valuation, the Civil Court has no power to revise the valuation, but is bound to accept it as conclusive as a matter of fact. The Civil Courts have nothing to do with the correctness or other wise of the valuation. The jurisdiction to interfere in matters regarding the amount of assessment has been withdrawn by express legislation in this section. Courts can only interfere where the assessment is *ultra vires*. In the absence of proof of *mala fides*, perversity, or manifest error Civil Courts ought not to interfere with the house-valuation made by a municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation, *Karsondas v. Ankeshvar Municipality*, I. L. R. 26 Bom. 294. The action of the Municipal Commissioners assessing the tax on persons upon the basis of a person's circumstances and property outside municipal limits is *ultra vires*. The Civil Court has jurisdiction to set aside such an assessment, *Kameshwar Pershad v. The Chairman of the Bhabua Municipality*, I. L. R. 27 Cal. 849. If an assessment be made within the powers conferred by the statute upon a municipality, the Civil Courts have no power to interfere; but if an assessment be made *ultra vires*, there is nothing in the Act to prevent a rate-payer from seeking in a Civil Court a decision that the action on the part of the municipality was *ultra vires* and that such an assessment was not binding upon him. So where P was the owner of a granary and a threshing floor, which were both assessed as one holding at Rs. 12 at the time of a general assessment, and afterwards in the very next year the municipality treated the granary and threshing floor as separate holdings and assessed the former at Rs. 12 and the latter separately at as. 9, it was held that this was not a case of enhancement of assessment but of fresh assessment and a suit lay to have it set aside, *Navadip Chandra Pal. v. Purnananda Saha*, 3 C. W. N. 73. All these decisions were referred to and followed in the *Chairman of Giridih Municipality v. Srish Chandra Mozumdar*, I. L. R. 35 Cal. 859.—See also *Brindaban Chandra Roy v. The Serampore Municipality* (19 W. R. 309), *Queen v. Sheffield Railway Company* (11 A & E 194), *The King v. Long* (1 M. & Ry. 139), in re *Penny* (7 E & B 660) and *Queen v. South*

Wales Railway Company (13 Q. B. 938). *Of. The Crown v. Kanhaiya Lal*, 109 P. L. R. 1909, 2 P. R. 1910 (Cr.)

As to irregular and improper procedure in levying taxes see *Leman v. Damodaraya* (1. L. R. 1. Mad. 158), *Joshi Kalidas Sevakram v. Dakor Town Municipality* (1. L. R. 7 Bom. 399) and the case of *Nanda Lal Bose*.

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

It is not incumbent upon the Commissioners to go from house to house for realizing taxes.

118. The amount due by any person on account of the tax on persons, or the rate on holdings, shall be deemed to be the amount entered in the lists, the notice relating to which is published under section 112, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due.

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

As to the altered amount compare sec. 97A.

119. For all sums paid on account of any tax or rate under this Act a receipt stating the amount and the tax or rate

on account of which it is paid shall be given, signed by the tax-collector or by some other officer authorized by the Commissioners to grant such receipts.

As to the form of the receipt see Account Rules, *App. p. 148a.*

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

Bill and notice of demand to be presented.

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

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

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

Presentation.—The presentation of the bill and service of notice of demand (with copy of bill attached) may be effected on the same occasion or at the same time and interview, one immediately following the other—*Opinion of the Legal Remembrancer, App. pp. 25a-27a.* See also the Account Rules, *App. pp. 153a and 161a.*

When a bill under this section has been duly presented and a notice of demand has been served on a ratepayer, the Commissioners are debar-

red from issuing a second notice of demand so as to extend the period of limitation of three months. See *Government Cir. No. 14 T—M*, (2-9-02), *App. pp. 25a-27a*. See section 358 and notes thereunder for consequence of failure of presentation.

Sec. 356 prescribes the mode in which the bill or notice of demand is to be served.

The provisions of this section also apply to the recovery of all costs, expenses, fees, tolls or other moneys due under the Act (sec. 360).

121. If any person, after service upon him of such bill and notice, shall not, within fifteen days of the service of such notice or from the date of any order made on an application for review under section 114, pay the sum due, either to the Commissioners at their office or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same,

the amount of the arrear due, with costs on the scale shown in the table of fees marked B in the fourth schedule, may at any time within three months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any moveable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found, or of any moveable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax or rate :

If not paid in fifteen days, process of distress may issue.

Provided that when the holding in respect of which the default is committed is a place of business and the moveable property distrained is shown to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released :

Provided also that if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

Changes.

The provisos are new and have been substituted by sec. 47 of Beng. Act IV of 1894 for "if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same."

Notes.

Moveable property.—For definition see sec. 6 cl. (6). A hut is an immoveable property; compare sec. 6 cls. (4) and (5). In the case of *Nattu Meah v. Nund Rane*, (17 W. R. 309), the question before the Full Bench was whether huts are to be considered as moveable property. **Couch C. J.** in making the distinction said,—“physically moveable things are such as can be moved from the place which they presently occupy without an essential change in their actual natures; and immoveable things are such as cannot be moved from their present places, or cannot be moved from their present places without an essential change in their actual natures”. See also *Raj Chunder Bose v. Dhurmo Chunder Bose* (10 W. R. 416).

Moveable property belonging to any other person.—

In justification of this provision the Hon'ble Mr. Allen said, "it is perfectly well recognized that the property of an innocent tenant is liable for taxes on the premises which he occupies, and which are left unpaid by the previous tenant, and it is the duty of a tenant entering on premises to make sure that all taxes have been paid up to the date of his entry. If he neglects to do so, he has only himself to blame if his property is seized. The liability to the tax is not of a personal character, but arising from the ownership or occupation of a holding. The law has from the first made the moveable property in a holding responsible for all rates then outstanding and due".—*Cal. Gaz., May 9, 1894. p. 790.*

Fish in Tanks and Fruit on Trees.—According to the definitions in section 6 cls. (5) and (6), "moveable property means property other than immoveable property", and "immoveable property" includes benefits arising out of land.

Although there is no ruling under this Act to the point, the same words, occurring in the definition of "immoveable property" in other Acts, have been judicially considered and held to include (1) fishery (see *Fadu Jhala v. Gour Mohan Jhala*, I. L. R. 19 Cal. 544, 553-4, F. B.) and (2) fruits or trees (*cf. Jograni Bhi v. Ganeshi* I. L. R. 3 All. 435 and *Asa Ram v. Nur Din*, 66 P. R. 1900). Fishes in tanks and fruit on trees are, therefore, not liable to distress and sale under this section.

Officer charged with execution of the warrant.—Where the distress warrant authorised the distraint of moveables of the defaulters, wherever found within the municipality, or any other moveables found within the holding in default specified in the warrant, it was held that the tax-daroga was justified in attaching goods proved to belong to the defaulters, which were found within municipal limits, *Fanindra Nath Chatterji v. Emperor*, I. L. R. 36 Cal. 67. See also *Emperor v. Babulal* (I. L. R. 33 Bom. 213) where it has been held that a tax-collecting clerk of a municipality is a public servant under cl. (10) of section 21 of the Indian Penal Code and any obstruction offered to him in execution of his duties is an offence under section 186 of the Code.

Refund.—A suit for refund of taxes realised in excess of a ratepayer's liability lies in the Civil Court. See *Chunilal v. Surat Municipality*, I. L. R. 27 Bom. 403 (408).

The wording of the first proviso has been taken from the Calcutta Municipal Act.

If the bill is not presented under sec. 120 within six months after the tax becomes due, the amount due under it cannot be realized by distress warrant under this section. The remedy is by a civil suit. See, however, sec. 358 and the notes thereunder.

122. Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the form marked C in the fourth schedule.

Distress how to be made.

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

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

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

Distress warrants must be signed by the Chairman, or when he delegates the power of signing them under sec. 45 by the Vice-Chairman.

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

Provided that he shall not enter or break open the door of any room appropriated for the zanana, or residence of women, which by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

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

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to

the satisfaction of the Commissioners or in a Court of competent jurisdiction.

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

Return of sales.

125. All officers and servants of the Commissioners, and all chaukidars, constables and other officers of police are prohibited from purchasing any property at any such sale.

Certain persons prohibited from purchasing at sales.

Whoever (not being a public servant within the meaning of section 21 of the Indian Penal Code) contravenes the provisions of this section shall be punished with simple imprisonment for a term which may extend to two months, or with fine, or with both.

Penalty.

Change.

The second paragraph has been added by sec. 48 of Beng. Act IV of 1894.

Notes.

Hitherto there was no penalty provided for infringement of the provisions of this section by officers and servants of the Commissioners who are not public servants.

Chaukidars, constables and officers of police, and those officers and servants of the Commissioners whose duty it is as such officers to take, receive, keep or expend any property, to make any survey or assessment, levy any tax or rate, are public servants under sec. 21 cl. (10) of the Indian Penal Code, and are punishable under sec. 169, I. P. C.

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

Commissioners to keep account of distress and sales.

127. If no sufficient moveable property belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the municipality, the Magistrate may on the application of the Commissioners, issue his warrant to any officer of his Court for the distress and sale of any moveable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any moveable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal, and such other Magistrate shall endorse the warrant so issued and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

Sale of property beyond limits of municipality.

Changes.

By sec. 49 of Beng. Act IV of 1894 the words "moveable property" have been substituted for "goods or chattels" after "sufficient", and "moveable" for "personal" and "exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal" for "whatsoever".

Notes.

Magistrate exercising jurisdiction &c. Bengal.—In issuing precept warrants this expression should be strictly kept in view. The issue of such a warrant to a magistrate in Burma was held to be irregular.—See *B. G. M. Cir. No. 1460 T. M. 11 Nov. 1897* (Govt. Cir. vol. III p. 1063).

It was held under a similar section of the N. W. P. Act that in issuing a warrant for the realisation of arrears of municipal taxes alleged to be due, the magistrate acts in a ministerial capacity only and has no jurisdiction to inquire judicially as to whether such arrears are really due or not.—*W. J. Ellis v. Municipal Board of Mussoorie*, I. L. R. 22 All. 111.

For the definition of the term "The Magistrate" see sec. 6 cl. (8).

128. No distress or sale made under this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceeding relating thereto.

Distress or sale not unlawful for want of form.

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

Commissioners may bring suit instead of distraining or on failure of distress.

When the Commissioners omit to serve a bill under sec. 120 within six months they can realize money due to them under the Act by a civil suit.

Limitation.—Where a debt lies on a statute, an action for the debt is governed by art. 120 of the Limitation Act and the suit may be instituted within six years.—*President of Municipal Commission,*

Gantoor v. Srikakulopa, I. L. R. 3 Mad. 124. This was a suit for recovery of a tax which had not been paid by the defendant. See notes to section 116.

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

Irrecoverable taxes.

The Municipal Commissioners have power to revive cancelled bills. — *Chairman, Santipur Municipality v. Dinanath Garai*, 2 C. W. N. p. xxiii (notes).

Of the Tax on Carriages, Horses and other Animals.

131. When it has been determined that a tax on carriages, horses and other animals specified in the fifth schedule shall be imposed, the Commissioners at a meeting shall make an order that every carriage, horse and every other animal of the kind specified in the said schedule, which is kept or is used in the ordinary course of business within or which is let for hire within or without, the municipality, and is used in the ordinary course of business within it, shall pay the tax, and shall cause such order to be published in the manner prescribed by section 354.

Such order shall be published at least one month before the beginning of the half-year in which such tax shall first take effect; and shall specify at what

rates, not exceeding the rates given in the said schedule, such tax shall be levied.

But such tax shall not be imposed on—

- (a) horses or ponies belonging to officers doing regimental duty, at the rate of one animal for each officer ;
- (b) animals exempt from any municipal tax under section 25 of the Indian Volunteers Act, 1869 ;
- (c) carriages or animals belonging to Government, or to the Commissioners, or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers ;
- (d) animals used by, or exclusively for the purposes of, any regiment ;
- (e) horses or ponies used by police officers, at the rate of not more than one for each officer ;
- (f) carriages, the wheels of which do not exceed twenty-four inches in diameter ;
- (g) carriages or animals kept for sale by any *bona fide* dealer in such carriages or animals, and not used for any other purpose.

Change.

The words "used in the ordinary course of business" were substituted for "habitually used" by sub-sec. (1) of sec. 9 of Beng. Act II of 1893.

Notes.

Carriage—For the definition of, see sec. 6 cl. (1).

A damaged carriage not fit to convey human beings is not taxable.

In the fifth schedule, the doubt hitherto entertained whether carriages drawn by one pony were taxable or not has now been removed by the insertion of the words "for every four-wheeled carriage drawn by one pony, &c".

Used in the ordinary course of business—For the meaning of, see sec. 141B. This expression has been substituted with a view to set at rest the doubt expressed by the High Court as to the exact scope of the term, "habitually used", in the case of the *Legal Remembrancer v. Shama Charan Ghosh* (I. L. R. 23 Cal. 52).

Sec. 25 of the Indian Volunteers Act (XX of 1869) provides that "every mounted officer, and every mounted orderly of a Corps of Volunteers, and every member of such Corps, while he belongs to a troop of cavalry in such Corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any municipal or other tax imposed upon horses".

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

Tax so fixed to continue in force until altered.

133. In any municipality in which a tax has been imposed under section 131, the owner of every carriage, horse and other animal specified in the said schedule shall

Licences how to be obtained.

within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages, horses and other animals liable to the tax, for which he is bound to take out a license.

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

Notes.

As to penalty see sec. 137.

No prosecution under sections 182, 199 and 417-511 of the Indian Penal Code lies for omission to make a return under this section or for making a false return, as there is no provision for a penalty for doing so, *Abdul Rahaman v. Chandi Persad*, I. L. R. 22 Cal. 131.

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

Proportionate tax on carriages, &c., acquired during half-year.

be calculated from the date on which such person may have acquired possession as aforesaid.

As to penalty see sec. 137.

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

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

Shall give a license.—It is obligatory upon the person applying for a license to pay to the Commissioners the requisite amount of tax at the time of forwarding a statement under sec. 133. "On receiving this statement and the money the Commissioners must, under sec. 133, give the applicant the license which he has asked and paid for; they have no power to refuse it in any case; and if at the same time it was applied for, the person, to whom the application was made, knew that the person applying for a license for one horse had twenty in his stables, he could not, under any provision under this Act, refuse the license for the one horse for which the tax was paid."—*Abdul Rahaman v. Chandi Persad*, I. L. R. 22 Cal. 131.

136. Whenever the owner of any carriage, horse or other animal liable to pay the said tax is not resident within the limits of the municipality to the Carriage, &c., liable to tax, although the owner be absent. Commissioners of which the tax is due, the person in whose immediate possession the carriage, horse or other animal is for the time being kept shall take out a license for the same.

For penalty see sec. 137.

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

Penalty.

Notes.

Three last preceding sections.—Evidently refers to sections 133, 134 and 136.

There must be evidence to show what the amount payable on account of the license is, *J. Wool v. The Corporation of Calcutta*, I. L. R. 8 Cal. 891.

Fines under this Act may be levied under the provisions of the Criminal Procedure Code. See sec. 355.

138. The Commissioners, at their discretion, may compound for any period not exceeding one year, with livery stable-keepers and other persons keeping carriages or animals for hire, for a certain sum to be paid for the carriages or animals so kept by such person, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 131 and 132.

Commissioners may compound with livery stable-keepers.

139. The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom

List of persons licensed to be prepared.

during the then current half-year a license has been given, and of the carriages, horses and other animals in respect of which they have paid the tax.

See Account Rules *App. p. 40a.*

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

Power to inspect stable, &c., and to summon persons liable to the payment of the tax.

And the Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses and other animals in respect of which such person is liable to be taxed.

No penalty is provided for non-compliance with any summons issued under this section.

141. On proof being given to the satisfaction of the Commissioners that a carriage, horse or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same propor-

Refund of tax in certain cases.

tion to the whole tax for the half-year as the period during which such carriage, horse or other animal has not been kept or used in the municipality bears to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such use of such carriage, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

In order to entitle a person to a refund under this section the carriage, &c. must *neither* be kept *nor* used in the manner contemplated in sec. 131.

141A. Nothing in sections 131 to 141 shall be deemed to authorise the levy of more than one fee for the same period in respect of any carriage, horse or other animal which is kept or used in more than one municipality.

Prohibition of double fee.

Changes.

This section is new and has been added by sec. 50 of Beng. Act IV of 1894. The words "or cantonment" at the end of this section have been omitted by sub-sec. (4), sec. 9 of Beng. Act II of 1896.

Notes.

Municipality.—*Of. The Bellary Municipal Council v. Sarkiss* (4 M. L. T. 477, 9 Cr. L. J. 91) in which it has been held under similar circumstances that payment of tax in a cantonment will exempt payment in a municipality.

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

This section was inserted by sec. 10 of Beng. Act II of 1896.

Of the Registration of Carts.

142 The Commissioners at a meeting may make and publish an order that every cart which is kept or is used in the ordinary course of business within or which is let for hire within or without the municipality and is used in the ordinary course of business, within it shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such manner as the said Commissioners shall direct :

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

This section shall not apply to—

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

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

(c) Howrah.

Changes.

The words "or the suburbs of Calcutta" after "Howrah" were omitted by sec. 51 Beng. Act IV of 1894. The expression, "or is used in the ordinary course of business" was substituted for "habitually used" by sub-sec. (1), sec. 9 of Beng. Act II of 1896.

Notes.

Cart.—For the definition of the term "cart", see sec. 6 cl. (2).

Used in the ordinary course of business—For the meaning of, see sec. 147B. This expression has been substituted with a view to set at rest the doubt expressed by the High Court as to the exact scope of the term, "habitually used", in the case of the *Legal Remembrancer v. Shama Charan Ghose*, (I. L. R. 23 Cal. 52.)

Howrah.—Carts kept or plied within Howrah are registered by the Calcutta Corporation which makes proportionate contribution.

Shall bear the number, &c.—*Cf. Srinivas v. Municipal Council, Kumbakonam* (3 M. L. T. 405, 18 M. L. J. 377) noted under sec. 146.

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

Fee for registration.

For penalty see sec. 146.

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

Proportionate payment of fee.

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

For penalty see sec. 146.

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

For penalty see sec. 146.

146. Whoever keeps, or is in possession of, a cart not duly registered as required by any of the three last preceding sections shall be liable to a fine not exceeding three times the amount payable by him in respect of such registration, exclusive of the amount so payable ; and whoever, being the owner or driver of any cart, shall fail to affix thereto the registration number as required by section 142 shall be liable to a fine not exceeding five rupees.

Fines under this Act may be levied under the provisions of the Criminal Procedure Code, see sec. 355.

Affix.—*Cf. Srinivas v. Municipal Council, Kumbakonam* (3 M. L. T. 405, 18 M. L. J. 377) in which removal of the portion of the axle, on which the number had been painted, from a damaged wheel and affixing the same to the repaired axle was held to be sufficient compliance with the provision of law, in as much as there was no bye-law expressly laying down any particular mode of affixing.

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

After such seizure the Commissioners shall forth-
with issue a notice in writing that after the expira-
tion of ten days they will sell such vehicle and
animals by auction at such place as they may state
in the notice; and if any registration fee, together
with the cost arising from such seizure and custody,
remains unpaid for ten days after the issue of such
notice, the Commissioners may sell the property
seized for payment of the said fee, and of all expen-
ses occasioned by such non-payment, seizure,
custody and sale.

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

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

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

The surplus sale-proceeds may be paid on demand, *if not* time-barred, under the Limitation Act.

147A. Nothing in sections 142 to 147 shall be deemed to authorise the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality.

Prohibition of double fee.

When carts not kept within any municipality are so used in more than one municipality, the Local Government, on

Apportionment of fees.

the application of the Commissioners of any such municipality, may, if it thinks fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality.

Levy of fee when cart registered in more than one municipality.

Changes.

This section was inserted by sec. 52 of Beng. Act IV of 1894. The words "used in the ordinary course of business" were substituted for "habitually used" in para. 1, paras. 2 and 3 were added and the words "or cantonment" at the end of para. 1 were omitted by sub-secs. (2), (3) and (4) respectively of sec. 9 of Beng. Act II of 1896.

See notes to sec. 142.

147B. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 142 and 147A, if it is used on an average, twice a week.

Meaning of "used in the ordinary course of business."

Change.

This section was added by sec. 11 of Beng. Act II of 1896.

Note.

For the necessity of this sec. see notes to sec. 142.

Of Tolls on Ferries.

148. The Local Government may, with the consent of the Commissioners, make over to the Commissioners any ex-

Existing public fer-
ries.

isting public ferry within or adjacent to the limits of the municipality to be administered by them until the Local Government shall otherwise direct.

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

Ferry—This expression in this Act means the exclusive right to carry passengers across a stream from one bank to the other on payment of certain prescribed tolls, *The Government of Bengal v. Senayat Ali*, I. L. R. 27, Cal. 317.

149. The Commissioners may also, with the sanction of the Local Government, declare that any other ferry within, or adjacent to, the limits of the municipality is a municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the municipal fund :

Other ferries may be declared to be municipal.

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

The amount of compensation due in such cases shall be ascertained and awarded by the Magistrate under the provisions of section 4 of Bengal Act I of 1866 (*to amend certain provisions of Regulation VI of 1819*), or any similar law for the time being in force.

Compensation.—Bengal Act I of 1866 was repealed by Act I of 1885, section 17 of which provides for the mode in which the amount of compensation is to be ascertained.

Magistrate.—A reference to section 17 of Act I of 1885 would shew that the word 'Magistrate' in this section means the Magistrate of the District and not 'the Magistrate' as defined in sec. 6 cl. (8) of this Act.

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

Duties of Commissioners in regard to such ferries.

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

Rate of tolls to be established and published.

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

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

When persons crossing river not liable to toll.

See *The Government of Bengal v. Senayat Ali*, I. L. R. 27 Cal. 317.

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

Cancellation of ferry
lease, &c.

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

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

154. Any collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a municipal ferry until the proper toll has been paid, and may

Toll must be prepaid.

require any person who refuses to pay the toll to leave the boat and to remove his goods from it.

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

155. No person shall keep a ferry boat for the purpose of plying for hire within a
Keeping of unauthorised ferry. distance of two miles above or below any municipal ferry without the previous sanction,

of the Commissioners, if he plies within the limits of the municipality, of the Magistrate of the district, if without such limits,

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

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

Municipal Ferry—means a ferry declared under section 149 to be a municipal ferry.

The object of this section appears to be to prevent the crossing of passengers from one bank of a river to the opposite bank by a boat plying for hire without a license within prescribed limits. The mere crossing of the bar of a *khal*, leading into a municipal ferry does not, therefore, constitute a breach of the Act.—*The Government of Bengal v. Senayat Ali*, I. L. R. 27 Cal. 317, 4 C. W. N. 348.

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

Penalty.

Under the Beng. Ferries Act I of 1885, the provisions of which are similar, it has been held that, in order to sustain a conviction for plying within public ferry limits it must be shown that a declaration with respect to the public ferry has been made, and the declaration itself and the limits fixed thereby must be proved, *Moharaj Mandal v. Pokar Singh*, 12 C. L. J. 21, 1. L. R. 37 Cal. 543.

A ferryman has no authority to demand toll from persons who are merely passengers in a unlicensed boat. The remedy against the person who keeps a ferry-boat without a license plying within prescribed limits is provided by this section, *The Government of Bengal v. Senayat Ali*, 1. L. R. 27 Cal. 317, 4 C. W. N. 348.

Daily fine—in addition to substantive is bad in law. See notes to sec. 218.

Of Tolls on Bridges and Roads.

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

Existing toll-bars.

sioners, shall be carried to the credit of the municipal fund.

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

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

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

Commissioners to publish expenses, &c., of toll-bars.

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

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

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

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

160. When it has been determined that tolls shall be levied on any such bridge or road, the Commissioners at a meeting shall make and publish an order, with the sanction of the Commissioner of the Division, specifying the rates at which such tolls shall be levied.

Rates of tolls to be established and published.

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

161. Any collector or lessee of tolls may refuse to allow any person to pass through any municipal toll-bar until the proper toll has been paid.

Power of collector or lessee in case of refusal to pay toll.

162. Whoever, having driven any vehicle or animal (not exempted from toll) through a toll-gate, refuses to pay the toll, or, with intent to evade payment of the toll fraudulently avoids passing

Penalty for refusing to pay or avoiding payment of toll.

through such toll-gate, shall be liable to a fine not exceeding fifty rupees.

Toll leviable only at toll-gate.—In the case of *Uttam Chunder Ganguli v. Issur Chunder Mukerjee*, (22 W. R. 76 C. R.) it was contended by the accused, a toll-collector on the Benares Road within the limits of the Howrah Municipality, that he had authority to collect tolls on carts on the aforesaid road irrespective of any distance from the toll-bar. But the High Court (*per. Markby and Mitter, JJ.*) held that it was at the toll-bar alone that the tolls could be levied.

163. If the toll due on any vehicle or animal is not paid on demand, the person authorized to collect the same may seize such vehicle or animal or any part of its burden of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners.

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

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

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to

the satisfaction of the Commissioners, or in a Court of competent jurisdiction :

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

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

*Of General Provisions relating to Tolls on
Ferries and Roads.*

164. The Commissioners may grant a lease of any municipal ferry or toll-bar for any period not exceeding three years.

Lease of ferry or toll-bar.

Note.

It has been held by the Madras High Court that money due from the lessee under such a lease is neither "rent" nor "toll" and the summary procedure of the Act is not applicable for the realisation of such money, *Abdul Azeer Shahib v. Cuddapah Municipality*, I. L. R. 26 Mad. 475.

165. A table of tolls legibly written in the vernacular of the district shall be hung up,
Table of tolls to be hung up.

in some conspicuous position at each end of every municipal ferry, and

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

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

As to daily fine see notes to sec. 218.

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

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

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

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

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

or of any animals, whether belonging to Government or otherwise, which are attached to a regiment or a military department, and which pass through a toll-bar :

Provided that tolls shall be leviable for conveying such animals over a ferry.

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

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

169. In all cases of resistance to the person authorized to collect tolls, police officers shall assist when required, and for that purpose shall have the same powers as they have in the exercise of their ordinary police duties.

Police officers to assist.

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

Penalty for taking unauthorized tolls.

171. If the Local Government has declared that the provisions of the Canals Act, 1864, or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a municipality, it may, with the consent of the Commissioners, appoint the Commissioners to collect tolls, as provided in section 8 of the said Act, until the Local Government shall otherwise direct; and the profits derivable therefrom, or such part thereof shall as be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the municipal fund.

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

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

The Canals Act is Beng. Act V of 1864.

172. The Local Government may at any time order that the Commissioners, or any person authorized by them, shall cease to levy any tolls under the last preceding section, and may at any time withdraw such order.

Local Government
may order Commissioners
to cease levying
tolls.

PART V.

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

General.

173. The provisions of this part shall be in force in every municipality, unless and until the Local Government shall otherwise direct.

Operation of this Part.

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

Local Government
may order provisions of
this Part to be not in
force in any munici-
pality.

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

175. Whenever it is provided in this Part or in Part VI that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers

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

of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served as provided in sections 356 and 357, on every owner or occupier who is required to execute such work or to do such thing; but, if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers of any land, to execute such work or to do such thing within a specified time; and in such notification it shall not be necessary to name the owners or occupiers.

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

such requisition to execute such work or do such thing.

Invalid notice.—It is imperative that a notice requiring a thing to be done should contain or make mention of the second clause of this section. When, therefore, a prosecution was started upon a notice not containing or making mention of it, it was *held* that failure to comply with the requisition of such a notice did not amount to an offence under sec. 271.—In the matter of *Chairman of the Puri Municipality v. Kissori Lal Sen*, 1 C. W. N. p. cexliv (notes).

A notice issued by the Vice-Chairman of a municipality, in the absence of proof of delegation of powers under sec. 45, is invalid, *Harendra Nath v. The Chairman of Birnagar Municipality*, 1 C. L. J. 51.

Recovery of expenses.—The expenses incurred may be recovered by distress warrant or by civil suit under sec. 360. The limitation for such a suit is governed by Art. 120 of the Limitation Act, and it may be instituted within six years, *President of the Municipal Commissioners, Gantoor v. Srikakulopa*, 1. L. R. 3 Mad. 124.

Fresh notice.—When a conviction is set aside on the ground of invalidity of one notice, there is no bar to the municipality's taking proceeding under a fresh notice, *Harendra Nath v. The Chairman of Birnagar Municipality*, 1 C. L. J. 51 (54).

An objection.—"No more than *one* petition of objection against an individual order is admissible, and when once the order has been made absolute under section 178, no subsequent petitions should be permitted to stay its execution," (see *para. 3, B. Govt. Munl. No. 2514 and Cir. No. 31, Octr. 1903, Govt. Cir. vol. III, p. 1038*.)

176. Any person who is required by a requisition as aforesaid to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of

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

the notification containing the requisition ; or, if the time within which he is required to comply with the requisition be less than five days, then within such less time.

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

Court fee.—An application or petition when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement, must bear a court fee stamp of one anna [see Court Fees Act VII of 1870, schedule II Art. 1 cl. (a)]. Petitions of objection, under this section, come under the purview of this article of the Court Fees Act, and require a court fee stamp of one anna.

Any objection taken in an informal petition, not properly stamped, is none the less an objection and should be dealt with according to law, *Jagadis Chandra v. Sreenath*, 2 C. W. N. clxxxvii (notes), followed in *Harendra Nath v. The Chairman of Birnagar Municipality*, 1 C. L. J. 51.

Disposal of objection.—As to procedure of disposing of objections made under this section and consequences of failure therein, see sec. 179 and the notes thereto.

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

Procedure if person objecting alleges that work will cost more than Rs. 300.

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

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

Chairman, &c., may
make order after hear-
ing objection.

See notes to sec. 179.

Invalid order.—A Magistrate, who also happened to be the Chairman of a municipality, while acting as Magistrate, convicted a person under section 273 cl. (1) and also passed an order requiring the accused to demolish the building without giving him an opportunity to object. A recommendation, made by the District Judge on reference for setting aside the order for demolition as illegal, was approved of by the High Court, *Emperor v. Mathura Prosad*, I. L. R. 29 Cal. 491.

179. If the person making such objection be present at the office of Commissioners, the said order shall be explained to him orally; and, if such order cannot be so explained, notice of such order shall be served as provided in section 356 on the person making the objection; and such explanation of, or service of, the notice of the said order shall be deemed a requisition duly made under this Act to execute the work or do the thing required.

Order to be explained orally.

Such explanation or service.—So where the objector is personally present before the Chairman, Vice-Chairman or the Commissioners in meeting, hearing objection, and the order has been explained to him, no further service of the notice under this section is necessary. In such case, however, a note should be recorded at the foot of the final order passed in each case to the following effect:—

"The order shall be carried out within * days from this date.

This order has been orally explained by me to the objector who is present in person. (sd.) ." * The number of days to be noted here shall not be less than the shortest time which might have been mentioned under the Act in the original requisition (see sec. 178).

Consequence of failure to hear objection.—An omission to comply with the provisions of this section and section 178 shall vitiate all subsequent proceedings. In an unreported case (*Boikunto Nath Sen v. Howrah Municipality*) the petitioner was convicted by a Bench of Magistrates for failing to comply with the requisition of a notice under sec 209. He had presented a petition of objection after

receipt of the notice, but the Commissioners, without recording an order under sec. 178, instituted the prosecution. The High Court (Prinsep and Ghose, JJ.) held that it was not competent to proceed in any way under the order made under sec. 209 until the objections, regularly made in accordance with the notice, had been disposed of.—*Hindu Patriot* December 6, 1892.

Cf. *Kanai Lal v. The Corporation of Calcutta* decided under the Calcutta Municipal Act, wherein **Holmwood, J.** was pleased to observe,—“they (the corporation) have been invested with the most ample powers, but when certain penal sections enforced by the criminal law were put in motion on the report of the servants of the municipality, it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure which is a condition precedent to any conviction, is strictly and properly carried out,” 11 C. W. N. 508 (511).

Requisition duly made.—Means the second notice served under this section. Such a notice is compulsory if the municipality contemplate to proceed to do the work under the next succeeding section, *Jagadis Chandra v. Sreenath*, 2 C. W. N. clxxxvii (notes). Cf. *Emperor v. Nadirsha*, I. L. R. 29 Bom. 35. See also *Poorna Chand Bural v. Corporation of Calcutta*, I. L. R. 33 Cal. 699, cited under sec. 246.

The time allowed in the notice under this section shall not be less than the shortest time which might have been mentioned in the first notice (see sec. 178).

180. If the person or persons required to execute the work or to do the thing fail, within the time specified in any requisition as aforesaid, to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners, or any person authorized by them in that behalf, may, after giving forty-eight hours' notice of their intention by a notification to be posted up on or near the spot, enter upon the land and

Power of Commissioners on failure of person to execute work.

perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

Necessary acts.—"As to all such matters the municipality have a discretion both as to the objects upon which they should proceed, and as to the manner in which they should do so. Under the law the Municipal Commissioners had authority to enter into the premises and to do all acts that they should think necessary. Thus a very wide discretion was given to the Municipal Commissioners".—*In the matter of Joges Chundra Dutta*, 16 W. R. 285. Where a municipality, legally proceeding under the Act, decide that certain works are *necessary*, that conclusion in the absence of *mala fides*, fraud or considerations of that nature, can not be questioned by the Civil Court, *Duke v. Rameswar Malih*, 1 L. R. 23 Cal. 811, 3 C. W. N. 508.

Expenses thereby incurred.—Civil Courts cannot examine the charges made by the Commissioners. All that can be done is to enquire if the sums sued for have actually been expended by the Commissioners and the person or persons sued against are the owner or occupier or both. The mere fact that the rates charged by the municipality are higher than those which could be obtained by other persons is no ground for interference, *Joges Chunder Dutta*, 16 W. R. 285 (286).

In the unreported case of the *Chairman of the Howrah Municipality v. Kristo Dhon Kurr*, the plaintiff claimed Rs. 170-10-0, being the amount of costs incurred for fencing a tank near a highway. The lower Court awarded a modified decree for Rs. 30 only, on the ground that the Commissioners put up a very expensive enclosure. *Held* (per L. Jackson, J.) that, it being the duty of the Commissioners to execute such works for public safety they must be authorized to do them in a sufficient and durable manner. They cannot be required to execute such works in a manner suited to the circumstances of the owner or occupier. They must do their work in such substantial manner as, they think,

is necessary for the safety and protection of the public, and provided the expense that they undergo to do that is made out, and does not exceed the bounds of reason, I think they are entitled to recover it, and the Court of Small Causes is not authorized to substitute for the costs actually incurred an estimate of its own as to what those costs might have been if the work had been done differently. The Commissioners are entitled to claim the amount of actual expense incurred by them which expense is not shown to be unreasonable, regard being had to the nature of the work done." *Rule No. 891 of 1874.* See also 7 W. R. 213.

Recovery thereof.—As to recovery of expenses incurred see notes to sec. 175.

The pendency of a civil action by a person who contests his liability will not bar the realization of the expense by distress warrant (see proviso, sec. 184).

If the Commissioners execute any work under the provisions of sec. 200, they may recoup themselves the expenses of the work by taking possession of the property in which the work is done (last para. sec. 200). When the Commissioners execute any repairs under sec. 210, they may retain possession of the house so repaired until the sum expended by them on the repairs be paid to them (see sec. 211).

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

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

in such manner as to the Commissioners may seem fit.

Owner.—For the definition of this term see sec. 6 cl. (11).

182. Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land, as provided in section 180, the Commissioners may apportion the said expenses among the said owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit.

Apportionment among owners and occupiers.

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

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

184. Any owner or occupier of land may contest his liability to pay any expenses or fees under this Part or Part VI, or may contest the amount which he

Liability to pay expenses or fees may be contested in Civil Court.

has been called upon to pay, in a Civil Court of competent jurisdiction :

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 360.

See notes to sec. 180.

185. Where any damages or compensation, other than compensation payable under section 35, are by this Act directed to be paid by the Commissioners, the amount, and, if necessary, the apportionment of the same, shall in case of dispute be ascertained and determined by a Civil Court of competent jurisdiction.

Damages and compensation how to be determined.

Sec. 35 refers to compensation under the Land Acquisition Act.

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

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

Establishments for removal of sewage, offensive matter and rubbish.

Change.

The words "by them" have been added by sec. 53 of Beng. Act IV of 1894.

Notes.

For the definitions of "Sewage," "Offensive matter" and "Rubbish" see sec. 6 cls. (17), (10) and (14) respectively.

Shall provide.—Where the owner of a shellac factory discharged the offensive flowage of his factory into a *kutchra* municipal drain, intended for the mere drainage of surface water and not carrying off such stuff, and on being sued for nuisance sought to shift the responsibility on the municipality, it was *held* that a private person cannot claim a right to foul an ordinary drain by discharging into it what it was not intended to carry off, and then throw on the municipality an obligation to alter the drain in order to remedy the nuisance that he has produced; nor can he say that other persons must meanwhile put up with such nuisance, *Galstaun v. Doonia Lal Seal*, I. L. R. 32 Cal. 697 (706).

187. The Commissioners at a meeting may, from time to time, by an order published as prescribed in section 354, appoint the hours within which it shall be lawful to remove sewage and offensive matter and the manner in which the same shall be removed, and may provide places convenient for the deposit thereof, and may require the occupiers of houses to cause the same to be deposited daily, or at other stated intervals, in such places, and may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so in accordance with this Act.

Hours and mode of removal of offensive matter.

The words "sewage and" have been added by sec. 54 of Beng. Act IV of 1894.

Note.

"**Offensive matter**" and "**Sewage.**"—For definitions of these terms see section 6, cls (10) and (17) respectively.

188. Whenever such order shall have been published, no mehter or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall with-

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

draw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.

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

189. The Commissioners at a meeting may, from time to time, by an order published as prescribed in section 354, appoint the hours within which only every occupier of any house or land may place rubbish on the public road adjacent to his house or land in order that such rubbish may be removed by the Commissioners; and the Commissioners may charge such fees as they may think fit in respect of the removal of such rubbish, with the consent of the occupier of any house or land, from such house or land or in respect of the removal from such public road of any rubbish which has accumulated in the exercise of a trade or business.

Consent—does not apply to the charging of fees but to the removal of the rubbish from house or land. The section empowers the Commissioners to enter into this particular kind of contract.

For definition of "Rubbish" see sec. 6 cl. (14).

Dust-bin—*Cf. Hansraj v. Karachi Municipality* (1 Sindh L. R. 228) as to power of municipality to place dust-bin at particular sites,

As to penalty for non-compliance see sec. 216 cl. (1).

Drains, privies and cess-pools under control of Commissioners.

190. All drains, privies and cess-pools shall be subject to the inspection and control of the Commissioners.

See notes to sec 30.

191. The Commissioners, or any officer authorized by them in that behalf, may inspect all privies, drains and cess-pools at any time between sunrise and sunset, after six hours' notice in writing to the occupier of any premises in which such privies, drains or cess-pools are situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of preventing or removing any nuisance arising from such privies, drains or cess-pools; and the expenses thereby incurred shall be paid by the owner or occupier of such premises.

Inspection of drains, privies and cess-pools.

The expenses may be recovered by distress warrant or by civil suit.
See notes to sec. 180.

192. Whenever the Commissioners are satisfied that the existence of such privy, drain or cess-pool is attended with risk of disease to the inhabitants of the neighbourhood, they may direct the use of such disinfectants or deodorants as they shall specify in such privy, drain or cess-pool, in such quantities or for such time as they shall think fit. The Commissioners shall, if necessary, themselves supply such disinfectants or deodorants

Commissioners may direct the use of disinfectants or deodorants for such drains, privies, &c., as are in a noxious state.

for such use at cost price, and the expense thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of such privy, drain or cess-pool; or the Commissioners may, if they think fit, order that such expense shall be paid from the municipal fund.

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

Common privies.

194. The Commissioners may license such necessities for public accommodation as they from time to time may think proper.

Licensing of public necessities.

As to the Commissioners' power of suspending licenses see sec. 278. Sec. 217 cl. (2) provides penalty for failing to take license under this section.

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

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

days, to clear and remove such vegetation, or level such surface or drain such land :

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

Notes.

Appears to the Commissioners.—*Cf. Emperor v. Raja Bahadur Shiv Lal Moti Lal* (I. L. R. 34 Bom. 346, 12 Bom. L. R. 126) in which it was held by the Bombay High Court that non-compliance with a notice, validly issued, made the offence complete, that the only condition precedent to the valid issue of a notice was that it should appear to the Commissioners and not to the Magistrate, that the premises were in the condition specified in the section and 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 the notice.

Remedies open to the Commissioners.—If the person, called upon under this section, fails to comply with the requisition the Commissioners may either prosecute him under sec. 219 or execute the works under sec. 180. The Commissioners are entitled to recover the expenses for clearing such jungle.

May require to drain land.—*Cf. Emperor v. Nadirsha* (I. L. R. 29 Bom. 35) as to the legality or otherwise of such requisition.

Procedure to be followed.—In the case of *Lord H. Ulrick Browne, Chairman of the Kishnagore Municipality v. Umes Chandra Rai*, 7 W. R. 213, Peacock C. J. was pleased to observe that in as much as the Commissioners are empowered to appoint subordinate officers and servants, they are to be assisted in causing all noxious vegetation which grows in the town to be cleared. They are not bound like a judicial officer to summon each individual, and to sit and hear evidence

on both sides in the presence of the parties concerned; nor are they bound to go to each particular spot of land personally and individually to ascertain, by evidence or upon their own view whether the jungle is such as will require their interference.

196. All sewage, rubbish and offensive matter collected by the Commissioners from roads, privies, sewers, pools and other places, shall be the property of the Commissioners, who shall have power to sell or otherwise dispose of the same; and the money arising from the sale thereof shall be carried to the credit of the municipal fund.

All rubbish collected to be the property of Municipal Commissioners.

The terms 'sewage,' 'rubbish' and 'offensive matter' are defined in sec. 6, cls. (17), (14) and (10) respectively.

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

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

Of Bathing and Washing Places and Tanks.

198. All streams, channels, water-courses, tanks, reservoirs, springs and wells, not being private property, shall, for the purposes of this Act, be under the direction and control of the Commissioners.

All public streams, &c., to be under direction and control of the Commissioners.

199. The Commissioners may, by order published at such places as they may think fit, set apart convenient wells, tanks, or parts of rivers, streams or

Commissioners may make provision for drinking water, bathing places, &c.

channels, not being private property for the supply of water for drinking and for culinary purposes: and may prohibit therein all bathing, washing of clothes and animals, or other acts calculated to pollute the water set apart for the purposes aforesaid ;

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

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

The Commissioners may by an order published at such places as they may think fit, prohibit in the private portion of any stream or channel used as a part of the public water supply, bathing, washing of clothes or animals or any act likely to pollute the water in the public portion of such stream or channel.

Changes.

By sec. 55 of Beng. Act IV of 1894 the word 'wells' has been added and the last paragraph has been substituted for "the Commissioners may similarly take such order as they think fit with the private portion of any stream or channel used as a part of the public water-supply."

Note.

For penalty see sec. 217, cl. (4). See *App. I. Govt. Lett. para. 23.*

199A. If the Chief Civil Medical Officer of the district certifies that the water in any well, tank, or other place situated within a municipality is likely, if used for drinking, to engender or cause the

Prohibition by Commissioners of use of unwholesome water.

spread of any dangerous disease, the Commissioners may, by public notice, prohibit the removal or use of such water for drinking during a period to be specified in such order.

This section is new and added by sec. 56 of Beng. Act IV of 1894.

Note.

For penalty see sec. 217, cl. (1). See *App. I. Govt. Lett. para. 23.*

200. (1) The Commissioners may require the owner or occupier of any land within eight days, or such longer period as the Commissioners may fix, either to re-excavate or fill up with suitable material, at his option, or to cleanse any well, watercourse, private tank or pool therein, and to drain off and remove any waste or stagnant water which may appear to be injurious to health or offensive to the neighbourhood :

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

(2) If under section 180 the Commissioners execute the work of such re-excavation or filling up with suitable material, they may retain possession of the tank or pool, or the site of such tank or pool

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

Commissioners may retain possession of tank or pool until expenses for re-excavation, &c., are realized.

and turn the same to profitable account until the expenses thereby incurred shall have been realized.

Changes.

By sec. 57 of Beng. Act IV of 1894 sub-sec. (1) has been substituted for "The Commissioners may require the owners or occupiers or the owners and occupiers of any land, within eight days, or such longer period as the Commissioners may fix, to cleanse any water-course, private tank, or pool therein and to drain off and remove any water or stagnant water which may appear to be injurious to health or offensive to the neighbourhood" and sub-sec. (2) has been added.

Note.

For penalty for non-compliance see sec. 219. *See App. I Govt. Lett. para. 24.*

Of Obstructions and Encroachments on Roads.

201. The Commissioners may close temporarily any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any

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

sewer, drain, culvert or bridge, or for any other public purpose :

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

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

Notes.

Road.—For the definition of, see sec. 6 cl. (13); compare sec. 30 and notes.

Close temporarily.—The Commissioners may, for the purpose of making, repairing or closing highways or for other purposes provided in this section, temporarily close them but they cannot stop up or divert them altogether, *Jadu Nath Ghose v. Brojo Nath De*, I. L. R. 2 Cal. 425.

Liability of Commissioners.—This section imposes upon the Commissioners certain duties which must be performed for the safety of passengers. In the case of *The Corporation of Calcutta v. Anderson*, (I. L. R. 10 Cal. 455) the High Court held that a corporation, having statutory obligation imposed upon them to repair and maintain the roads, are liable for a breach of their statutory duties. Where there is a dangerous obstruction *a fortiori* where such dangerous obstruction results from a permission accorded by the Commissioners, they are to be held liable for damages caused by it. The mere fact of their giving permission to another person although for a perfectly proper purpose would not relieve them of their statutory duty.

202. The Commissioners may issue a notice requiring any person to remove any wall which he may have built, or any fence, rail, post or other obstruction or encroachment which he may have erected in or on any road or open drain, sewer or aqueduct, after the date on which the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality; or, in case none of the said Acts was in force in the municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto; and, if such person shall fail to comply with such requisition within eight days of

Removal of future obstructions or encroachments in or on road.

the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed; and thereupon the Commissioners may remove any such obstruction or encroachment; and the expenses thereby incurred shall be paid by the person who erected the same.

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

Notes.

Proceedings before the Magistrate.—It is submitted that proceedings before the Magistrate under this and sections 203, 204 and 233 are not prosecutions for any offence under the Act and the bar of limitation under section 353 is not applicable to such proceedings.—*Cf. Corporation of Calcutta v. Keshub Chunder Sen* (8 C. W. N. 142), *Chuni Lal Dutt v. Corporation of Calcutta* (11 C. W. N. 30; Cr. L. J. 408) and *Sarat Chandra Mukerji v. Corporation of Calcutta* (14 C. W. N. 591.)

May.—*Cf. Abdul Samad v. The Corporation of Calcutta* (I. L. R. 33 Cal. 287, 3 C. L. J. 90) for construction of the discretion meant by the use of the word.

Notice.—The notice, contemplated by this section, should be served upon the person, who may have erected the encroachment, and on failure to comply with the requisition of the notice he alone is liable to prosecution under sec. 218. So where a person was prosecuted for failing to comply with a notice under this section, and the accused repeatedly asked that the requisition should be served upon his lessee of the land who had erected the encroachment and the Magistrate also found that encroachment had been erected by the lessee, the conviction was set aside as bad, *Shama Bibee v. Judab Chandra*, 2 C. L. J. 226, Cr. L. J. 613.

As to form of notice see sec. 203 and sec. 175 and the note thereunder.

As to the mode in which the notice is to be served see secs. 203, 356 and 357.

Road.—The word has been defined in sec. 6, cl. (13). In this and sec. 204 it includes a passage over which the public have a right of way and not merely a road which is vested in the Commissioners under sec. 30, *Ram Chunder Ghose v. Bally Municipality*, I. L. R. 17 Cal. 634. See notes to sec. 217.

Class of encroachments.—This section refers to encroachments or obstructions made after any of the Acts referred to had first come into force in any municipality and those made prior to any of them, are provided for in sec. 233.

Where, upon proceedings were taken under this section for the removal of an encroachment, there was a suit for injunction to restrain such proceedings and it was proved that the obstruction had existed for at least 50 years, it was held that the suit could not be dismissed on the supposition that the municipality might proceed under section 233. The relief, granted to plf. in that suit, was, however, safe-guarded in such a way as not to interfere with any possible right the municipality might otherwise have. *Jenkins C. J.* was pleased to observe, "we are only concerned with the action of the municipality under section 202, and, the decree we therefore pass is that the municipality be restrained from removing the platform under section 202 or otherwise taking action under that section."—*Gopal v. Chairman of Santipur*, 10 C. L. J. 613; 2 Ind. Cas. 512.

Remedies open to Commissioners.—For non-compliance with the requisition of a notice provided by this section, the Commissioners may proceed against the defaulting person by a prosecution under sec. 218, and after conviction may, by an order of the Magistrate, remove the obstruction or encroachment, or, instead of prosecuting, they may have recourse to the latter procedure after the expiration of the period of the notice or of the notice under sec. 179.

The Commissioners may instead of issuing a notice prescribed by this section, prosecute under sec. 217, cl. (5).

Procedure.—For giving effect to the provisions of this and section 204 the procedure laid down in secs. 175, 177, 178 and 179 must be

strictly observed. When an objection against the notice is filed it must be disposed of by a written order under sec. 178, and the same shall, under sec. 179, either be explained or communicated to him, otherwise the action of the Commissioners towards the removal of the encroachment or obstruction will be illegal.—*Boikunto Nath Sen v. Howrah Municipality* (unreported). See notes to sec. 179.

The Magistrate—For the definition of the term see sec. 6, cl. (8).

Under sec. 205 the Commissioners are bound to execute the orders of the Magistrate and cannot be sued for damages. (See India Act XVIII of 1850).

"Expenses incurred"—may be recovered by distress warrant or by a civil suit. See notes to sec. 180.

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

Procedure when person who erected obstruction cannot be found.

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

Proceedings before the Magistrate.—See notes to sec. 202.

The provisions of sec. 360 may also apply for the recovery of the cost of removal under this section.

See notes to sec. 202 and sec. 205.

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

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

Projections from
houses erected in future
to be removed.

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

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

Notice—For the form and mode of service of, see secs. 203 and 175 and note to latter.

House.—For the definition of, see sec. 6, cl. (4).

Road.—See secs. 6, cl. (13) and 30 and also *Ram Chunder Ghose v. Bally Municipality*, I. L. R. 17 Cal. 634.

Projection.—In Madras (*Mothe Atchayya Garu v. The Municipal Council of Ellore*, 7 M. L. T. 66, 4 Ind. Cas. 828) a pandal erected in front of a building in a public street was held to be a "projection." In Bombay (*Ollivant v. Rahimtulla Nurmahomed*, I. L. R. 12 Bom. 474) a person was directed to remove the eaves of a building projecting over the public road to the extent of one foot and eight inches, the width of the road in front of the building being about 40 feet. The party sued to restrain the Municipal Commissioner from removing the projection. The lower Court found on the evidence that the traffic was not likely to suffer any appreciable obstruction from the projection and that nobody could reasonably complain of any practical inconvenience and accordingly decreed the suit. On appeal the High Court held that as the law contemplated "obstruction to the safe and convenient passage along" the road, the words obviously meant passage along the *whole* of the road, and therefore along *every part of it*. The projection was therefore one which

the Commissioner was quite competent to remove. The question was not whether it constituted a real practical inconvenience to public traffic, but whether it came within the meaning of the law.

The public have a right of passage over the *whole* of a street, *Ahmedabad Municipality v. Manilal*, I. L. R. 19 Bom. 212. See also *Ghasi Ram v. King-Emperor* (45 P. R. 1905 Cr.) in which it was held that the public were entitled to the whole breadth of a street to the last inch. *Cf. Alopi Din v. Municipal Board of Allahabad* (4 A. L. J. 8; A. W. N. (1907), 27 in which a notice requiring the removal of a construction not projecting into any street was held to be invalid.

As to projections existing prior to any of the Acts mentioned in this section see sec. 233.

Proceedings before the Magistrate.—See notes to sec. 202.

Erected or placed.—The words “which may have been so erected or placed” in this section must mean erected or placed *for the first time*. This section therefore applies to the case of a projection which is caused by a building which is new, that is, erected after the passing of the Acts referred to in it. It does not apply to the case of a projection forming part of a building which is merely in substitution for an old building, which had existed upon the same site, before the passing of the Acts mentioned in the section, *Eshan Chunder Mitter v. Banku Bihari Pal*, I. L. R. 25 Cal. 160, 1 C. W. N. 660. See also *Kala Govind v. Municipality of Thana*, I. L. R. 23 Bom. 248, and *Lutchmi Narayana v. The Municipal Council of Trichinopoly*, 7 M. L. T. 154, 5 Ind. Cas. 916. *Cf.* sec. 206.

See notes to sec. 202 and sec. 205.

Penalty for non-compliance, see sec. 218.

Cf. Corporation of Calcutta v. Imadul Huq, (I. L. R. 34 Cal. 844), decided under the Calcutta Municipal Act, where a verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain running between the street and the front of the house was held to be a projection, encroachment or obstruction over or on a public street removeable under section 341 of the Act.

Road, aqueduct, drain and sewer.—These expressions should be kept in view in requiring removal of projections, &c., under this sec-

tion. Cf. *Municipal Committee of Delhi v. Devi Sahai* (62 P. R. 1907) in which it was observed that an encroachment upon municipal property, not being street, drain, sewer or aqueduct would not come within the purview of section 95 (b) of the Punjab Municipal Act (XX of 1891) which is similar to this section.

205. Every order made by the Magistrate under sections 202, 203, 204 or 233 shall be deemed to be an order made by him in the discharge of his judicial duty; and the Commissioners shall be deemed to be persons bound to execute such orders of a Magistrate within the meaning of Act XVIII of 1850 (*for the protection of Judicial Officers.*)

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

The Magistrate.—For the definition of the term see sec. 6, cl. (8).

India Act XVIII of 1850 runs as follows:—

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

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

Scope of section—Though this section bars any action for damages against the Commissioners acting under the orders of the Magistrate it does not preclude any person from suing them for declaration of title in respect of a property affected by their acts in pursuance of such orders. In the unreported case of *Doyal Chunder Sett v. The Howrah Municipality*, in which the plaintiffs sued for a declara-

(tion of title to a piece of land from which they were dispossessed by the Commissioners, who removed, under the orders of the Magistrate, a pucca staircase on the ground of encroachment, the defendant Commissioners objected to the entertainment of the suit on the ground that they had acted in pursuance of the Magistrate's order. The Munsif overruled the objection and was of opinion that the rulings reported in 24 W. R. 414 and 12 W. R. 160 did not apply. This decision was upheld in appeal. See *Ujul Mayee Dassee v. Chunder Kumar Acharji*, 12 W. R. F. B. 18.

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

See notes to sec. 204.

Penalty for non-compliance, see sec. 218.

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

Penalty for non-compliance, see sec. 218.

208. The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges thereon bordering on any road, and to cut and trim any trees thereon overhanging any road or tank or any well used for drinking purposes, or obstructing any road or causing, or likely to cause, damage to any road or any property of the Commissioners or likely to cause damage to any person using any road, or fouling or likely to foul the water of any well or tank.

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

Change.

This section has been substituted by sec. 58 of Beng. Act IV of 1894 for "The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges bordering on any road, and to cut and trim any trees overhanging any road and obstructing the same or causing damage thereto."

Notes.

Road—See sec. 6, cl. (3) and sec. 30 and *Ram Chunder Ghose v. Bally Municipality*, I. L. R. 17 Cal. 634.

Penalty for non-compliance, see sec. 218.

Of General conservancy and Improvement.

209. If any well, tank or other excavation, whether on public or private ground, be, for want of sufficient repairs or or protection, dangerous to passengers, the Commissioners shall forthwith, if it appears to them to be necessary, cause a temporary hoard or fence to be put up for the protection of passengers, and may require the owners or occupiers,

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

or the owners and occupiers, of the land on which such tank, well or other excavation is situated, within seven days properly to secure or protect such well, tank or other excavation.

Dangerous to passengers.—In order to justify an order under this section it is necessary to show that there is danger to passengers. The mere fact of the passage of municipal scavengers does not put any place within the provisions of this section so as to require the owner to fence it as dangerous from its proximity to a tank, *Boikunto Nath Sen v. The Howrah Municipality* (unreported). So where the only evidence was that a tank was *inconvenient* to passengers owing to want of repairs and protection and evidence of its being dangerous was wholly wanting, the High Court (Ghose & Hill JJ.) held that a conviction upon such evidence was bad, *Saroda Prosad Pal v Queen-Empress* (No. 33031-1895, decided on 15th November, 1895 unreported).

Penalty for non-compliance, see sec. 219.

The Commissioners may execute the work themselves and recover the expenses under sec. 360. See sec. 180 and notes, also *Re. Jages Chundra Dutta* 16 W. R, 285 and the unreported case, *Chairman of the Howrah Municipality v. Kristo Dhon Kurr* cited under sec. 180.

210. If any building, or portion of a building, or structure affixed to a building, be deemed by the Commissioners to be in a ruinous state and dangerous to the inmates, if any, of such building or of any other building or to passers-by, or if any wall or other structure be deemed by the Commissioners to be in a ruinous state and dangerous to passers-by or to any other persons, they shall forthwith, if it appears to them necessary, cause a proper hoard or fence to be put up for the protection of passers-by or of other persons who may be endangered, and may require

Fencing of buildings
in a dangerous state.

the owner or occupier of the building or the owner or occupier of the land to which such building, wall or other structure is affixed, within seven days, to take down, secure or repair such building, wall or other structure, as the case may require.

Changes.

This section has been substituted by sec. 59 of Beng. Act IV of 1894 for "If any house, wall, structure, or any thing affixed thereto, be deemed by the Commissioners to be in a ruinous state, or in any way dangerous, they shall forthwith, if it appears to them to be necessary, cause a proper hoard or fence to be put up for the protection of passengers and may require the owners or occupiers or the owners and occupiers of the land to which such house, wall or structure is affixed, within seven days to cause such repairs to be made to such house, wall or structure as they may consider necessary for the public safety, or to remove such house, wall, structure or thing affixed thereto."

Notes.

For penalty, see sec. 219.

Owner.—For the definition of, see sec. 6, cl. (11). See *App I, Govt. Lett. para. 26*, also secs. 211 and 212.

Deemed by the Commissioners.—

Dangerous.—"This section vests the Commissioners with discretion of deciding whether a building is dangerous," *Harendra Nath v. The Chairman of Birnagar*, 1 C. L. J. 51.—Cf. *The Lalbhai v. Municipal Commissioner of Bombay*, (I. L. R. 33 Bom. 334, 10 Bom. L. R. 821, 3 Ind. Cas. 361) in which the expression has been explained and the procedure to be followed, in a case coming under the corresponding section of the City of Bombay Municipal Act, by the municipal authorities and the limits within which the jurisdiction of the Civil Court is to be exercised, have been discussed at length.

Take down, secure or repair.—Cf. *Hazuri Mal v. King-Emperor*, (18 P. R. 1908 Cr.) in which it has been held by the Punjab Chief Court (*per* Chatterjee J.) under the similar provision of the Punjab Act that a notice, requiring removal of a ruinous shed without the option to repair it, is defective and illegal, and non-compliance with it is no offence.

A notice issued by the Vice-Chairman under this section, in the absence of proof of delegation of powers under sec. 45, is invalid, *Harendra Nath v. The Chairman of Birnagar Municipality*, 1 C. L. J. 51.

Joint conviction—of owner and occupier under a similar section of the Calcutta Municipal Act was held illegal, *Bairab Kolay v. The Corporation*, 14 C. W. N. 911.

212A. Whenever it appears to the Commissioners that any building, by reason of being unsecured and untenanted, or by reason of having fallen into ruins, affords facilities for the commission of a nuisance or for the harbouring of snakes or other noxious animals, the Commissioners may require the owner of such building or the owner of the land to which such building is attached, to properly secure the same, or to remove or level such ruins, as the case may require.

Commissioners may require owners to pull down ruins.

Changes.

This section has been added by sec. 60 of Beng. Act IV of 1894.

Notes.

Owner.—Defined in sec. 6, cl. (11).

For penalty see sec. 219.

No time has been fixed for the requisition.

211. If the Commissioners shall have caused any repairs to be made to any house or other structure, and if such house or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession

Power to enter upon possession of houses so repaired.

thereof until the sum expended by them on the repairs be paid to them.

The Commissioners may also recover the expenses by distress warrant or by civil suit. See notes to sec. 180.

212. The materials of anything which shall have been pulled down or removed under the provisions of section 175 and 210 may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred.

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

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

The words " 175 and " have been added by sec. 61 of Beng. Act IV of 1894.

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

Stray dogs to be killed at certain appointed periods.

As to rewards for killing dogs see sec. 214.

Commissioners may offer rewards for destruction of noxious animals.

214. The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of a municipality.

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

Road—defined in sec. 6, cl. (13). This section has reference to *any road*. See notes to sec. 30.

House—defined in sec. 6, cl. (4).

As to **penalty** for doing any injurious act in respect of name or number see sec. 216, cl. (2).

Penalties.

Penalty—is used in many places in the Act as equivalent to fine. There is no distinction between the word 'penalty' and the word 'fine' as used in sec. 64 of the Indian Penal Code.—In *Re. Lakmia*, I. L. R. 18 Bom. 409.

Preliminaries requisite for prosecutions.—All prosecutions under this Act shall be instituted with the order or consent of the Chairman or the Vice-Chairman generally or specially delegated by sec. 45 with powers of the Chairman. See sec. 353, also *Khiroda Prosad Pal v. Chairman, Howrah Municipality*, (I. L. R. 20 Cal. 448) and *Queen-Empress v. Mukunda Chundra Chatterji*, (I. L. R. 20 Cal. 662).

Court fee.—Petitions of complaint by municipal officers are not chargeable with court fees.—Sec. 19, cl. xviii, Court Fees Act (VII of 1870).

Procedure.—Chapters XX and XXII of the Criminal Procedure Code apply to the trial of all offences under this Act except offences under sec. 366.

Punishment.—In default of payment of fines imposed Courts may direct offenders to be imprisoned.—*See sec. 25 of the General Clauses Act (X of 1897), secs. 64 and 67, Indian Penal Code and Reg. v. Galub Chund, I. L. R. 18 Bom. 400.*

Courts shall, in addition to fines imposed on persons convicted, order them to repay the fees paid by complainants for serving process.—Sec. 31, sub-sec. iii, Court Fees Act (VII of 1870).

Realization of fines.—See sec. 355 and sec. 386 of the Criminal Procedure Code. Process fees order to be repaid in addition to fines may be similarly realized.—Sec. 31, sub-sec. iv, Court Fees Act.

Limitation.—See sec. 353 and notes thereunder.

216. Any person who, in any municipality—

(1) places, or allows his servants to place, rubbish on a public road at other than the times appointed by the commissioners under the provisions of section 189, or

Offences under sections 189 and 215.

(2) destroys, pulls down, defaces or alters any name or number put up by the Commissioners under the authority of section 215,

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

217. Any person who, in any municipality—

(1) being the occupier of a house in or near a public road, keeps, or allows to be kept, for more than twenty-four hours, or for more than such shorter time as may be prescribed by a bye-law, otherwise than in some proper recept-

Occupier not removing filth, &c.

acle, any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter, in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same, or

- (2) keeps any public necessary without a license from the Commissioners under section 194, or, having a license for a public necessary, suffers such necessary to be in a filthy or noxious state, or neglects to employ proper means for cleansing the same, or

Keeping unlicensed public necessary.

- (3) being the owner or occupier of any private drain, privy or cess-pool, neglects or refuses, after warning from the Commissioners, to keep the same in a proper state, or

Not keeping private drain, &c., in proper order.

- (4) disobeys an order passed by the Commissioners under the provisions of section 199 or 199A, or

Disobeying order under sec. 199 or 199A.

- (5) encroaches upon any road, drain, sewer, aqueduct or water-course by making any excavation, or by erecting any wall, fence, rail, post or other obstruction,

Erecting obstruction.

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

Change.

In cl. (4) the words "or 199A" have been added by sec. 62 of Beng. Act IV of 1894.

Notes.

Offensive matter.—See sec. 6, cl. (10).

Sec. 199—setting apart of tanks, &c., for drinking purposes.

Sec. 199A—prohibition to the use of unwholesome water.

Clause (5).—The term 'Road' here is not limited to roads vested in the Municipal Commissioners. A person was charged at the instance of a municipality under that clause with obstructing a path through his paddy fields by erecting a fence at either end of it. It was found that the public had a right of way over the path, and the lower Court convicted the accused. In revision it was contended that the clause could only refer to a road vested in the Municipal Commissioners; but the High Court held that the conviction was right and upheld it, *Ram Chunder Ghose v. Bally Municipality*, I. L. R. 17 Cal. 634.

A conviction obtained at the instance of a Local Board of all the co-owners for an encroachment made by one was upheld by the High Court.—*Bengalee, August 21, 1901.*

See notes under *Penalties*.

218. Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections 202, 204, 206, 207 or 208, shall be liable, for every such default, to a penalty not exceeding fifty rupees, and to a further penalty, not exceeding ten rupees, for every day during which the default is continued after the ex-

Disobeying requisition under section 202, 204, 206, 207 or 208.