piration of eight days from the date of service on him of such requisition.

Change.

The references, "206, 207" were inserted by sec. 63 of Beng. Act IV of 1894.

Notes.

Scope of inquiry.—A notice was issued requiring A to remove an alleged obstruction. The requisition was not complied with, and A was prosecuted for non-compliance.—*Held* (*per* Prinsep, J.) that the Court had power to inquire whether the alleged obstruction was in point of fact an obstruction or not, and the accused could when prosecuted for disobedience, claim exemption from operation of the order of the Commissioners on the ground that it was not a proper order, *Municipal Committee of Dacca* v. *Someer*, I. L. R. 9 Cal. 98.

In the unreported case of *The Kotchandpore Municipality* the accused, who was prosecuted for non-compliance with a notice under sec. 202, admitted the service of notice and was convicted. *Held* (*per* Petheram, C. J. and Rampini, J.) that the mere admission by the accused of the receipt of notice in the absence of any finding upon the requirements of law does not justify a conviction.—*The Statesman*, *June 2*, 1894. See *Shama Bibee* v. *Jadab Chunder*, 2 C. L. J. 226 cited under sec. 202.

Second prosecution before conviction in first, bad.—In the case of *the Corporation of the Town of Calcutta* v. *Matu Bewah*, (I. L. R. 13 Cal. 108) it was held that a second prosecution for the continuance of an offence before conviction in the first is bad.

Daily fine.—Daily fine, in addition to substantive fine, is bad in law. In *Re. Sagore Dutta*, Norman, J. was pleased to observe that the infliction of daily fine in such a case is in fact an adjudication in respect of an offence which had not been then committed. The conviction cannot be amended; a conviction must either be wholly good or wholly bad. Part of it being bad it is bad altogether.—18 W. R., 44 C. R., note. But in the case of *W. N. Lore* the High Court, while setting aside the daily fine, upheld the conviction in respect of the substantive fine.—18 W. R. 44 C. R. Jackson, J. however, distinguished this case from that of *Sagore Dutta* in the following words. "We think it proper to follow the precedent given at page 44, 18 W. R., C. R. In

the case mentioned in a foot note on the same page (*Sagore Dutta*) the Court had before it a conviction before Justices regulated by the English law and which could not be amended. "—*Chairman of the Subarban Municipality* v. *Aneesuldin Meah*, 20 W. R., 64 C. R. See also *Queen* v. *Tarini Churan Bose*, 21 W. R., 31 C. R., *Kristo Dhone Dutta* v. *The Chairman of the Subarban Municipality*, 25 W. R., 6 C. R., *Nilmoni Ghatak* v. *Emperor*, I. L. R. 37 Cal. 671, *the unreported cases of Mutty Lall Bose* (Revision No. 645, April 20, 1872), and of *Raja Fanindra Deb Raikata of Jalpaiguri* (*Amrita Bazar Patrika, November, 27, 1894*)

Procedure for infliction of daily fine.—In a similar case in Bombay (In *re. Limbaji Tulsiram* I. L. R., 22 Bom. 766) in which the accused was "fined Rs. 5 and Re. 1 per diem until work completed," the order relating to the daily penalty was set aside as illegal. It was held that the law necessitated a separate prosecution for a distinct offence, on a charge for a specific contravention for a specific number of days which must be proved ; so that the order was bad as involving convictions and punishments for offences which the accused had not committed and with which he was not and could not have been charged at the time the sentences were passed. The High Courts of Calcutta and Allahabad have taken the same view of the law in recent cases, *Ram Krishna Biswas* v. *Mahendra Nath Mozumdar*, I. L. R. 27 Cal. 565, *Emperor* v. *Wazir Ahmad*, I. L. R. 24 All. 309, and *Mahadeo Parsad* v. *Municipal Board, Lucknow*, 11 O. C. 122, 7 Cr. L. J. 454. See also *King-Emperor* v. *Po Nau* (4 L. B. R. 44, 6 Cr. L. J. 281) in which it was held that the Magistrate had no authority to inflict a fine contingent on future events. If the offence continues a fresh prosecution ought to be instituted.

The law does not allow a daily fine to be imposed in anticipation of an offence being committed, *Harendro Nath* v. *The Chairman of Birnagore Municipality*, 1 C. L. J. 51.

Limitation.—The offence provided for in this section is the failure to comply with a requisition and is of a continuous nature. Limitation against a prosecution for such offence, therefore, begins to run from the time when the failure to comply with the requisition is first brought to the notice of the Chairman, *Lutti Singh* v. *The Behar Municipality*, 1 C. W. N. 492.

Disobeying requisition under sections 195, 200, 209, 210 or 210A.

219. Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with any requisition issued by the Commissioners under the provisions of sections 195, 200, 209, 210 or 210A, shall be liable, for every such default, to a penalty not exceeding one hundred rupees, and to a further penalty, not exceeding twenty rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

Change.

The word "210A" has been added by sec. 61 of Beng. Act IV of 1894.

Notes.

Sec. 195—Requisition upon owner to clear noxious vegetation and to improve bad drainage.

Sec. 200—Power to deal with private tanks.

Sec. 209—Requisition upon owners, &c., to secure tanks, &c.

Secs. 210 and 210A—Ruinous houses and powers in connection therewith.

Requisition.—When the notice by which a requisition is made is invalid, a conviction for failure to comply with it is bad, *Harendro Nath* v. *The Chairman of Birnagore Municipality*, 1 C. L. J. 51.

Procedure &c,—See notes under *Penalties, pp. 171-2.*

Liability of owner or occupier.—See 8 W. R 45, C. R. and 16 W. R. 70, C. R. cited under sec. 217.

Second prosecution and daily fine.—See notes to sec. 218.

PART VI.

Of Special Regulations.

Operation of Parts VI, VII, VIII, IX and X.

220. No provisions contained in this part, or in Part VII, VIII, IX or X, shall apply to any municipality, unless and until it has been expressly extended thereto by the Local Government in the manner provided by the next succeeding section:

Saving clause.

Provided that, except as is otherwise provided by this Act, in the case of any municipality to which all the provisions of any one of the Parts VII, VIII, or IX of the Bengal Municipal Act, 1876, may have been extended, and provided that such provisions were still in force in such municipality immediately before the commencement of this Act; all the provisions of the corresponding Part of this Act, namely, of Parts VI, IX or X respectively, shall be, and shall be deemed to have always been, in force in such municipality without such provisions being expressly extended thereto.

Change.

The proviso was added by sec. 65 of Beng. Act IV 1894.

Notes.

See *App. p.* 12A, *Govt. Lett., para.* 28.

In order that any of the provisions of this part of the Act may apply to any municipality, it must be expressly extended to such municipality

in the manner provided by the next succeeding sections, and it must be shown that there has been such an extension, *Gopal* v. *Chairman of Santipur*, 10 C. L. J. 613.

Local Government may order the provisions of the said Parts to be in force.

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

And the Local Government may thereupon make an order accordingly.

Publication of order.

222. Every such order shall be published in the *Calcutta Gazette*, and the Commissioners shall, within fifteen days of such publication, cause a copy of the same, with a translation thereof into the vernacular of the district, to be posted up at their office, with a notice of the date on which such order shall take effect, and shall cause the same to be published as prescribed in section 354.

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

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

Publication—Unless the requirements of this section are strictly complied with, a conviction, under the provisions of the Parts mentioned in sec. 220, shall be bad and liable to be set aside. In the unreported case of *Empress* v. *Satya Kumar Chatterji* (*Amrita Bazar Patrika, October* 19, 1894), a conviction under sec. 273, cl. (2) was set aside on the ground, amongst others, that the local notification was made after the expiration of the period allowed by law.

Local Government may cancel or modify order.

223. The Local Government, on a similar application made by the Commissioners, may at any time cancel or modify an order made under section 221 and such cancellation or modification shall be published and shall take effect in the manner prescribed by the last preceding section.

Of a Survey.

Survey of a municipality.

223A. The Commissioners at a meeting may order that a survey shall be made of the lands situated in the municipality, and thereupon all the provisions of the Calcutta Survey Act, 1887, shall, so far as may be practicable, apply and be extended to such municipality.

Change.

This section is new and has been added by sec. 66 of Beng. Act IV of 1894.

Notes.

For the Calcutta Survey Act, 1887, see *App. p. 276a.*

The cost of a survey is chargeable to the municipal fund.—Sec. 69, cl. (9).

Of Privies, Drains and Excavations.

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

Commissioners may require owner or occupier to repair drain, &c.

Penalty for non-compliance, see sec. 271.

This section contemplates a case of mere efficiency even when no repair is necessary. It is imperative that a notice under this section should contain or make mention of the second clause or proviso to section 175. When therefore a prosecution was started upon a notice not containing or making mention of the said proviso, it was held that failure to comply with the requisition of such a notice did not amount to an offence under section 271.—In the matter of *Chairman of the Puri Municipality* v. *Kissori Lall Sen*, 1 C. W. N., *p*. ccxliv (notes).

A municipality is authorised under this section to direct the removal of a latrine without giving the owner an option to repair and make it efficient. For the purposes of a prosecution for non-compliance with a requisition no second notice, as provided by section 179 is necessary. But such a notice is necessary if the municipality contemplate to proceed to do the work under section 180, *Jagadis Chunder Ganguli* v. *Sreenath Bose*, 2 C. W. N. *p*. clxxxvii, (notes).

The action of the Municipal Commissioners requiring the removal of a *pucca* privy by means of a notice issued under sec. 245 was held not to be *ultra vires*, in as much as the Commissioners have the right to make such requisition under this section, *Duke* v. *Rameswar Maliah*, I. L. R. 26 Cal. 811.

225. Every person constructing a privy shall have such privy shut out by a sufficient roof and wall or fence from the view of persons passing by,

Privies must be properly enclosed.

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

Penalty for failing to have a new privy shut out from view, see sec. 266, and for non-compliance with the requisition see sec. 271.

Unauthorized drains leading into public sewers may be demolished

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

For penalty, see sec. 272, cl. (1).

Commissioners may require owner to drain land.

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

For penalty, see sec. 271.

228. If it appear to the Commissioners that a group or block of houses may be drained or improved more economically or advantageously in combination than separately, and a sewer, drain or other outlet already exists within one hundred feet of any part of such group or block of houses to be so drained and improved;

Group or block of houses, &c., may be drained by a combined operation.

and the expenses thereby incurred shall be recovered from the owners of such houses in such proportions as shall to the Commissioners seem fit.

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

Commissioners may alter any drain, &c., made contrary to their orders.

For penalty, see sec. 272, cl. (2).

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

No latrine, &c., to be constructed within fifty feet of tank or water course.

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

Water-course—does not include wells [see *para.* 6, *B. Govt. Munl. No.* 2514 *and Cir. No.* 31, *Octr.* 1903, Govt. Cir. Vol. III *p.* 1039].

For penalty for breach of the provisions of the first paragraph see sec. 270, cl. (3), and for non-compliance with the requisition see sec. 271.

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

Construction of privy.

Road.—For the definition of, see sec. 6, cl. (13). See also I. L. R. 17 Cal. 634.

Penalty for breach of the first provision and for non-compliance with the requisition, see secs. 270, cl. (3) and 271 respectively.

Power to prohibit excavations.

232. The Commissioners at a meeting may, by a general order, prohibit the making of excavations for the purpose of taking earth or stone therefrom, or for the purpose of storing rubbish or offensive matter therein, and the digging of cess-pools, tanks or pits without special permission previously obtained from them.

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

Them—Upon a grammatical construction of the first paragraph of this section, the word *them* at the end of it would mean "the Commissioners at a meeting". This seems to be due to oversight in drafting; for it does not appear to be the intention of the legislature to reserve such details to be dealt with by the Commissioners in meeting. Moreover a glance at clause (4) of section 270 will show that the permission is to emanate from the Commissioners and not the Commissioners in meeting.

Penalty—for making excavations without permission is provided in cl. (4) sec. 270.

No penalty for failure to comply with a notice to fill up an unauthorised excavation is provided in the Act.

Special permission—The Commissioners have discretion in granting or withholding permission, and shall not be liable for damages for withholding it so long as they act *bona fide* and within the spirit of the law and not arbitrarily; *Bhyrub Chander Banerji* v. *G. E. Makgill, Chairman, Howrah Municipality*, 17 W. R. 215.

Of Obstructions and Encroachments on Roads.

Removal of existing projection from houses.

233. The Commissioners at a meeting may determine on the removal or alteration, as they shall think fit, of any projection, encroachment or obstruction which may have been erected or placed against or in front of, any house on any road within the limits of the municipality before the date on which the District Municipal Act, 1864, or the District Towns Act, 1863, or the Bengal Municipal Act, 1876, as the case may be, came into force in the municipality, or in case none of the said Acts was in force in the municipality before the commencement of this Act, then before the date on which this Act may have been extended thereto.

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

same, the Magistrate may, on the application of the Commissioners, order such projection, encroachment or obstruction to be removed or altered; and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction.

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

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

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

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

Compare secs. 202 to 205 and the notes thereunder.

H owned a house in the town of A, to which the Towns Improvement Act, 1871, was extended in 1879. In 1882 the Municipal Commissioners, professing to act under sec. 139 of the said Act removed a *pial* which projected beyond the main walls of H's house and abutted on a lane which was used by the public. H proved that the *pial* had existed for fifty years. *Held*, that the action of the Municipal Commissioners was illegal, *Hanumayya* v. *N. A. Ronpell, President of Municipal Commission, Anantapur*, I. L. R. 8 Mad. 64. See, however, *Mothe Atchayya Garu* v. *The Municipal Council of Ellore* (7 M. L. T. 66, 4 Ind. Cas. 828) where it was held that the remedy of a person, required to remove a projection, is to recover compensation; a suit for an injunction will not lie.

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

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

such fees as they may fix for such permission :

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

Cf. sec. 201 and notes thereto.

Liability of Commissioners.—The mere fact that the Commissioners granted permission to another person for a perfectly proper purpose would not relieve them of their statutory duty. They will, however, be held liable for damages even if such person undertakes to make provision for the requirements of the proviso.—*Calcutta Corporation* v. *Anderson*, I. L. R. 10 Cal. 445.

Penalty.—No penalty is provided for depositing &c., without permission, and the Commissioners may frame a bye-law under this section.

Hoards to be set up during repairs.

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

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

This section does not prescribe a fee for permission to erect a fence or scaffolding, but if it encloses any portion of a road, the Commissioners may probably charge a fee under the preceding section.

For penalty see sec. 273, cl. (1).

Of Building Regulations.

Roofs and external walls not to be made of inflammable materials.

236. The Commissioners at a meeting may, by an order published in the manner prescribed in section 354, direct that within certain limits, to be fixed by them, the external roofs and walls of huts or other buildings which may thereafter be erected, or the roofs or walls of which may thereafter be renewed or repaired, shall not be made of grass, leaves, mats or other inflammable materials.

Change.

The words "by an order published in the manner prescribed in section 354" have been added by sec. 67 of Beng. Act IV of 1894.

Notes.

External roofs, &c.—In the case of the *Public Prosecutor* v. *Narayanswamy* (2 M. L. T. 499, Cr. L. J. 219) decided under the corresponding section of the Madras Act, it was *held* that the construction, the section operates only when the roofs, &c., are constructed outside the house, *i. e.*, externally, was erroneous.

For penalty see sec. 270, cl. (5).

A person cannot be convicted under sec. 188 of the Indian Penal Code for disobedience of an order passed under this section in as much as amongst other grounds such an order is not promulgated by a public servant,—the body of Commissioners being not such within the definition of sec. 21 of the Indian Penal Code though an individual Commissioner is.—See unreported case of *Tara Chand, Criminal Revision, June 2, 1882*; *Empress* v. *The Calcutta Corporation*, I. L. R. 3 Cal. 758.

Renewed or repaired.—*Per* Macpherson, J. A renewal, whether of only a portion of a roof, or of a whole roof must not be made of any inflammable material. The one question always is whether any portion of the roof is renewed, that is to say, made new again. To read the law otherwise would enable owners or occupants of huts, by repairing their roofs piecemeal, to defeat the object of the Act and bye-law wholly.—*Howrah Municipality* v. *Montani Bewah*, 24 W. R. 70 C. R.

Notice of erecting a house not being a hut.

237. (1) Every person who intends to erect or re-erect any house, not being a hut, shall give notice in writing of his intention to the Commissioners, and shall accompany such notice with a general description of the building which he intends to erect, and of the provision he intends to make in respect of drainage and latrine accommodation, and the Commissioners may, within six weeks after the receipt of such notice, either refuse to sanction the said building or may sanction the said building either absolutely or subject to any written directions which the Commissioners may deem fit to issue in accordance with the rules, if any, made under section 241 :

Provided that the Commissioners shall make full compensation to the owner for any damage which

he may sustain in consequence of the prohibition of the re-erection of any house, or of their requiring any land belonging to him to be added to the street.

(2) Any person giving notice to the Commissioners under this section shall, if required to do so by any rule, forward with his notice a plan and specification of the house, not being a hut, which he intends to erect or re-erect, together with a site plan of the land of such character, and with such details as the rule may require; and no notice under this section shall be valid until such plans and specification have been supplied.

Change.

This and the four next succeeding sections have been substituted by sec. 68 of Beng. Act IV of 1894 for the old secs. 237 to 241.

Notes.

See *App. p.* 13*a*, *Govt. Lett. para. 30.*

Erect or re-erect.—See secs. 238 and 240 and notes thereunder.

House and **Hut.**—See sec. 6, cl. (4) and notes thereunder.

House not being a hut.—A detached wall does not come under the category, cf. *Corporation of Calcutta* v. *Jogeswar Laha*, 8 C. W. N. 487. See also the elaborate judgment in the case of *Corporation of Calcutta* v. *Benay Krishna Bose*, 7 Ind. Cas. 890, 12 C. L. J. 476.

A *compound wall* is included within the meaning of the word "building" in sec. 33 Bom. Act VI of 1873 (The District Municipal Act).—See also *Dave Harishankar* v. *The Town Municipality, Umreth*, I. L. R. 19 Bom. 27.

For penalty see sec. 273, cl. (1). *Compare Krishanji Narayan* v. *Municipality of Tasgaon*, I. L. R. 18 Bom. 547.

Subject to written directions.—Cf. *Tribhovan* v. *Ahmedabad Municipality*, (I. L. R. 27 Bom. 221) where a bye-law, regulating construction of projecting balconies over private streets was upheld as legal, as not being contradictory to general law.

Railway buildings.—In paragraph 14 of Government of India, Public Works Department letter No. 20R.—T., dated 7th January, 1901, which was circulated under Public Works Department endorsement No. 21R.—T. of same date, it was stated that the Government Buildings Act, 1899 (IV of 1899), applied to Railways, and that when Railways proposed to undertake any works on their land, they should give, due notice thereof to the municipality within whose jurisdiction the land lay, so as to give them the opportunity, with the permission of the Local Government previously obtained and subject to any restrictions or conditions which might, by general or special order, be imposed by the Local Government, to inspect the land, plans and buildings proposed to be erected inside the railway boundary within municipal limits and submit objections or suggestions.

2. The Government of India are now advised that in view of section 7 of the Indian Railways Act, 1890 (IX of 1890), the Government Buildings Act, 1899 (IV of 1899), has no application to Railways. In these circumstances, I am to request that paragraph 14 of the Government of India letter No. 20R.—T., of 7th January 1901, may be considered as cancelled.

3. I am however, to add that it will usually be expedient to give municipal authorities reasonable notice of any works which it is proposed to undertake on railway land within municipal limits. Water supply, drainage, etc., have to be arranged for in most cases, and Railway Administrations would run the risk of a good deal of inconvenience if they always insisted on their strict legal rights. I am accordingly to say that the Government of India desire that reasonable notice may always be given to municipalities of all works which it is proposed to construct within municipal limits.—*India Govt. Cir. No.* 4170, *May* 26, 1906.

Government buildings.—The powers of municipal authorities to interfere with the erection, and re-erection of Government buildings have been defined by the Government Buildings Act (India Act IV of 1899), the material portions of which are as follows:—

3. Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any public purpose, which is the property, or in the occupation, of the Government, or which is to be erected on land which is the property, or in the occupation, of the Government :

Provided that, where the erection, re-erection, construction or material structural alteration of any such building as aforesaid (not being a building connected with Imperial defence, or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret) is contemplated, reasonable notice of the proposed work shall be given to the municipal authority before it is commenced.

4. (1) In the case of any such building as is mentioned in the last preceding section (not being a building connected with Imperial defence or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret), the municipal authority, or any person authorized by it in this behalf, may, with the permission of the Local Government previously obtained, but not otherwise, and subject to any restriction or condition which may, by general or special order, be imposed by the Local Government, inspect the land and building and all plans connected with its erection, re-erection, construction or material structural alteration, as the case may be, and may submit to the Local Government a statement in writing of any objections or suggestions which such municipal authority may deem fit to make with reference to such erection, re-erection or material structural alteration.

(2) Every objection submitted as aforesaid shall be considered by the Local Government, which shall, after such investigation (if any) as it shall think advisable, pass orders thereon, and the building referred to therein shall be erected, re-erected, constructed or altered as the case may be, in accordance with such orders :

Provided that, if the Local Government overrules or disregards any such objection or suggestion as aforesaid, it shall give its reasons for so doing in writing.

(3) Every order passed by the Local Government under this section shall be subject to revision by the Governor-General in Council,

but not otherwise, and the decision of the Governor-General in Council thereon shall be final.

Commissioners may order a house not being a hut erected without notice, etc., to be altered or demolished.

238. (1) Should any person commence to erect or re-erect such house, not being a hut, without giving notice, or without submitting such plans and specification as aforesaid, or without waiting for the orders of the Commissioners for six weeks from the date of his giving notice in writing under section 237, or in contravention of any legal order of the Commissioners issued within six weeks of receipt of a valid notice under the last preceding section, the Commissioners may, by notice, to be delivered within fifteen days, require the building to be altered or demolished, as they may deem necessary.

(2) Should the Commissioners neglect or omit for six weeks after the receipt of a valid notice under the last preceding section to make and deliver to the person who has given such notice any order in respect thereof, they shall be deemed to have sanctioned the proposed house absolutely:

Provided that no rule under section 241 and no legal order shall be held to have been contravened by anything done in accordance with plans and specifications forwarded to the Commissioners under section 237 and not objected to by them.

Change.

The words "or without waiting," &c., up to "section 237" have been added by sec. 12 of Beng. Act II of 1896.

Notes.

The addition of these words has laid at rest the doubt expressed by the High Court as to whether it was an offence under the section as it stood before to erect a building without waiting for six weeks after giving notice, for the orders of the Commissioners.—See *Chandra Kumar Dey* v. *Gonesh Das Agarwalla*, I. L. R. 25 Cal. 419.

Erect or re-erect—for meaning of, see sec. 240 and note thereunder. *Cf. Tullaram* v. *The Corporation of Calcutta*, I. L. R. 30 Cal. 317 (335).

In the case of *Emperor* v. *Mathura Prosad* (I. L. R. 29 Cal. 491) the accused was convicted by the Lower Court under the first clause of section 273 for commencing to add a second storey to his house without permission. On a reference made by the Sessions Judge, the High Court set aside the conviction on the grounds that there was no necessity for such permission and that the building regulations contained in sections 236 to 241 related to building or rebuilding a house and not to alterations therein. A reference is made in the judgment to sections 233 and 235, which relate to obstructions and encroachments on roads, apparently with the object of distinguishing the later sections relating to building regulations which do not contain the word "alter" or "alteration" as the earlier sections do, the inference being that the building regulations do not apply to any alterations of an existing building. It is submitted that this view is hardly consistent with section 240, by the terms of which the expression "erect or re-erect any house" as used in this and section 239 includes any material alteration or enlargement of any building. On this point see the Govt. Circular, *App. p. 27a.*

Without giving notice.—Building in excess of permission granted, that is, on land other than that for which notice has been given seems to be simply building without notice, so far as the excess land is concerned.—*Bhawani Shankar* v. *The Surat Municipality*, I. L. R. 21 Bom. 187.

Six weeks.—This period is to be calculated from the date when complete plans and specifications are submitted in such a form as to be capable of consideration by the Commissioners.—*Sewnandan Rai Kayab* v. *The Vice-Chairman of the Darjeeling Municipality*, 5 C. W. N. 42.

Legal order—means an order *consistent* and *capable of performance.* "Neither the law nor any direction purporting to be made

under the law can compel any person to do what is impossible; and a permission which involves a condition absolutely inconsistent with its own terms could not come within the category of legal orders" [I. L. R. 25 Bom. 142 (151)]. In a Bombay case (*Dave Harishankar* v. *The Town Municipality of Umreth*, I. L. R. 19 Bom. 27) a wall, not shewn in the original description furnished to the municipality and built in spite of express prohibition, was held to have been built in contravention of legal orders. The municipality was not liable for damages for having it demolished.

Fifteen days—as the section stands, appears to mean fifteen days *from* the time when any person commences to erect or re-erect a house. It is submitted that this limitation of time is likely in many cases to defeat the object of the law, as the commencement of a building may be successfully concealed from the Commissioners for fifteen days and then they will be quite powerless to require an alteration or demolition of the building, however insanitary it may be and however much it may contravene the building regulations. Sub-section (4), section 92 of the Punjab Municipal Act (India Act XX of 1891) substantially follows the wording of sub-section (1) of this section; but there the expression "*within a reasonable time*," is used instead of the fixed period of "*fifteen days*."

Neglect or omission to make and deliver order within six weeks.—No prosecution under sec. 273 (1) lies against a person who commences to build a house in accordance with plan submitted, after waiting for six weeks from the date of submission of notice in a complete form, if the municipality has neglected or omitted to pass orders thereon within that period. The mere fact that the party made certain alterations in his building at the suggestion of the municipality, does no preclude him from raising this objection at the trial.—*Sewnandan Rai Kayab* v. *The Vice-Chairman of the Darjeeling Municipality*, 5 C. W. N. 42.

Sanction irrevocable.—In a case under the *Calcutta Municipal Consolidation Act* (Beng. II of 1888), the High Court (*per* Henderson, J.) held that an unconditional sanction, once legally given, was absolute and there was nothing in the Act which enabled the Corporation to revoke it. The Corporation must be taken to be bound by the acts of its officers and the plea that it was misled by an overseer or that

an overseer had made a mistake would not avail it. The question would, however, assume a different aspect, if the sanction had been obtained by fraud or collusion of the party seeking it, or the erection of the sanctioned building had been carried on in non-compliance of the party's own undertaking, in which case the remedy open to the Corporation was by an injunction or such other legal steps.—*Tullaram v. The Corporation of Calcutta*, I. L. R. 30 Cal. 317.

Sanction available for one year only

239. Every sanction for the erection or re-erection of any house, not being a hut, which shall be given or deemed to be given by the Commissioners, shall be liable for one year from the date on which the notice shall have become valid and complete, and no longer; and should the house so sanctioned not have been begun by the person who have obtained such sanction, or some one lawfully claiming under him within such year, it shall not be begun without fresh sanction, but such person as aforesaid may at any subsequent time give fresh notice to the Commissioners in the manner hereinbefore prescribed, and thereupon the provisions hereinbefore contained shall apply to such notice.

In *Mahamad Yasin v. The Municipal Committee, Lahore*, (9 P. R. 1905, P. L. R. 1905) decided under sub-sec. (6), sec. 92 of the Punjab Municipal Act (India Act XX of 1891), which is an exact counterpart of this section, a party, erecting a building under a sanction more than one year old was prevented from going on with the building. He, thereupon, instituted a suit for injunction to restrain the municipality from interfering with the building. It was *held* by the Chief Court that the sanction had abated and the plaintiff was not entitled to build.

Where a person obtains, from a municipal committee, the necessary sanction for building under section 92 of the (Punjab Municipalities)

Act, the sanction does not make it obligatory on him to complete the building within a year of his obtaining sanction nor even to have commenced each separate part of the building within that time. He is bound only to commence some portion of the building within the period of one year from the date of sanction, and there cannot be any rule or provision of law requiring that the building must be completed within any particular, or a reasonable time, *Banwari Lal* v. *King-Emperor*, 61 P. R. 1905 (cr.), 41 P. L. R. 1906, 3 Cr. L. J. 344.

Erection or re-erection—for meaning of, see sec. 240 and note thereto.

240. The expression "erect or re-erect any house, not being a hut" as used in the two last preceding sections includes:—

Definition of expression "erect or re-erect any house, not being a hut."

(*a*) any material alteration or enlargement of any building;

(*b*) such alterations of the internal arrangements of a house as effect an alteration of its drainage or sanitary arrangements, or affect its stability.

U was convicted and fined, the charge against him being that one of the walls of a house belonging to the Mission at P was raised by about a foot and a half without notice to the municipality. It was contended on behalf of the petitioner in the High Court that upon the facts proved, he was guilty of no offence and that he was not bound to give any notice to the municipality for making such microscopic alterations in the house. Reference was also made in argument to the definition of the term 're-erect' in the Calcutta Act where it meant an alteration in the cubical extent by at least one-half. Their Lordships however held that the raising of a wall and a roof by one foot and a half would be a material alteration within the meaning of this section, making a notice to the municipality obligatory and declined to interfere.—In the matter of *Rev. H. Uffmann* (*unreported*), *Bengalee*, *June 27, 1900*. *Cf. Kamta Nath* v. *The Municipal Board of Allahabad*, I. L. R. 28 All. 199,

Emperor v. *Nanabhoy*, 9 B. L. R. 932, 6 Cr. L. J. 236 and *Basant Ram* v. *King-Emperor*, (13 P. R. 1907 (Cr.), 6 Cr. L. J. 342) *re* erection of a partition wall affecting the interests of the public.

See also notes under sec. 238.

241. (*1*) The Commissioners at a meeting may from time to time make, repeal or alter rules to regulate the erection or re-erection of houses, not being huts, within the municipality in respect of all or any of the following matters :—

Power of the Commissioners to make rules as to mode of construction of houses not being huts.

(*a*) the materials and method of construction to be used for external and party walls, roofs, floors, fire-places and chimneys ;

(*b*) the provision, position and ventilation of drains, privies and cess-pools ;

(*c*) the free passage or way in front of the house ;

(*d*) the space to be left about the house to secure free circulation of air and facilitate scavengering, and for the prevention of fire ;

(*e*) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on ;

(*f*) the level and width of the foundation, the level of the lowest floor and the stability of the structure ;

(*g*) the number and height of the storeys of which the house may consist ;

(*h*) the means to be provided for egress from the house in case of fire ;

(*i*) the line of frontage with neighbouring houses if the house abuts on a street.

(*2*) Rules under this section, not inconsistent with the Act, shall be subject to the sanction of the Local Government, and shall, if sanctioned, be published in such manner as the Local Government may direct, and shall have the force of law.

(*3*) If in and during the erection or re-erection of any house, any rule under this section is contravened, the Commissioners may by notice to be delivered within fifteen days require the building to be altered, or, if necessary, demolished within the space of thirty days, so as to secure conformity to such rule.

(*4*) This section shall not take effect in a municipality until it has been specially extended thereto by the Local Government at the request of the Commissioners at a meeting.

See *Emperor* v. *Rustomji* (9 Bom. L. R. 363, 5 Cr. L. J. 338) in which it has been held that provisions such as these are intended in the interests of public health, and the Court ought to so construe them as to advance that object, and that it is not permissible to create a *casus omissus* by interpretation save in some case of strong necessity. *Cf.* In re *Ali Mahomed.* 9 Bom. L. R. 737, Cr. L. J. 80.

Fifteen days—for meaning of, see note to sec. 238.

Penalty for breach of the provisions, see sec. 273, 273, cl. (1).

See App p. 13*a*, *Govt. Lett. para. 30.*

242. The Commissioners may prohibit the owner of any house, not being a hut, from letting it for occupation, if in their opinion it is unstable, or if the drainage or latrine accommodation of such house is in their opinion defective, until its stability shall have been secured or such defects in drainage or latrine accommodation shall have been made good to their satisfaction.

Commissioners may prohibit letting of unstable or ill-drained house.

Change.

This section has been substituted by sec. 69 of Beng. Act IV of 1894 for the original section.

Notes.

No such order shall be liable to be called in question otherwise than by such appeal.—The language of section 147 sub-section (1) of the Burma Municipal Act (Burma Act III of 1902) is exactly the same. The following ruling of the Burma Chief Court on this point is therefore of importance :—'That the words should not be interpreted as preventing an accused person from challanging an order as *ultra vires* by way of defence to a criminal charge, that the portion of the order prohibiting the use of the house until such time as the municipal committee is satisfied that it is fit for human habitation is *ultra vires*, that section 130 (here section 242) does not make the committee the judge of the question whether the house has been made fit for habitation and that it is a question of fact to be decided by the Magistrate, if the committee see fit to prosecute."—*Bretto* v. *Rangoon Municipal Committee*, 4 L. B. R. 144, 7 Cr. L. J. 441.

For penalty for disobedience see sec. 273 cl. (1).

242A. (*1*) Any person aggrieved—

Appeals from orders Commissioners.

(*a*) by the prohibition by the Commissioners under section 237 of the erection or

re-erection of a house, not being a hut, or

(*b*) by a notice from the Commissioners under section 238 or sub-section (3) of section 241 requiring the alteration or demolition of a building, or

(*c*) by any order made by the Commissioners under the powers conferred upon them by section 242,

may appeal within thirty days from the date of such prohibition, notice or order, to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) The order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final:

Provided that the prohibition, notice or order shall not be modified or set aside until the appellant

and the Commissioners have had reasonable opportunity of being heard.

Change.

This section has been added by sec. 70 of Beng. Act IV of 1894.

Notes.

Sub-sec. (1) cl. (b).—See *Chhote* v. *Municipal Board of Lucknow* (90 C. 29, 3 Cr. L. J. 205) in which it was held under the similar provision of the N. W. P. and Oudh Municipalities Act that an accused person is not prohibited from challanging the validity of the notice where the Boards' order was wholly *ultra vires*.

Sub-sec. (3), Final.—Compare notes to secs. 113 and 116.

Erection of new huts to be under the control of the Commissioners.

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

Changes.

By sec. 71 of Beng. Act IV of 1894 the words "one month's," "each line" have been added, and "every two lines" have been substituted for "each line."

Notes.

One month's previous notice.—Mere submission of an application for permission to build would not entitle a person to build, before permission has been obtained.—*Deputy Superintendent and Remembrancer of Legal Affairs on behalf of the Government of Bengal* v. *Choita Raj Bhor*. Crl. Appl. No. 1507 of 1902 (unreported). This unreported case was followed in the case of *Chairman, Howrah* v. *Golapi*, (10 C. L. J. 16) where it was held that this section forbade the erection of huts without a month's notice to the Commissioners and if any one erected a hut without such notice, he was liable to punishment under the first portion of section 267.

Hut—as to the meaning of, see notes sec. 6, cl. (4)

For penalty for infringement see sec. 267 and notes thereunder.

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

Power to direct removal of huts built without notice.

Penalty for non-compliance with the requisition, see sec. 267 and for execution of the works see sec. 180 and notes.

Instead of prosecuting a party, who has built a hut without notice, under the first portion of section 267, the Commissioners, may, if they like, take action under this section, but they are not bound to do so. But if they do, and the party fails to comply with their requisition, the punishment provided for in the second portion of section 267 will paly *Chairman, Howrah* v. *Golapi*, 10 C. L. J. 16.

Of Sanitary Measures with regard to Blocks of Huts.

Power of Commissioners as to inspection of huts.

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

Hut—for the meaning of, see sec. 6, cl. (4) and notes.

Commissioners sole judges of necessity.—Where a municipality, having proceeded in accordance with sections 245 and 246, decide that certain works are necessary, that conclusion, in the absence of *mala fides*, fraud or considerations of that nature, cannot be questioned in a Civil Court, *F. W. Duke* v. *Rameswar Maliah*, I. L. R. 26 Cal. 811, 3 C. W. N. 508.

Section not applicable to masonry structure.—The Howrah Municipality referred the question of *Bustee* improvements to the Local Government; and the Government in the Municipal Department letter, No. 2040, dated, the 19th July 1886 to the address of the Com-

Notes.

One month's previous notice.— Mere submission of an application for permis-ion to build would not entitle a person to build, before permission has been obtained.—*Deputy Superintendent and Remembrancer of Legal Affairs on behalf of the Government of Bengal* v. *Choita Raj Bhor*. Crl. Appl. No. 1507 of 1902 (unreported). This unreported case was followed in the case of *Chairman, Howrah* v. *Golapi*, (10 C. L. J. 16) where it was held that this section forbade the erection of huts without a month's notice to the Commissioners and if any one erected a hut without such notice, he was liable to punishment under the first portion of section 267.

Hut—as to the meaning of, see notes sec. 6, cl. (4)

For penalty for infringement see sec. 267 and notes thereunder.

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

Power to direct removal of huts built without notice.

Penalty for non-compliance with the requisition, see sec. 267 and for execution of the works see sec. 180 and notes.

Instead of prosecuting a party, who has built a hut without notice, under the first portion of section 267, the Commissioners, may, if they like, take action under this section, but they are not bound to do so. But if they do, and the party fails to comply with their requisition, the punishment provided for in the second portion of section 267 will paly *Chairman, Howrah* v. *Golapi*, 10 C. L. J 16.

Of Sanitary Measures with regard to Blocks of Huts.

Power of Commissioners as to inspection of huts.

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

Hut—for the meaning of, see sec. 6, cl. (4) and notes.

Commissioners sole judges of necessity.—Where a municipality, having proceeded in accordance with sections 245 and 246, decide that certain works are necessary, that conclusion, in the absence of *mala fides*, fraud or considerations of that nature, cannot be questioned in a Civil Court, *F. W. Duke* v. *Rameswar Maliah*, I. L. R. 26 Cal. 811, 3 C. W. N. 508.

Section not applicable to masonry structure.—The Howrah Municipality referred the question of *Bustee* improvements to the Local Government; and the Government in the Municipal Department letter, No. 2040, dated, the 19th July 1886 to the address of the Com-

missioner of the Burdwan Division expressed its views as follows:—

"The ruling of the Judge of Hoogly that the provision of the Bengal Municipal Act in regard to blocks of huts do not apply to masonry structures, is apparently correct. The existence of such a structure might, therefore, be fatal to progress in *bustee* reclamation, if the owner insisted on his legal rights to the detriment of his neighbours.

But a pucca privy may be removed.—Where a municipality among other works required the removal of a *pucca* privy by means of a notice issued in accordance with this section, it was held that their action was not *ultra vires*, in as much as the municipality had a right to make such requisition under section 224.—*F. W. Duke* v. *Rameswar Maliah*, I. L. R. 26 Cal. 811, 3 C. W. N. 508.

Policy to be adopted in effecting busti inprovement.—The following extracts, from the letter No. 571, dated the 7th June, 1886, addressed by the late Hon'ble Sir Henry Harrison to the Under-Secretary to the Government of Bengal, Municipal Department, may be found useful in giving effect to the provisions of this section:—

"A bustee road once constructed becomes "a street" under the Calcutta Act, and the Commissioners have full power, under section 202, to compel the owner to keep it in repair. This power is systematically exercised. But we have never questioned the right of the owner to build over the road, if he wishes to convert the bustee or part of the bustee into a pucca house. The land is his own, and though we claim a voice in its sanitary management, as long as it is used for blocks of huts, if he wishes to change the disposition of any portion of it, and build (say) a ware-house, it is perfectly open to him to do so. The question has often been put to us by the owners when constructing the roads, and they have invariably been informed that there is nothing to prevent their building on the land afterwards if they wish to do so.

[See the case of *Abinash Chandra* v. *The Corporation*, (12 C. W. N. 72) deciding a question of this nature.]

The question about huts referred to in paragraph 8 of Mr. Carstairs' letter will be found discussed at paragraphs 320 and 321 of our report for 1882-83. We have always assumed in Calcutta the power of granting compensation for huts under the proviso to section 282; and the hardship of making poor hut-owners remove their huts without compensation would be so great that we make it a rule to give compensation. Such

compensation not being obligatory, we fix a fair rate, and not the imaginary market values which the courts usually award in acquisition cases, and no difficulty whatsoever is experienced. Our difficulty is in recovering the amount from the owners; there has been a trial case in the Small Cause Court which was given against us. * * * No wonder bustee improvement is unpopular at Howrah, if hut-owners who have nothing whatsoever to gain by the improvements, have their huts pulled down without compensation."

Bustee roads.—In a recent case, however, the High Court (*Per* Rampini and Pratt, JJ.) was pleased to hold that roads made under these sections are vested in the Commissioners under section 30. There is no clause in the Act which, in any way, limits the right of user of the municipality in *bustee* roads, *Romanath Ghose* v. *Duke*, Spl. Appl. No. 1105 of 1900, (unreported).

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

On receipt of report, Commissioners may cause notice to be served.

Owner of land—includes all the owners of land to which the sections are applicable. Compare sec. 180.

It was held in a case under the Calcutta Municipal Act (Beng. Act III of 1899), that direction given in a notice under sec. 408 of the Act to the owners of property, during the pendency of litigation in

respect of that property, could not be said to be lawfully given, if it was not open to the owners at that time either individually or collectively to alter the property by carrying out the improvements mentioned in the notice, *Poorna Chand Bural* v. *Corporation of Calcutta*, I. L. R. 33 Cal. 699.

Expenses may be recovered by instalments or remitted in case of poverty.

247. The Commissioners at a meeting may order that any expenses payable in respect of any work done by them in consequence of the failure of the owners or occupiers to execute such work when required to do so under the last preceding section shall be recovered by instalments from the person liable to pay the same; or if it should appear to them that the said person is unable by reason of poverty to pay the same, may order the same, or any portion thereof, to be paid out of the municipal fund.

As to recovery of expenses, see sec. 360 and notes to sec. 180.

Sale of huts.

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

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

Markets, slaughter-houses, &c., to be properly drained.

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

Compare sec. 340. For penalty for default, see sec. 268.

Sale of unwholesome food or drink.

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

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

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

Noxious—explained in *Chokraj* v. *The Emperor*, 12 C. W. N. 608, and *Emperor* v. *Sheo Lal*, I. L. R. 26 All. 387.

Destruction of unwholesome food.—In a case under the Calcutta Municipal Act (Beng. III of 1899) it was held by the High Court (*per* Stevens and Harington JJ.) that in order to justify an order for the destruction of articles, the Magistrate must be satisfied and there must be a finding in the judgment directing such destruction that the articles were either exposed or hawked about for sale, or deposited in, or brought to, any place for the purpose of sale or preparation for sale, and were intended for human food. Unless and until some attempt was made to dispose of them for such purpose, the mere fact that there was risk of their being so used would not justify an order for the destruction of a man's property which might be disposed of in a perfectly legitimate way, *Chundra Coomar Biswas* v. *Calcutta Corporation*, I. L. R. 30 Cal. 421.

Prohibition of the sale of articles of food not of the proper nature, substance or quality.

251. No person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser under a penalty not exceeding one hundred rupees:

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say—

(*1*) where any matter or ingredient not injurious to health has been added to the food, because the same is required for the production or preparation thereof as an article of commerce, in a state fit for

carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the food, or conceal the inferior quality thereof;

(2) where the food is unavoidably mixed with some extraneous matter in the process of collection or preparation.

The term 'food' shall include every article used for food or drink by man other than drugs or water.

In any prosecution under this section it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale.

Change.

This section has been substituted for the original section of Beng. Act III of 1884 by sec. 2 of Beng. Act III of 1886.

Notes.

Prejudice of purchaser.—The adulteration of mustard oil with *til* oil is to the prejudice of the purchaser, in as much as it becomes less suitable for the purposes for which it is used and also because adulterants are used for the purpose of increasing the bulk of the oil and the profit of the manufacturer, *Mati Lal Pal* v. *The Calcutta Corporation*, 7 C. W. N. 637.

Nature of the article demanded.—When a person asks for mustard oil he expects what is commercially known as mustard oil, *i. e.*, pure mustard oil and not oil adulterated with *til* and other oils, *Ibid.*

Required for production.—It is not necessary for the purposes of manufacturing mustard oil to use any hard seed (such as *til*) to assist in expressing oil. Adulterants are used in such cases simply to save expense and increase profit, *Ibid.*

251A. No proceedings shall be instituted under the last preceding section without the order or consent of the Commissioners.

No proceedings to be had without leave of the Commissioners.

Change.

This and the next succeeding three sections have been added by sec. 3, Beng. Act III of 1896.

251B. The Commissioners, or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any market, building, shop, stall or place used for the sale or storage of articles intended for food, or as a slaughter-house, and may examine any such articles which may be therein, and, if upon examination such articles, or any of them, appear to be unfit for food, may seize the same.

Power of Commissioners to enter and inspect markets, shops, &c., and to seize unwholesome articles exposed for sale.

251C. Upon the seizure of any article of food under the last preceding section, the same may, if the owner or the person in whose possession the same is found consents, be forthwith destroyed or so diposed of as to prevent it being used as food ; but, if the owner or the person in whose possession the same is found do not consent, then, if it appear to a Magistrate upon sufficient evidence that the same is unfit for food, he shall order the same to be destroyed or so disposed of as to prevent it being used as food,

Power to destroy unwholesome articles.

and may impose a penalty not exceeding one hundred rupees upon the owner or person in whose possession the same was found, such person not being merely a carrier or bailee thereof.

Person refusing to sell any article to Commissioners liable to penalty.

251D. If the Commissioners, or any person authorized by them in that behalf, shall apply to purchase any article of food exposed to sale, and shall tender the price for a quantity not more than shall be reasonably requisite for the purpose of analysis, and the person exposing the same for sale shall refuse to sell the same, such person shall be liable to a penalty not exceeding fifty rupees.

Registry of shops for sale of European drugs.

252. No shop or place shall be kept for the retail sale of drugs recognized by the British Pharmacopœia, not being also articles of ordinary domestic consumption, unless the same shall have been registered in the office of the Commissioners. Any keeper of such shop or place failing to register the same within two months after this section shall come into force, or within two months from the date of the establishment of such place, shall be liable to a fine not exceeding one hundred rupees. The Commissioners shall, upon registration, grant the keeper of such shop or place a license which he shall be bound to display in some conspicuous part of his premises.

Certificated dispensers.

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

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

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

Penalty for failure to register is provided in sec. 275 and for an offence under para. 2 in sec. 276.

Inspection of drugs.

253. The Commissioners, or any person authorized by them in that behalf, may at all reasonable times enter into and inspect any place kept for the sale of drugs, or in which drugs are sold, and if they have reason to suspect that any drug in the said place is adulterated or by any reason of age or the effect of climate has become inert or unwholesome, or has

otherwise become deteriorated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, may remove the same on giving a receipt therefor, specifying the nature and quantity of the drug removed, and its approximate value; and if it appear to a Magistrate that the said drug removed as aforesaid is adulterated or has become inert, unwholesome or deteriorated as aforesaid, he may order the same to be destroyed, or to be so disposed of as to him may seem fit.

Compensation if drug be not adulterated.

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

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

Of Burial and Burning Grounds.

Registration of existing burial and burning grounds.

254. Within three months from the date on which this and the six next succeeding sections may come into force as provided in section 222 every place which is used as a burial or burning ground for corpses shall be registered as such by the owner thereof in the office of the Commissioners, but no fee shall be charged for such registry.

No new or disused burial or burning place henceforth to be used without leave of Government or of Commissioners.

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

Delegation.—By Notification, No. 1095 T. M. dated, the 12th June 1903, the Local Government, in the exercise of the powers conferred on it by cl. (1), sec. 29A, was pleased to delegate its powers and functions under secs. 30, 255 and 259 to the Divisional Commissioners in regard to all municipalities within their respective Divisions.—*Cal. Gaz., 1903, Part, 1 B, p. 107.*

Commissioners may order certain burial or burning grounds to be closed.

256. If it shall appear to the Commissioners at a meeting that any public or private burial or burning ground is dangerous to health or offensive to the taxpayers or to the inhabitants of the neighbourhood, and also that a suitable place for interment or burning, as the case may be, exists within a

convenient distance, and is open and available to the inhabitants of the municipality, the Commissioners shall give public notice of their intention to close such burial or burning ground, and shall consider any objections which may be preferred within fifteen days of the publication of such notice; after considering such objections they may, by notification to be affixed on some conspicuous part of the ground, appoint a time, not being less than two months, for the closing of such burial or burning ground.

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

As to the law relating to burning grounds dedicated to the public, subsequently abandoned, see the *Chairman of the Howrah Municipality* v. *Khetra Krishna Mitra*, I. L. R. 33 Cal. 1290.

Two months.—In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held that the point of time from which the period is to run must be mentioned. In the absence of express mention of a point of time, the period cannot be taken to run from the date of the certificate (here notification-Ed.) itself.—*Lutfer Rahaman Nusker* v. *The Calcutta Municipal Corporation*, 2 C. W. N. 145.

Private burial-places may be excepted.

256A. When notice is given of the intention to close any burial-ground under the last preceding section, private burial-places in such burial-grounds may be excepted

from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf :

Provided that the limits of such burial-places are defined, and that they shall only be used for the burial of members of the family of the owners thereof.

This and the next succeeding sections have been added by sec. 72 of Beng. Act IV of 1894.

Appeals from orders under sections 256 and 256A.

256B. Any person, aggrieved by any order made by the Commissioners under the powers conferred upon them by the two last preceding sections may appeal to the Magistrate, whose decision shall be final.

The Magistrate—See sec. 6 cl. (8).

Prohibition to bury or burn in unregistered ground.

257. After the expiration of the three months mentioned in section 254, no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning ground; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

For penalty see sec. 274.

Commissioners may cause corpses to be burnt or buried according to the religious tenets of the deceased.

258. After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried, and the expenses

thereby incurred shall be recoverable as a debt due from the estate of such person. In every such case, the corpse shall be disposed of so far as may be possible, in a manner consistent with the religious tenets of the deceased.

Commissioners may provide places to be used as burial or burning grounds.

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

Fitting.—Cf. *Muhammad Mohidin* v. *The Municipal Commissioners of Madras*, I. L. R. 25 Mad. 118.

Local Government—The powers and functions of, delegated to Divisional Commissioners.—See note to sec. 256.

Commissioners may provide for burial of paupers free of charge.

260. The Commissioners at a meeting may, from time to time, out of the municipal fund, provide for the burial and burning of paupers free of charge within the limits of the municipality.

Power to license fuel shops at burning grounds.

260A. (*1*) The Commissioners may, from time to time, grant licenses to persons applying for the same, for the sale at burning grounds of fuel and other articles used for the cremation of dead bodies, and in case any such license shall be granted shall, at a meeting, prescribe a scale of rates for the sale of

such articles; and any person not so licensed, who shall, within three hundred yards of any such burning ground, sell or offer for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such license they may think fit, and any person to whom any such license is granted, who shall charge for the sale of any such article any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled, and shall be liable also to a fine not exceeding ten rupees.

Change.

This section is new and has been added by sec. 73 of Beng. Act IV of 1894 at the instance of the Commissioners of the South Barrackpur Municipality.

Notes.

License for sale of cremation requisites.—This section does not contemplate that the Commissioners should create a monopoly in favour of any person in respect of such articles; and there is no conceivable reason why more than one person should not be granted licenses to keep shops for sale of such articles at prescribed rates.—*Gaurmani* v. *Chairman of Panihati*, 12 C. L. J. 74 (85), 14 C. W. N. 1057.

Cremation Priest.—A voluntary consent of the people to the employment of a particular individual or his predecessors as cremation priests, cannot confer on him any exclusive right; and the continuance of such state of things, even for generations cannot confer upon the individual a legally enforceable right.

An agreement with a Municipal Corporation, creating in favour of a particular individual an exclusive right to officiate as cremation priest at a particular burning ground is not specifically enforceable.

A municipality and a person holding a license from them under this section cannot compel any person to employ a particular cremation priest, and they have no authority to levy any fee for that purpose.—*Gaurmani* v. *Chairman of Panihati*, 12 C. L. J. 74, 14 C. W. N. 1057.

Of certain Offensive and Dangerous Trades or Occupations.

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

Certain offensive and dangerous trades not to be established within limits to be fixed by the Commissioners without license.

melting tallow;

boiling offal or blood;

skinning or disembowelling animals;

as a soap-house, oil-boiling house, dyeing house;

as a tannery, slaughter-house, or kiln for making bricks, pottery, tiles or lime;

as a manufactory or place of business from which offensive or unwholesome smells may arise;

as a yard or depot for trade in hay, straw, wood, thatching-grass, jute or other dangerously inflammable material;

as a store-house for kerosine, petroleum, naphtha or any inflammable oil or spirit;

as a shop for the sale of meat;

as a place for the storage of rags or bones or both ; or

as a lodging-house or a serai.

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

The Commissioners at a meeting may, in accordance with a scale of fees to be approved by the Commissioner of the Division, levy a fee in respect of any such license and the renewal thereof, and may impose such conditions upon the grant of any such license as they may think necessary.

Changes.

By sec. 74 cl. (1) of Beng. Act IV of 1894 the words "as a place for the storage of rags or bones or both" have been added, and by cl. (2) the last paragraph has been substituted for the words "the Commissioners may levy a fee in respect of such license and the renewal thereof, and may impose such conditions upon the license as they may think necessary."

Notes.

Annually—has reference to the definition of the term "year" in sec. 6 cl. (19) which means a year beginning on the 1st April.

For any of the following purposes—*cf. Emperor* v. *Wallace Flour Mill Company*, (I. L. R. 29 Bom. 193) where it was *held*, under a similar provision of the Bombay Municipal Act, that purpose must be the dominant motive, that purpose and intention is the test, and not incidental or unavoidable use ; although no doubt the relative quantity of the articles kept, in proportion to the exigencies of consumption, must in each case be important evidence as to the purpose and intention.

Dangerous and offensive trades.—See *B. G. M. Cirs. Nos.* 6 *T. M. and* 123 *T. M.*, 10 *June* 1895 (Govt. Cir. Vol. III *p.* 1041)

wherein a distinction is drawn between the two kinds of trades and different policies laid down for the treatment of each. Such trades as cause actual annoyance or discomfort to persons living in the neighbourhood have been placed in the category of offensive trades, and those which contain some elements of danger (*e. g.* danger from fire) have been placed in the other category. And the policy laid down for treatment of the former is to levy such rates as will tend to discourage their establishment within municipalities, as they may equally well be carried on outside such limits; but the fees levied on the latter should not be much in excess of the cost of maintaining supervision necessary to secure precautions taken.

Other dangerously inflammable material—must be *ejusdum generis* with articles mentioned before, and coal and coke cannot be regarded as falling within the category. Places in which they are stored are therefore exempt from taxation under this section.—See *B. Govt. Munl. Cir. No.* 10 *T. M. and No.* 1407 *T. M.*, 15 *July* 1902, Govt. Cir. Vol. III, *p.* 1040.

Distilleries—in municipal limits are not taxable under this section.—See *B. Govt. Munl. No.* 4515 *T. M.*, 20 *Decr.* 1895, Govt. Cir. Vol. III, *p.* 1040.

Cf. Somu Pillai v. *Municipal Council, Mayavaram,* (I. L. R. 28 Mad. 520) for exposition of the principles which ought to be followed in granting licenses.

Scale of fees.—"The section gives power to the Commissioners only to levy a fee in respect of a license to use a place for a certain specified purpose. No power is given to levy a tax on the products of the manufacture carried on in a place used in pursuance of such a license."—See *B. G. M. Cir. No.* 205 *T. M.*, 23 *June* 1898 (Govt. Cir. Vol. III, *p.* 1041).

By secs. 46 and 46A of Beng. Act I of 1893 as amended by Beng. Act I of 1894 (*The Licensed Ware House and Fire Brigade Act*) this section has been repealed in so far as it entitles the Commissioners to levy fees in respect of premises licensed as depots for hay, straw, wood, rags, jute or other dangerously inflammable materials and used as warehouses. By sec. 1 cl. (2) the said Act has been made applicable to the Municipality of Howrah and other Municipalities near Calcutta or

Howrah, to which its provisions may be extended by an order of the Local Government. For the Licensed Ware-House and Fire Brigade Act see *App. p.* 361*a*.

The question of licensing places for making bricks, &c., for a persons own use is set at rest by the insertion of sec. 262A. See *Sree Ram Haldar* v. *Chairman of the Howrah Municipality*, 20 W. R. 65 C. R.

In the case of the *Suburban Municipality* v. *Zamir Shaik and others*, 16 W. R. 4 C. R., Norman, C. *J. held* that no person is liable to any penalty (for using any place for the purposes of this section) except a person who uses a place or building either by letting it out or by employing servants and others for the purpose of carrying on the business. *Cf. Crown* v. *Tyebji Mulla*, 9 Cr. L. J. 257.

The High Court (Mitter & Pigot, JJ.) on a reference by the District Magistrate of Howrah agreed with him that in a prosecution under this section the Magistrate was only to try whether the accused was carrying on his business without a license and not any other question.—See Criminal Revision No. 16 of 1883, *Overseer, Howrah Municipality* v. *Deno Manjee, dated 25th October, 1883, unreported.*

A municipality is not entitled to any fees for license under this section, where no limits have been fixed by the Commissioners in meeting, no license has been granted, and no scale of fees approved by the Commissioner of the Division, *Chairman, Bansberia* v. *Karunamoy*, 10 C. L. J. 22, 2 Ind. Cas. 944. See also *B. G. M. Cir. Nos.* 6 *T. M.* and 123 *T. M.*, 10 June 1895 (Govt. Cir. Vol. III, *p.* 1041) wherein it is said that approval of the Commissioner of the Division is required before any scale of fees can be levied by Municipalities by licenses.

Railway Administration.—Cf. *Municipal Commissioner of Bombay* v. *G. I. P. Railway Company*, (I. L. R. 34 Bom. 252) in which it has been *held* that, in view of section 7 of the Indian Railways Act (IX of 1890), a Railway Administration is not liable to take out license from a municipality for storing timber which is necessary for the convenient making, maintaining, altering, repairing and using of the railway notwithstanding anything in any other enactment for the time being in force. Should, however, the exercise of the statutory powers by the Railway Administration be in any manner inconsistent with the health of the inhabitants of the municipality or the safety of property

therein, the municipal authorities concerned may make a representation to that effect to the Governor-General in Council for redress of the grievance.

Using a place without a license is a continuous offence (see sec. 353); and a penalty is provided in sec. 273 cl. (2); and cl. (3) of the same section provides a penalty for breach of the conditions imposed under the last paragraph.

As to institution of prosecution and procedure of trial see notes under *Penalties* (*pp.* 219-20) and sec. 217.

Commissioners may, in certain cases, order the use of slaughter-houses and the carrying on of dangerous and offensive trades to be discontinued.

262. If it be shown to the satisfaction of the Commissioners at a meeting that any place licensed under section 261 is a nuisance to the neighbourhood, they may notwithstanding anything contained in the said section, give notice to the occupier to discontinue the use of such place within one month after the date of such notice:

Provided that in this case the Commissioners shall refund so much of the fee levied under the last preceding section as may be proportionate to the unexpired portion of the year for which the license was granted.

The proviso was added by sec. 75 of Beng. Act IV 1894. For penalty see sec. 278.

As to the power of any Magistrate for suspension or revocation of license see sec. 278.

A previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance to the neighbourhood, *The Municipal Commissioners of the Suburbs of Calcutta* v. *Mohomed Ali and another*, 16 W. R. 6 C. R.

Shall refund.—When a municipal body receives license fees under a void agreement, it must, when the agreement is set aside, refund the

amount so received.—*Somu Pillai* v. *Municipal Council, Mayavaram*, I. L. R. 28 Mad. 520.

Commissioners may prohibit private kilns.

262A. Within such local limits as may be fixed by the Commissioners at a meeting, no place shall be used as a kiln for making bricks, pottery, tiles or lime for private purposes.

This section was added by section 76 of Beng. Act IV of 1894.

Compare notes under sec. 261.

For penalty see sec. 273 cl. (2).

Milkman, &c., not to keep animals or cattle without license.

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

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

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

Change.

The words "exceeding ten in number" after "cattle" have been omitted by sec. of Beng. Act IV of 1894.

Notes.

Object of change.—The omission of the words was found necessary, for, in many cases the municipal authorities were not able to enforce the taking out of license by reason of the proprietor stating that ten or a less number belonged to him and the rest to other persons.

The Hon'ble Mr. Ghose objected to the omission on the ground that it might cause great hardship to poor persons who keep one or two cows for their living. The Hon'ble Mr. Bourdillon, however, was pleased to observe that "it is not reasonable to suppose that the taking out of a license will be required in the case of a poor woman who keeps a cow for her support, and the Commissioners are not anxious to tax poor persons, but to obtain effective control over those who keep considerable number of cattle and yet manage to evade the law as it now stands." But it is doubtful whether any poor person having a cow and calf will be justified in claiming exemption.

Shall keep.—Cf. *Emperor* v. *Kayandi Konan* (I. L. R. 30 Mad. 220) in which it has been held that mere temporary use of a place for *keeping* does not constitute an offence.

For penalty for failing to take out a license and for breach of conditions thereof see sec. 273 cls. (2) and (3).

In a case the evidence showed that "the accused had 7 or 8 ponies, 4 cows and some sheep and let out one carriage and a pair of ponies on a monthly hire, kept the same in her stable and also kept other ponies for sale and supplied milk to others out of her cows". It was however held that on the facts found the case did not come under the terms of this section or of sec. 273 so as to render the accused liable under cl. (2) of the latter section. No reason for the decision appears in the judgment and the report shows that the opposite party who prosecuted the accused was unrepresented at the hearing.—*Fairweather* v. *Suresh Chundra Dutta*, 5 C. W. N. 331.

In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held that the defendants, not being in direct possession of the premises, could not be prosecuted under sec. 307. When a property is let out, it is the duty of the lessee to obtain license.—*Abhoy Charan Das* v. *Fuller*, 2 C. W. N. 289.

Commissioners may provide public stables.

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

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

For penalty see sec. 273 cl. (4).

Conditions for keeping pig-sty.

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

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

For penalty see sec 273. cl. (5).

Penalties.

[For procedure for institution of prosecution, &c., see notes under *Penalties* (*pp*, 219-20) and sec. 217].

Failing to shut out privy from view.

266. Any person constructing a privy within a municipality, and failing to have it shut out from view, as in section 225 required, shall be liable to a fine not exceeding twenty rupees.

Compare notes under sec. 225.

Erecting huts without notice.

267. Whoever erects a hut, or any range or block of huts or sheds, or adds to any hut or shed, or to any range or block already existing, contrary to the provisions of section 243, and whoever fails to remove such hut, block of huts or shed when required by the Commissioners to do so, shall be liable to a fine not exceeding twenty rupees for every such offence, and to a further fine, not exceeding five rupees, for each day during which the offence is continued after he has been convicted of such offence.

Daily fine.—See notes under sec. 218.

Hut—for the meaning of, see sec. 6, cl. (4) and notes thereunder.

When a person was prosecuted for having constructed a hut without previous notice under section 243, and the defence was that the accused had made an application, the magistrate held that the municipality had no right to prosecute until that application had been disposed of. The High Court (Stevens and Harington, JJ) on appeal held that the view taken by the magistrate was clearly erroneous. "The mere submission of an application for permission to build would not entitle a person to

build before such permission had been obtained; and if it was proved that the hut had been built without previous permission having been obtained, it would be no answer in a prosecution under section 237 that an application had been made, but had not been disposed of by the Commissioners.—*Deputy Superintendent and Remembrancer of Legal Affairs on behalf of the Government of Bengal* v. *Choita Raj Bhor*, Crl. Appl. No. 1507 of 1902, decided on 2. 4. 02, (unreported). Cf. *Emperor* v. *Shadi*, I. L. R. 26 All. 386.

Analysis of the section.—This section provides for two distinct offences, *namely*, (1) erecting a hut without a month's previous notice to the Commissioners (s 243) and (2) failing to remove a hut, unlawfully built, when required to do so (s. 244). The second of these offences only is of a continuing nature; in as much as the first cannot be said to be continued, after it has once been committed. "The last 26 words of this section apparently apply to both offences, but this seems to be a mere inadvertence in drafting and does not justify the conclusion which relates only to continuing offences, that is to say, to failing to remove huts when required to do so. The same remark applies to the use of the word "and" for "or" in the middle of the section. But that erecting a hut without notice * *, and failing to remove huts * * are two distinct offences seems to be clear from the repetition of the word "whoever". If failing to remove huts when required to do so is an essential ingredient in an offence under this section, the second "whoever" is ungrammatical."—*Chairman, Howrah* v. *Golapi*, 10 C. L. J. 16.

Disobeying requisition under section 249.

268. If any owner, occupier or farmer of any place for the sale of meat, poultry, fish or vegetables, or of any slaughter-house, within the limits of a municipality, after notice in writing given to him by the Commissioners that such place or slaughter-house is defective in any of the particulars specified in any section 249, and requiring him to remedy the defect specified within not less than thirty days, makes default therein, he shall be liable to fine not exceeding twenty rupees for every day

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

For daily fine see notes to sec. 218.

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

Cutting up road for passage of water.

Public road.—Compare sec. 30.

The expenses under the latter portion of this section may be recovered in the manner provided by section 360.

270. Whoever, within a municipality,—

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

Throwing rubbish into sewers.

(*2*) causes or allows the water of any sink, sewer or cess-pool, or any other offensive matter belonging to him or being on his land, to run, drain, or be

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

thrown or put upon any road, or causes or allows any offensive matter to run, drain or be thrown into a surface drain near any road; or

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

(3) constructs a latrine, urinal, cess-pool, house drain or privy, in contravention of the provisions of sections 230 or 231; or

Making excavations.

(4) without the written permission of the Commissioners, digs or makes, or causes or suffers to be dug or made, any excavation, cess-pool tank or pit, in contravention of the provisions of section 232; or

Making a roof or wall f grass, &c,

(5) makes or repairs a roof or wall with grass, leaves, mats or other inflammable material in contravention of the provisions of section 236;

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

Change.

Clause (5) has been added by sec. 78 of Beng. Act 1V of 1894.

Notes.

Definitions.—For the definitions of the terms "rubbish", "sewage' and "offensive matter" see sec. 6 cls. (14), (17) and (10) respectively.

Cl. (1), "Road."—See sec. 6 cl. (13) and also I. L. R. 17 Cal. 634.

Cl. (2).—The road or drain referred to in this clause is a road or drain belonging to the Municipality, *Mahesh Chandra Pandey* v. *Basanta Kumar Das*, 10 C. W. N. 667. The considerations which appear to have led his Lordship (**Mukerji J.**) to make this ruling are

these, namely,—(1) that this clause is to be read with the first clause, (2) that, as this clause finds a place in the Municipal Act, the only reasonable construction which can be put upon it is that the road or drain to which reference is made must be a road or drain belonging to the Municipality and (3) that it could not have been intended by the Legislature to authorise any municipality to interfere with the user of any private drain by a private individual. It is however submitted that it is difficult to reconcile this ruling with some of the provisions of the Act, for instance; —(1) among others, sections 191, 217 cl. (1) and 230 and the expression "or into any drain communicating therewith" in the previous clause;—(2) the express reference to *public* drains in some sections, *e. g.*, sections 197, 207, 226 and the previous clause of this section, and reference to others as *any*, as here and in section 203.

It is further submitted that the importation of the expression "belonging to the Commissioners" from the previous clause to this may lead to a redundancy. Cf. *Venkatram Chetti* v. *Emperor*, I. L. R. 28 Mad. 17.

Cl (3)—The word "latrine" rather imports public convenience and the word "privy" applies to private places.—*Cal. Gaz.*, Sup. page 807, May 9, 1894

No private person can claim a right to foul an ordinary drain by discharging into it what it was not intended to carry off, *Galstaun* v. *Doonia Lal Seal*, I. L. R. 32 Cal. 697.

An offence under cl. (3) of this section is not a continuous one, but one under cl. (1) would be.—*Bidhu Bhusan Mullick* v. *Asansole Municipality*, 6 C. W. N. 167.

271. Whoever, within a municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections 224, 225, 227, 230, 231 or 238, shall be liable, for every such offence, to a fine not exceeding twenty-five rupees, and to a further fine, not exceeding five rupees, for every day

Disobeying requisition under section 224, 225, 227, 230, 231, or 238.

during which he shall continue to make such default after service on him of such requisition.

Changes.

By sec. 79 of Beng. Act IV of 1894 the figures "224," "227" and "or 238" have been added.

Notes.

Sec. 224—Requisition upon owner or occupier or both to repair and make efficient any drain or privy, &c.

Sec. 225—Requisition upon owner or occupier of land to cause privy to be shut out from view.

Sec. 227—Requisition upon the owner to drain his land into sewer, &c.

Sec. 230—Requisition upon owner and occupier to remove any latrine &c, built within 50 feet of a tank.

Sec. 231—Requisition upon owner or occupier to remove a privy built with a door or trap-door opening on to any road or drain.

Service of requisition on a person, who is charged with disobedience thereof, as well as the requisition itself should be proved and found before there can be conviction for an offence under this section.—*Bidhu Bhusan Mullick* v. *The Asansole Municipality*, 6 C. W. N. 167.

See also *Chairman Puri Municipality* v. *Kissori Lal Sen*, 1 C. W. N., p cexliv (notes) and *Jagadis Chundra Ganguli* v. *Sreenath Bose*, 2 C. W. N. *p.* clxxxvii (notes.)

272. Whoever, within a municipality,—

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

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

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

Making drains contrary to the orders of the Commissioners.

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

273. Whoever, in a municipality,—

(1) begins to build or to take down, or alter or repair any house contrary to the provisions of sections 235, 238 or 241, or lets a house for occupation contrary to the provisions of section 242, or, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever, or who, being permitted, fails to put up such fence or hoard, or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night; or who does not remove the same within eight days, when directed by the Commissioners; or

Offence under section 235, 238, 241, or 242.

(2) without a license uses any place for any of the purposes specified in section 261 or section 263; or uses any place as a kiln in contravention of the provisions of section 262 A; or

Offence under sections 261, 262A or 263.

(3) being a holder of a license under section 261 or section 263, breaks any condition of such license; or

Offence under section 261 or 263.

(4) after the issue of an order under section 264 keeps horses or cattle exceeding ten in number in contravention of such order; or

Offence under section 264.

(5) keeps any pig-sty, pigs, sheep or goats contrary to the provisions of section 265,

Offence under section 265.

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

Changes.

By sec. 80 of Beng. Act IV of 1894 the figures "238" have been inserted before "241" in cl. (1) and the words "uses any place as a kiln in contravention of the provisions of section 262A; or" have been added in cl. (2).

"House."—See sec. 6, cl. (4).

274. Whoever, within a municipality, after the expiration of the period mentioned in section 257, knowingly buries or burns, or causes, procures or suffers to be buried or burned, any corpse in or on any ground not registered as a burial or burning ground, shall be liable to a fine not exceeding one hundred rupees.

Burying or burning corpse in unregistered grounds.

Offence under section 252.

275. Whoever, within a municipality, uses any such place as is mentioned in section 252, without the same being registered, shall be liable to a fine not exceeding one hundred rupees and to a further fine not exceeding twenty rupees for each day during which the offence is continued after he has been convicted of such offence.

Uncertificated persons dispensing drugs.

276. Whoever, within a municipality, not being the holder of such certificate as is mentioned in the second clause of section 252, shall compound, mix, prepare or sell any drugs in any registered shop or place, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees for each offence; and any owner, occupier or keeper of any such shop or place, who shall employ any such uncertified person to perform any one or more of such duties, shall, on conviction before a Magistrate, be liable to a fine not exceeding two hundred rupees, and shall be further liable, at the discretion of such Magistrate, to forfeit his license:

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

Disobeying notice under section 262.

277. Whoever, within a municipality, after the expiration of the time specified in a notice issued by the Commissioners under the provisions of section 262, uses, or permits to be used, the place specified in such notice in such a manner as to be a nuisance to the neighbourhood, shall be liable to a fine not exceeding two hundred rupees, and to further fine not exceeding forty rupees for each day during which the offence is continued after he has been convicted of such offence..

Suspension or revocation of license, &c.

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

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

See notes to sec. 262.

PART VII.

Of a Water-supply.

Imposition of water-rate.

279. (1) In any municipality to which the provisions of this part shall be extended in the manner prescribed by section 222, it shall be lawful for the Commissioners, at a meeting to impose a water-rate not exceeding seven-and-a-half per centum on the annual value of holdings when the houses and lands are situated in any road supplied with water, and not exceeding six per centum when the houses and lands are situated in any road not so supplied.

(1a) With the sanction of the Local Government the amount of the water-rate imposed under this section may vary with the distance of houses or lands from the nearest standpipe or other source of water-supply, and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises.

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

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

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

(*a*) any house or land, no part of which is within a radius to be fixed by the Local Government for each municipality from the nearest standpipe or other supply of water available to the public; or

(*b*) any land used exclusively for purposes of agriculture: or

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

Changes.

This section has been substituted by sec. 81 of Beng. Act IV of 1894 for the original section and clause (c) has been added by sec. 14 of Beng. Act II of 1896.

Notes.

Under this section the rate is payable by the occupier but when he is not the owner of the holding he may recover a fourth of the rate paid by him in the manner provided by sec. 281 from the owner. Compare sec. 282.

Valuation, assesment, and collection of water-rate.

280. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections 96 to 109 (both inclusive) and 112 to 130 (both inclusive) shall *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this Part, be appli-

cable to the assessment and collection of the water-rate.

Occupier paying water-rate may deduct one-fourth from rent due to owner.

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

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

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

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

Refund of water-rate when house ceases to be occupied.

283. Whenever any quarterly instalment of the water-rate shall have been paid in respect of any house or land, and such house or land shall, during the quarter for which such instalment shall have

been paid, cease to be occupied, the person who shall have paid such water-rate shall be entitled to be repaid by the Commissioners three-fourths of such sum as shall bear to the amount paid by him the same proportion which the residue of the quarter bears to the entire quarter:

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

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

Rate payable on house being re-occupied.

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

And such occupier shall be entitled to deduct from the rent, or otherwise recover from the owner one-fourth of the water-rate that would have been

payable if the house or land had been occupied during the entire quarter.

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

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

Owner to pay water-rate in certain other cases.

286. The provisions of sections 312, 313 and 314 shall be applicable to this Part:

Provided that the owner shall not be entitled to recover from any occupying tenant more than three-fourths of the water-rate that would but for this proviso be recoverable by him under the said sections.

The Commissioners to provide water-supply.

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

Domestic purposes.—See next section.

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

What are domestic purposes.

Domestic purposes.—Cf. *Surat Municipality* v. *Tyabji* (I. L. R. 32 Bom. 460) where it has been held that the expression "means nothing more or less than legitimate household purposes."

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

Pressure at which water must be kept.

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

Communication-pipes.

leading water to their premises for domestic purposes.

This section has been substituted by sec. 82 of Beng. Act IV of 1894 for the original section.

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

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

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

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

Power to enter premises.

292. Any officer authorised in that behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land supplied with water as aforesaid in order to examine all pipes, works and fittings connected with

the supply of water, and to ascertain whether there be any waste or misuse of such water.

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

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

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

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

Supply for business.

294. The Commissioners may supply water for purposes other than domestic purposes, and may, subject to such

charges and rates as may have been fixed by the Commissioners at a meeting, lay down, or allow to be laid down, the necessary pipes and works of such dimensions and character as may be approved by them.

Change.

The words "through a meter" after "water" have been omitted by sec. 83 of Beng. Act IV of 1894.

Note.

Domestic purposes.—See sec. 288 and notes.

Householder entitled to certain supply of water for domestic use.

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

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

Commissioners may provide filtered or unfiltered water for latrines.

296. It shall be at the option of the Commissioners to provide filtered or unfiltered water for all latrines and water-closets, and it shall be lawful

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

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

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

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

Occupier in whose house water is wasted liable to penalty.

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

Water is wasted.—Cf. *Surat Municipality* v. *Tyabji* (I. L. R. 32 Bom. 460) in which **Scott, C. J.** held that the question waste or no waste depended for solution upon the construction of the definition of "domestic purposes," which meant nothing more or less than legitimate household purposes.

Person causing waste of water liable to penalty.

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

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

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

Penalty.

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

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

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

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

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

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

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

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

Obstructing or diverting water.

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

Fine.—See notes under *Penalties* (*pp.* 171-2) and sec. 217

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

Estimate and specification of works to be sent.

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

Owner to keep works in repair.

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

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

Tanks, &c., vested in the Commissioners.

307 The water-rate and all moneys collected, received or recovered for or in respect of the supply of water or the execution of works, and all fines

Application of rates and moneys received from the supply of water, &c.

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

Changes.

The words "in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct" have been added by sec. 84 of Beng. Act IV of 1894.

PART VIII.

Of Lighting with Gas.

308. In any municipality in which this Part shall have been introduced in the manner provided in section 222, it shall be lawful for the Commissioners from time to time to submit to the Local Government, for its sanction, a plan for lighting with gas any portion of any area situate within the municipal limits, whether so lighted already or not, such portion of the said area having been previously defined by the Commissioners at a meeting held

Municipal Commissioners may submit to the Local Government a plan for lighting.

for that purpose. The Local Government shall cause the plan to be published for one month in the *Calcutta Gazette*, and the Commissioners shall publish it in the vernacular within the limits of the municipality; and after such publication, and after consideration of any objections which may be raised to it, or alterations suggested in it, the Local Government may, if satisfied that the lighting proposed in the plan is proper and sufficient, sanction such plan, or may refuse its sanction thereto, or may return to the Commissioners for alteration in certain particulars to be specified by it, and when altered may sanction it as altered. The Local Government shall cause its sanction to any plan to be notified in the *Calcutta Gazette*, and shall at the same time cause the plan sanctioned to be published in the said *Gazette*.

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

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

Proviso as to portions already lighted.

Provided that, as regards any portion of the said area already lighted with gas, for the future lighting of which a plan shall have been sanctioned by the

Local Government under the provision of the last preceding section, if it shall appear that the estimated proceeds of the said rate at three per centum will not be sufficient to defray the whole expense of such lighting, it shall be lawful for the Commissioners to impose a rate sufficient to defray the whole expense of lighting such portion.

Holdings.—See sec. 6, cl. (3).

All holdings.—As there is no proviso like that in sec. 279 exempting arable lands from this tax and as under cl. (e) sec. 86 this tax is leviable upon holdings generally, arable lands are liable to this tax. *Mohadeb Aon* v. *Chairman, Howrah Municipality*, 11 C. L. J. 524 (528.)

The new section 318A prescribes the mode in which the money realized under this Part shall be applied. It provides that it shall be applied to the payment of a proportionate cost of collection and for purposes connected with lighting.

Rate payable by occupiers quarterly in advance.

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

Compare sec. 312 as to this rate being realized from the owner.

Valuation, assessment, and collection of lighting-rate.

311. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on

holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections 96 to 109 (both inclusive), and 112 to 130 (both inclusive), shall *mutatis mutandis,* and so far as they are not inconsistent with the provisions of this part, be applicable to the assessment and collection of the lighting rate.

As to the procedure of assessing the valuation of holdings see sec. 101 and notes.

Power to assess owners in certain cases.

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

The owner may recover the amount of rate paid under this section from the occupier, (see next section).

Owner to recover from the occupier rates paid by owner.

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

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

Owner may recover rate so paid as rent.

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

Rent.—Cf. *Brojo Nath Mitra* v. *Gopi Shakrani* (I. L. R. 23 Cal. 835) in which it was held, in similar circumstances under the Calcutta Municipal Consolidation Act, that a suit by the proprietor for the recovery of taxes, paid by him, from the tenant was cognizable by the Provincial Small Cause Court.

Occupier liable to the rate for time of occupation only.

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

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

Excess paid in advance to be refunded.

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

No rate to be charged during vacancy.

Provided always that, when any person ceases to be the occupier of any holding upon which the rate has been assessed, he shall give the Commissioners notice to that effect within seven days from the date of the cessation of his occupancy. If the occupier fail to give such notice within such period, he shall be liable to the rate assessed on such holding for the whole quarter, although he may have occupied for a part only of such quarter : and, in cases to which the provisions of section 312 apply, the rate assessed on such holding for the whole quarter shall be recoverable from the owner, if such owner has failed to give notice that such holding is unoccupied, within seven days from the date on which it ceased to be occupied.

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

Sec. 312 provides cases in which it shall be lawful for the Commissioners to realize from the owner.