ing 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.

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

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

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

## *Of Burial and Burning-Grounds.*

Registration of existing burial and burning-grounds.

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

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

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

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

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

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

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

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

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

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

If any building is attached to, and used in connection with, a burning-ground closed under this section, the Commissioners shall, if the owner of such building make an

application to them in that behalf, take over the same on payment of a fair price therefor.

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

Prohibition to bury or burn in unregistered ground.

257. (281) After the expiration of the three months mentioned in section two hundred and fifty-four, 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.

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

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

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.

This section is altogether new.

No. 532 T—M. of the 12th May 1884, in the Municipal Department, orders that the following clause should be added to Rule 8 of the "Rules for reporting, transmitting, and disposing of intestate moveable property: "—

"The *bonâ fide* expenses incurred by a Municipality on account of the cost of the burial or cremation of the corpses of persons dying intestate within Municipal limits, should also be included in Form III, and should be paid at once from the estate of the deceased to the Vice-Chairman of the Municipality, on his presenting a duly receipted bill for the amount to the Judge."

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

259. (283) 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.

The provision for the imposition of fees is new.

Commissioners may provide for burial of paupers free of charge.

*260. (284) 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.

*Of certain Offensive and Dangerous Trades or Occupations.*

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

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

melting tallow;

boiling offal or blood;

skinning or disembowelling animals;

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

as a tannery, slaughterhouse, or kiln for making bricks, pottery, tiles, or lime;

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

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

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

as a shop for the sale of meat;

or as a lodging-house or a serai.

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

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

In the former Act "oil, spirit or explosive substance."
The provision for the levy of a fee in respect of the license is new.

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

It would seem that this section does not apply to cases where the premises are only temporarily used for the purposes specified, for private convenience and not in the way of business or trade. There is a High Court ruling with regard to section 77, Act III of 1864 (B. C.), which appears to be in point, as no distinction can be drawn between the two sections in this respect. In *In the matter of Sreeram Chunder Haldar*, GLOVER and BIRCH, JJ., remarked as follows: "We think that this rule must be made absolute. The Junior Government Pleader who has appeared on behalf of the Chairman of the Municipality, says, that no one is permitted to make bricks, whether for his own use or for sale, without taking out a license. The only section of Act III of 1864 (B. C.) which could be applied to this case refers to making bricks or doing other things with reference to trade. There is nothing in the section which applies to a person making bricks for his own use or which makes it an offence against Municipal Regulations to make them without first taking out a license . . . . It appears to us that this fine has been improperly levied on the petitioner, and that it should be returned to him."—6 5 Cr. R., 20 W. R.

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

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

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

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

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

262. (287) If it be shewn to the satisfaction of the Commissioners at a meeting that any place licensed under section two hundred and sixty-one is a nuisance to the neighbourhood, they may, notwithstanding anything contained in the said section, give notice to the

occupier to discontinue the use of such place within one month after the date of such notice.

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

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

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

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

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

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

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

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

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.

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

Conditions for keeping pig-sty.

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

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

Punishable under section 273, clause (5).

*Penalties.*

Failing to shut out privy from view.

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

Erecting huts without notice.

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

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

Disobeying requisition under section 249.

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

See note to preceding section.

Cutting up road for passage of water.

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

This is entirely new.

270. Whoever, within a Municipality,—

Throwing rubbish into sewers.

(1) (236) 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

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

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

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

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

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

Making excavations.

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

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

Disobeying requisition under sections 225, 230, and 231.

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

272. Whoever, within a Municipality,—

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

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

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

Making drains contrary to the orders of the Commissioners.

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

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

273. Whoever, in a Municipality,—

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

Offence under sections 235, 241, 242.

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

Offence under sections 261, 263.

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

Offence under sections 261, 261.

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

Offence under section 265.

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

Offence under section 256.

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

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

274. (282) Whoever, within a Municipality, after the expiration of the period mentioned in section two hundred and fifty-seven, knowingly buries or burns, or causes, procures or suffers to be buried or burned, any corpse in or

Burying or burning corpse in unregistered grounds.

on any ground not registered as a burial or burning-ground, shall be liable to a fine not exceeding one hundred rupees.

This is practically unaltered.

Offence under section 252.

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

This section is altogether new.

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 two hundred and fifty-two, shall compound, mix, prepare or sell any drugs in any registered shop or place, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees for each offence; and any owner, occupier or keeper of any such shop or place, who shall employ any such uncertified person to perform any one or more of such duties, shall, on conviction before a Magistrate, be liable to a fine not exceeding two hundred rupees, and shall be further liable, at the discretion of such Magistrate, to forfeit his license:

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

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

Disobeying notice under section 262.

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

day during which the offence is continued after he has been convicted of such offence.

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

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

"*A further fine*, etc." A sentence by a Court imposing a fine for an offence, and a daily fine for such time as the offence may be continued in future, is bad in law. *In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See note to section 156.

Suspension or revocation of license, &c.

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

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

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

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## PART VII.

### OF A WATER-SUPPLY.

Imposition of water-rate.

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

ing five per cent. when the houses and lands are situated in streets not so supplied.

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

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

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

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

It will be the duty of the Commissioners to regulate the rate according to the amount of benefit enjoyed by the residents of particular streets. In making the rate assessable on all holdings, it has been taken for granted that all the rate-payers in a town are benefited by the introduction of a pure supply of water, whether it is brought close to their doors or not.—*P. C., Feby. 23rd*, 1884.

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

This is altogether new. As the provisions of section 98 are hereby extended to the assessment of the water rate, places used for public wor-

ship and registered public burial and burning-grounds are exempted from it.

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

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.

This section reproduces, with some slight verbal alterations, section 98 of the Calcutta Act.

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.

From section 99 of the Calcutta Act with verbal alterations.
The definition of "owner" in section 6, clause (11), is important.

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.

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

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.

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

Person subletting 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.

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

Owner to pay water-rate in certain other cases.

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

The sections quoted refer to lighting rates. Section 312 provides that, in certain cases, the rate may be levied from the owner; section 313, that

rates paid by the owner may be recovered by him from the occupier; section 314, that the owner shall have the same powers of recovering such rates as if they were rent.

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 standpipes or pumps for the use of the inhabitants of the Municipality for domestic purposes.

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

What are not domestic purposes.

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

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

Pressure at which water must be kept.

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.

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

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

290. If the Commissioners at a meeting shall determine to supply water to houses within the Municipality, every person paying the water-rate hereinbefore mentioned shall be entitled to lay down communication-pipes from the service pipes

of the Commissioners for bringing into his house or land a reasonable supply of water for domestic use:

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

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

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

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.

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

Power to enter premises.

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

And if such officer at any such time be refused admittance into such house or land for the purposes aforesaid; or be prevented from making such examination, the Commis-

sioners 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 zenana or residence of women, which, by the custom of the country, is considered private, unless a notice in writing of not less than four hours be given.

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

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.

Section 139, B. C. Act IV of 1876, with merely verbal alterations.

Supply for business.

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

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

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.

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

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.

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

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

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

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

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

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.

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

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

Person causing waste of water liable to penalty.

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

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

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

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.

Penalty.

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

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

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

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

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

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

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

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

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

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

Obstructing or diverting water.

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

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

Estimate and specification of works to be sent.

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

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

Owner to keep works in repair.

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:

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

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

Tanks, &c., vested in the Commissioners.

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

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

Application of rates and moneys received from the supply of water.

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

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

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

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## PART VIII.

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

### Of Lighting with Gas.

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

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

alteration in certain particulars to be specified by it, and when altered may sanction it as altered. The Local Government shall cause its sanction to any plan to be notified in the *Calcutta Gazette*, and shall at the same time cause the plan sanctioned to be published in the said *Gazette*.

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

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

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.

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

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

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

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 levi-

able for any quarter or portion of a quarter antecedent to such lighting.

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

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

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

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

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

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

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

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

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.

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

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

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.

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

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.

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

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.

Excess paid in advance to be refunded.

If he shall have paid the rate in advance, the amount paid in excess of the sum due under this section shall 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 three hundred and twelve apply, the rate assessed on such holding for the whole quarter shall be recoverable from the owner, if such owner has failed to give notice that such holding is unoccupied, within seven days from the date on which it ceased to be occupied.

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

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

"Cession of occupancy" in the margin is apparently a mistake for "cessation of occupancy."

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

Unknown owner or occupier how to be designated.

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

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

Situation of gas-pipe or other gas-work to be altered at the expense of the Commissioners.

Provided that such alteration be not such as permanently to injure such pipe or work, or to prevent the gas from

flowing as freely and conveniently as before, and the expenses attending such raising, sinking, or altering, and full compensation for the damage done thereby, shall be paid by the Commissioners out of the Municipal Fund as well to the person to whom such pipe or work belongs as to all other persons.

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

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

If owner, &c., neglect to make alterations, the Commissioners may cause the same to be made.

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

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

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

Provisions applicable to other systems of lighting.

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

## PART IX.

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

### OF THE CONSTRUCTION AND CLEANSING OF LATRINES.

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

Notice to be issued by the Commissioners.

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

321. When such provision has been made, the Commissioners may levy fees, to be fixed on such scale, with reference to the annual value of holdings within the limits of the Municipality, or such part thereof as aforesaid, as the Commissioners at a meeting may, from time to time, direct;

Commissioners may levy fees.

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

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

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

Section 3, B. C. Act VI of 1878.

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

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

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

322. The said fee shall be payable by the occupier for the time being of the holding, or by the owner thereof under the next succeeding section, in quarterly instalments, and shall be

Recovery of fees.

recoverable in the manner prescribed for the recovery of the rate on the value of holdings in this Act.

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

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

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

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

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

In certain cases fee may be levied from owner, who may recover from occupier.

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

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

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

Owner may recover fees from occupier as rent.

324. Every owner who, under the provisions of the last preceding section, is entitled to recover any sum from the occupier of any part of a holding, shall have for the recovery of the said sum all such and the same remedies,

powers, rights, and authorities as if such sum were rent payable to him by the occupier in respect of such portion of the holding as may be in his occupation.

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

Commissioners may compound with occupier or owner of certain premises for fee.

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

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

Commissioners may levy a rate per head.

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

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

Commissioners may reduce or remit fee.

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

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

Penalty.

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

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

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

Exemption from prosecution under section 217.

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

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

Powers of servants of Commissioners.

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

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

Commissioners may require nightmen to take out licenses.

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

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

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

By section 355, all fines under this Act may be imposed by a Magistrate and may be levied under the provisions of the Code of Criminal Procedure.

332. If the Commissioners think that any latrine or additional or common latrine should be provided for any house or land within the limits of the Municipality, the owners of such house or land shall, within fourteen days after notice

Commissioners may require latrine to be constructed, and in default may construct themselves.

given by the Commissioners, or within such longer time as the Commissioners may for special reasons allow, cause such latrine to be constructed in accordance with the requisition of such notice; and if such latrine is not constructed to the satisfaction of the Commissioners within such period, the Commissioners may cause the same to be constructed, and the expenses thereby incurred shall be paid by the owners, and shall be recoverable as provided in section three hundred and twenty-two.

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

Commissioners may require list of persons in a holding.

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

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

Penalty.

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

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

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## PART X.

This Part corresponds with Part IX of the former Act.

### Regulation of Markets.

Power to construct markets.

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

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

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

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

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

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

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

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

Definition of "Municipal market."

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

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

Commissioners may prohibit use of unlicensed markets.

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

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

There is consequently nothing in the section which renders it necessary for any one, under any circumstances, to take out a license for a

market in which only provisions which are not of a highly perishable nature are sold. No license is required for a market in which only *dhan*, rice, pulses, or other grains, salt, sugar, *gur*, spices, and any other provisions not of a highly perishable nature are sold. The correct interpretation of this section is often overlooked.

"*Shall be used as a market.*"

The meaning of these words has been discussed in two Bombay cases. —*In re Rájá Pábá Khoji*, I. L. R., 9 Bom., 272, and *Queen-Empress* v. *Magan Harjivan and another*, I. L. R., 11 Bom., 106. In both cases it was ruled that the selling of articles in a private shop or shops, could not be held to be using such shops as a market.

Power to grant licenses for markets.

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

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

Duration of licenses and terms on which granted.

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

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

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

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

Chairman bound to certify fit places.

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

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

Existing markets.

In the case of markets existing at the time of the extension of this Part to the Municipality, the section compels the Commissioners to grant a license for the current year without a certificate. In subsequent years, the certificate is absolutely necessary. The question arises, however, as to whether the Commissioners have, in subsequent years, the power of refusing the license altogether, in the case of such markets, notwithstanding that the certificate had been duly obtained. It does not appear that they have such power, as the words "shall not be renewed without such certificate" are probably intended to imply that it must be renewed if the certificate has been obtained.

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

Licenses to be registered.

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

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

(*c*) the extent and boundary of the market;

(*d*) the description of articles sold therein; and

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

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

Transfers to be registered.

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

Unregistered markets to be deemed unlicensed.

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

344. (311) Whoever, being the owner or occupier of any land, wilfully or negligently permits the same to be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetables or

Penalty for using unlicensed market.

similar provisions without license under section three hundred and thirty-eight, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees, for each day during which the offence is continued, after conviction of such offence.

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

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

Power to close unlicensed places.

345. (312) The Magistrate, on the application of the Commissioners, may order any land, in respect of which a conviction shall have been obtained under the last preceding section, to be closed as a market-place, and thereupon may take order to prevent such land being so used; and every person who shall sell, or expose for sale, meat, fish, butter, ghee, fruits, vegetables, or similar provisions, on any land which shall have been so closed, shall be liable, for every such offence, to a fine not exceeding ten rupees.

In the former section "may appoint persons, or otherwise take order." For definition of "the Magistrate," see section 6, clause (8).

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## PART XI.

This Part reproduces, with only some unimportant verbal alterations, Part VIII of the former Act.

### OF THE REGISTRATION OF BIRTHS AND DEATHS.

Registration of births and deaths.

346. (295) The Commissioners of any Municipality, when required by the Local Government to do so, shall provide for the registration of births and deaths within the limits of the Municipality in accordance with the provisions of Bengal Act IV of 1873 (*for registering births and deaths*), or any other similar Act for the time being in force.

This section is practically unaltered.

By section 11 of Act IV of 1873, the Commissioners must make such arrangements at a special meeting; and are empowered to do so of their own motion, that is to say, without a requisition from the Local Government. The Act will be found *post*.

Circular No. 7T—M., dated Darjeeling, the 28th May 1886, refers to this section, and is as follows :—

It has been brought to the notice of Government that the duty of keeping the registers of births and deaths under Act IV (B.C.) of 1873, and in some instances even the vaccine registers under Act V (B.C.) of 1880, has, in many Municipalities where these Acts are in force, been entrusted to the police. The Inspector-General of Police has raised objections to this practice, on the ground that it is detrimental to the legitimate duties of the police. As the maintenance of the police is no longer a charge upon Municipalities, the Inspector-General suggests that Municipalities should be called upon to arrange for the maintenance of the registers of vital statistics, and that the police may be altogether relieved of this work. This proposal has been approved by the Sanitary Commissioner and the majority of the local officers who were consulted in the matter.

2. Under section 346 of the Bengal Municipal Act III (B.C.) of 1884, the Local Government is empowered to require the Commissioners of any Municipality to provide for the registration of births and deaths within the limits of the Municipality in accordance with the provisions of Act IV (B.C.) of 1873. Under sections 18—24 of Act V (B.C.) of 1880, the registration of vaccine operations devolves upon the registrars of births and deaths under Act IV (B.C.) of 1873. Having regard to the fact that the Act last cited provides sufficient machinery to secure proper and complete registration of vital statistics, and that it forms no part of the proper functions of the police, the Lieutenant-Governor considers it desirable that the police should be relieved of the duty; and he accordingly directs that in those Municipalities to which the provisions of Act IV (B.C.) of 1873 have been extended, the registration of births and deaths, and, consequently, the work of keeping up registers of vaccine operations under the Compulsory Vaccination Act wherever it is in force, shall be entrusted to the Municipal authorities from the 1st July 1886. Sir Rivers Thompson is aware that this measure will throw some additional expense on the Municipalities concerned; but where Ward Committees are efficiently organised with a Chairman or other recognised executive head, the cost need not be great. In many mofussil towns there are headmen of mohullas recognised by general consent, though not formally elected; and it has in some cases been found practicable, advantageous, and economical to enlist their services as registrars of births and deaths. The Lieutenant-Governor thinks that this experiment might succeed in other places also, and he has no doubt that the suggestion of employing such indigenous agencies in this work will commend itself to Municipal authorities generally.

On requisition of Government, Commissioners to appoint Sub-Registrars at burning-ghats and burial-grounds.

347. (296) The Local Government may require the Commissioners of any Municipality to appoint and maintain, at any burning-ghat and burial-ground, a Sub-Registrar for the registration of all corpses brought to such burning-ghat or burial-ground, for cremation or interment.

The corresponding section contained the words "for natives" after the word "burial-ground." The section is therefore now applicable to burial-grounds of other nationalities also.

*348. (297) Whenever a Sub-Registrar shall have been appointed for any burning-ghat or burial-ground under the last preceding section, information of the particulars required by section eight of Bengal Act IV of 1873 to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall be deemed to be information given to the Registrar of the District as required by the said section.

Information required by Bengal Act IV of 1873 to be given to such Sub-Registrar.

Section 9 of Bengal Act IV of 1873 shall be applicable to all Sub-Registrars appointed under this Act.

Section 9 of Bengal Act IV of 1873 is as follows: "Any Registrar who refuses or neglects to register any birth or death occurring within his district, which he is bound to register within a reasonable time after he shall have been duly informed thereof, or demands or accepts any fee or reward or other gratification as a consideration for making such registry, shall be punishable, at the discretion of the Magistrate, with fine which may extend to fifty rupees for each such refusal or neglect."

The particulars required by section 8 of the Act are such as may be prescribed in the forms which the Lieutenant-Governor may, from time to time, sanction.

349. (298) Whenever a death shall occur in any hospital within the limits of any Municipality in respect of which the Local Government has directed that all deaths shall be registered under Bengal Act IV of 1873, it shall be the duty of the Medical Officer in charge of such hospital forthwith to send a notice, in writing, of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe; and in such case no other person shall be required to give information of such death to a Registrar under Bengal Act IV of 1873, or to a Sub-Registrar under this Act.

Information of deaths in hospitals.

"Local Government" for "Lieutenant-Governor;" otherwise unaltered.

# PART XII.

## MISCELLANEOUS.

Power to impose penalties on breach of bye-laws.

350. (313) The Commissioners of any Municipality may, from time to time, at a meeting which shall have been convened expressly for the purpose, and of which due notice shall have been given, frame such bye-laws as they deem fit, not being inconsistent with this Act, or with any other general or special law, for giving effect to the objects of this Act, and may by such bye-laws impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of fifty rupees for each offence, and in case of a continuing offence, a further penalty not exceeding twenty rupees for each day after written notice of the offence from the Commissioners.

The changes made in this section are very important. Their object will be explained by the following quotation:

"On the subject of bye-laws, the provisions of the existing Act, which were reproduced (with an inconsiderable alteration) in the Bill as originally drafted, have been found in practice to be inconvenient. The section first specifies certain matters in respect of which bye-laws may be made, and then gives power to make bye-laws generally for the purposes of the Act. This has led (as Mr. Kilby has pointed out in his note) to some uncertainty as to whether this general power extends to cases which do not fall under any one of the specified classes; and different legal advisers of Government have held different views upon this point. We think that a general power to make bye-laws should be given, and that it is needless to particularize in the Bill the subjects to which such bye-laws may apply."

"Bye-law," or perhaps more correctly "by-law," is derived from the Scandinavian "by," a town or borough, and therefore originally meant a town or borough law. It afterwards came to mean a rule or law passed by any Corporation. Wharton defines bye-laws as "the rules, regulations and constitutions of Corporations for the government of their members." Blackstone remarks, that it is one of the inherent rights of Corporations "to make by-laws or private statutes for the better government of the Corporation, which are binding on themselves, unless contrary to the law of the land, when they are void. This is also included by law in the very act of incorporation, for as natural reason is given to the natural body for the governing it, so by-laws or statutes are a sort of political reason to govern the body politic."—1 *Bl. Com.*, 476. "And this is held to be a right so much of course, that when a charter of incorporation gave to a select body of the members a power to make bye-laws as to certain specified matters, it was held that the body at large was nevertheless at liberty to legislate with regard to all matters not so specified."—4 *Steph. Com.*, 13.

Grant, in his treatise on the Law of Corporations, expounds the law on the subject as follows:—

"Where it is necessary for the accomplishment of the objects of their incorporation, a body politic has, as an incident to it, the power of making

bye-laws, and of enforcing them by penalties; and such bye-laws, in the case of Municipal Corporations, and of other corporations entrusted with local, popular, or territorial Government, will bind both members and strangers, and not members of the Corporation only."

"A bye-law is a rule obligatory on a body of persons or over a particular district, not being at variance with the general laws of the realm, and being reasonable and adapted to the purposes of the Corporation; and any rule or ordinance of a permanent character, which a Corporation is empowered to make either by the common or statute law."

It appears to be clear from the extract from the preliminary report of the Select Committee already quoted, that the changes made in this section are intended to enlarge, and not to restrict, the powers of the Commissioners with regard to the making of bye-laws. It would seem, therefore, that they may now make all the classes of bye-laws specified in section 313 of the former Act, as well as any others, which may be necessary for carrying out the purposes of the present Act. The classes of bye-laws specified in section 313,—omitting the general class at the end of the section,—were as follows:—

(*a*) Regulating the conduct of business at their meetings.
(*b*) Regulating the time and mode of collecting taxes.
(*c*) Regulating the conduct of persons employed by them.
(*d*) For the prevention of the construction or opening of cesspools.
(*e*) Regulating the disposal of offensive matter, rubbish, and dead bodies of animals.
(*f*) For the regulation and management of privies.
(*g*) Regulating traffic in the streets.
(*h*) Regulating or prohibiting the use of fire-balloons, fireworks, fire-arms, or other missiles (*sic*) in the vicinity of public roads.
(*i*) For the registration of births and deaths.

Whatever other bye-laws the Commissioners may, or may not, pass, there seems no reason to doubt that that they may make bye-laws of all the classes above specified.

The bye-laws which a Municipal Corporation is empowered to pass, may be divided into three classes:—

(1.) Those which are binding on the members of the Corporation only, such as bye-laws regulating the conduct of business at their meetings.
(2.) Those which are binding on the servants of the Corporation only, such as rules regulating their conduct.
(3.) Those which are binding on the subjects of the Corporation, or the public generally, such as laws relating to nuisances.

Now, in the case of class (1), penalties are practically out of the question. As regards class (2), they are usually unnecessary, and are therefore seldom prescribed. Bye-laws of the third class would obviously be inoperative without penalties. Of the three classes, it appears, therefore, that only the third are laws in the sense in which that term is used in modern legislation. The other two classes, from a modern point of view, must be regarded as rules only. According to Austin, positive laws are commands addressed by Sovereigns to their subjects, imposing a duty or obligation on those subjects, and threatening a sanction or penalty in the event of disobedience to the command; and, according to this definition, the two first classes enumerated are obviously not positive laws, or laws proper, at all. As Maine has, however, clearly shewn (Early History of Institutions, Lects. XII and XIII), the theories of Austin as to the essential attributes of laws are only applicable to modern and highly centralized States. The term 'bye-law' dates back to a much less

civilized stage of society, and to a much more primitive and less analytical conception of the nature of law. In modern legislation, the use of the term is more commonly restricted to the third of the classes mentioned above, the other two being usually designated as rules.

Tried by the modern standard, it could not be said that, under the common law of England, bye-laws were penal laws at all. No indictment lies at common law for the breach of a bye-law, and the only method of enforcing the penalty was by action of debt or *assumpsit*. The only exception was where a local custom allowed of the enforcement of the penalty by distress.

The following important provision contained in section 313 has been omitted from the present section: "Provided that no fee or toll, which is not expressly sanctioned by this Act, shall be levied under any such bye-law." At first sight the effect of this omission would appear to be to legalize the levy by bye-laws of tolls and fees not expressly sanctioned by this Act. It seems, however, very improbable that the omission has been made with any such intention. The cases in which tolls and fees may be levied are distinctly specified in the Act, and it appears highly improbable that there should have been an intention of giving, in addition, a general power of levying other fees. Supposing, however, that such fees and tolls could be imposed by bye-laws, it does not appear that they could be recovered under the Act. They would not be recoverable under section 360, as that section only provides for the recovery of fees due under this Act, and a distinction must obviously be drawn between fees due under this Act and fees due under bye-laws made under this Act.

It is more probable that the provision has been omitted on the ground that it embodied a legal principle so well known and accepted, that it was not likely to be disputed.

"It is, however, a rule of law, which has been designated as a 'legal axiom,' requiring no authority to be cited in support of it, that no pecuniary burden can be imposed on the subjects of this country, by whatever name it may be called, whether tax, due, rate, or toll, except upon clear and distinct legal authority, established by those who seek to impose the burden."—*Broom's Legal Maxims*, 4th Ed., p. 4.

"So a bye-law may levy a toll or tallage on the *members* of the Corporation towards the necessary expenses of the Corporation; though clearly a bye-law to levy money of the subjects generally would be bad."—*Grant on Corporations.*

The following provision of section 313 has also been omitted: "The Commissioners may, from time to time, at a meeting as aforesaid, repeal, alter, or add to any such bye-laws." This has probably been omitted as unnecessary: "Every Corporation too has a right, as of course, to alter, or repeal, the bye-laws, which itself has made."—3 *Steph. Com.*, 13.

Confirmation of bye-laws.

351. (314) Bye-laws made under this Act shall not take effect unless and until they have been submitted to, and confirmed by, the Local Government; nor shall such bye-laws be confirmed—

unless one month at least before the making of the application, notice of the intention to apply for confirmation has been given in one or more of the local newspapers circulated within the Municipality to which such bye-laws

relate, or if there be no such newspapers, then in such manner as the Commissioners may direct; and unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the Commissioners, and has been open during office hours thereat to the inspection of the inhabitants of the Municipality to which such bye-laws relate, without fee or reward.

The Commissioners shall, on the application of any inhabitant of the Municipality, furnish him with a copy of such proposed bye-laws, on payment of four annas for every hundred words contained in the copy.

A bye-law requiring confirmation by the Local Government shall not require confirmation, allowance, or approval by any other authority.

The alterations made in this section provide for the more effective publication of bye-laws. They are evidently taken from section 184 of the Public Health Act, 1875, 38 & 39 Vict., c. 55.

"We are also of opinion that better provision should be made for the publication of proposed bye-laws within the Municipality, previous to their being submitted to the confirming authority for sanction."—*P. Rep., S. C.*

The last clause cannot be taken to mean that the legality of the bye-laws shall not be called in question in any Court. For it follows from section 350, that if a bye-law is inconsistent with this Act, or with any other general or special law, it must be void *ab initio*, and the act of the Local Government in confirming it must be *ultra vires*. This is in accordance with the common law of England in which "the general rule is, that no bye-law will be held good in any Court of law or equity which is repugnant to, or inconsistent with, the laws of the land in any one instance."—*Grant on Corporations*, p. 17.

By the common law of England, moreover—"A bye-law, if unreasonable, will be held bad, although it may have been duly passed and published and notified to the proper authorities, and not objected to by them." *Ibid*, p. 81.

The last clause appears to be altogether redundant. The section is taken from section 189 of the Public Health Act, in which the term Local Government *Board* occurs instead of Local Government. The final clause of the section provides that a bye-law required to be confirmed by the Local Government *Board* shall not require confirmation, allowance, or approval by any other authority. The provision, necessary enough in the English Act, does not appear to be required here, as the confirmation of the Local Government is obviously sufficient.

Commissioners may direct prosecution for public nuisance.

352. (316) The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act, and for the punishment of any persons offending

against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the Municipal Fund.

Practically unaltered. A complaint filed by a Municipal officer is exempted from stamp-duty—Act VII of 1870, section 19, clause (18).

No prosecution for an offence under this Act to be instituted without consent of Commissioners.

353. (317) No prosecution for an offence under this Act or any bye-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within three months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within three months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman of the Commissioners:

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

This section is practically unaltered.

"Continuing offence." A sentence imposing a daily fine until such time as an accused person shall desist from an offence, is bad in law, as being an adjudication in respect of an offence not yet committed.—*In re Sagur Dutt*, 1 B. L. R., O. Cr., 41. See also 9 B. L. R., App., 35.

Publication of order.

354. (365) Every bye-law, order, notice, or other document directed to be published under this Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct.

And a public proclamation shall be made throughout such Municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

Levy of fines.

355. (366) Fines under this Act may be imposed by a Magistrate on any person who is convicted of the offence to which the

fine attaches, and may be levied under the provisions of the Code of Criminal Procedure, 1882.

Section 555 of the Criminal Procedure Code enacts that a Judge or Magistrate shall not, except with the permission of the Court to which an appeal lies, try or commit for trial any case in which he is a party, or personally interested, but provides that such Judge or Magistrate shall not be deemed to be a party or personally interested merely because he is a Municipal Commissioner.

Notwithstanding anything contained in section 555 of the Criminal Procedure Code, a conviction for an offence against any Municipal law or regulation, tried before a Bench of Magistrates which includes a salaried officer of the Municipality, is bad.—*Nobin Krishna Mukerjee* v. *The Chairman of the Suburban Municipality*, I. L. R., 10 Cal., 194.

In a case decided on the 22nd August 1884,—*In the matter of Kharak Chand Pal (Petitioner)* v. *Tarack Chunder Gupta, Municipal Overseer (Opposite Party)*, I. L. R., 10 Cal., 1030,—the Court, *per Prinsep, J.*, ruled as follows:—"The petitioner has been convicted under section 188 of the Penal Code of having disobeyed an order of the Municipal Commissioners of Commillah under section 256, Bengal Act V of 1876, dated the 29th March 1883.

"On enquiry we have ascertained that the District Magistrate, who tried and convicted the petitioner, was present as Chairman of the Municipal Commissioners at the meeting of the 29th March 1883, when the order was passed, the disobedience of which forms the subject of the present case.

"Section 555 of the Code of Criminal Procedure provides, that no 'Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested.' (No permission has been applied for in the present case.) The explanation to section 555 further declares that 'a Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.'

"That explanation, however, does not, in our opinion, apply to any case in which a Magistrate may have been personally concerned as a Municipal Commissioner in the matter which forms the subject of trial before him. It is rather intended to prevent an objection being raised that from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some municipal matter was involved. It is a very different matter when in the present case we find that the Magistrate is practically one of the prosecutors and the judge."—*Conviction set aside.*

The question arises as to whether the above ruling would be held applicable to the case of a Magistrate trying offences against bye-laws, in the passing of which he had been personally concerned as a Municipal Commissioner. The distinction, on the score of personal interest, between a bye-law and such a general order as the one in question, is not very obvious. It is at least open to question whether the above ruling does not carry the doctrine of disqualification by interest too far, especially as the current of the more recent English decisions appears to have set in the opposite direction. The Court followed *Sergeant* v. *Dale*, L.R., 2 Q. B. D., 558, a precedent of a very general nature. In a more recent case, however, *Reg.* v. *Handsley*, 8 Q. B. D., 383, it was held that when by Statute a member of the council of a borough may act as a Justice of the

Peace in matters arising under the Act (34 and 35 Vict., c. 154), in order to disqualify him from so acting, it is not sufficient to shew that, as a member of the council, he has a pecuniary interest in the result of the information or complaint, or that the corporation of which he is the member, are the prosecutors; but it must be established that he has such *a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter.*

The Court in this case (*Reg.* v. *Handsley*) intimated their disapproval of *Reg.* v. *Gibbon*, 6 Q. B. D., 168, the facts in which were as follows: By a Local Improvement Act the Corporation was made the authority for the execution of the Act with power to direct prosecutions for this purpose. An information for an offence under the Act having been preferred by an officer on behalf of the Corporation, a summons was issued upon it by a Justice, who was also an alderman and member of the Corporation, but came on for hearing before Justices, none of whom were connected with the Corporation. *Held*, notwithstanding, that such Justices could not proceed with the hearing of the summons, for it had been issued by one who was virtually prosecutor.

In *Rex.* v. *Milledge*, 4 Q. B. D., 332, and *Reg.* v. *Lee*, 9 Q. B. D., 394, it was held that when a councillor has taken part in *passing a resolution directing a prosecution*, he is disqualified from acting as a Justice in respect thereof. These rulings do not appear to necessarily conflict with *Reg.* v. *Handsley*, above cited.

In *Reg.* v. *Justices of Great Yarmouth*, 8 Q. B. D., 525, the Mayor of Yarmouth was the Chairman of the Magistrates at a special sessions for appeals against poor rates, and was himself an appellant in one of the cases. After taking part in the decision of the other cases, he left the bench, when his own case came on, and conducted it himself. On a *certiorari* to bring up all the orders for the purpose of quashing them, *held*, that the Chairman being a litigant in a case similar to the other cases before the Court, was disqualified from acting as a Justice, and that the orders were bad. In this case the disqualification arose out of a personal and pecuniary interest.

Another case, in which it was held that interest is not a disqualification, unless it is sufficient to cause a real bias, is *Reg.* v. *Mayor and Justices of Deal*, 45 L. T. N S., 439. In that case the petitioner had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Society for the Prevention of Cruelty to Animals. Some of the Justices who took part in the conviction were subscribers to a branch of the said Society. *Held*, upon a rule for a *certiorari*, that there was nothing in these facts to create a real bias in the minds of the Justices which could amount to a disqualifying interest.

See Rawlinson's Municipal Corporations Act, eighth edition, p. 246, where the strict rule of disqualification is spoken of as the "old rule."

By section 4, clause (*p*) of the Criminal Procedure Code "offence" means any act or omission made punishable by any law for the time being in force. By clause (*r*) of the same section "bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force. Under the schedule referred to, all "offences against other laws" (*i.e.*, not under the Penal Code) which are punishable with fine only, or with imprisonment for less than three years, are bailable. It follows that all offences under the present Act, with the exception of that punishable under section 366, are bailable offences within the meaning of the Criminal Procedure Code; and that the provisions of that Code referring to such offence

apply to them. By the same schedule they are, with the same exception, cases in which a summons shall ordinarily issue in the first instance.

By section 1, Act V of 1867 (B.C.) the word "Magistrate" includes all persons exercising all or any of the powers of a Magistrate.

Objections have been raised to this section to the effect that it is at variance with Government orders regarding Municipal Benches. The orders in question direct that at least two Honorary Magistrates must form a Bench for the trial of municipal cases. The present section enacts that a Magistrate may try such cases. Therefore, it has been alleged, the section and the orders are contradictory. The answer to the objection is, that a Bench of Magistrates is a Magistrate within the meaning of this section and of the Criminal Procedure Code, and that Honorary Magistrates are not usually vested with jurisdiction to try cases singly. Were they vested by Government with the necessary local jurisdiction, they could of course do so.

"*Fines under this Act.*" There is an obvious distinction between fines under this Act, and under bye-laws made under this Act. This fact is recognized by section 353, which refers to a "prosecution for an offence under this Act or any bye-law made in pursuance thereof," thus obviously implying, that the former does not include the latter. The same distinction was observed in 5 and 6 Will., 4, c. 76, s. 91, which provided that all the provisions thereinafter contained relative to offences *against the Act* shall be taken to apply to all offences committed *in breach of any bye-law* or regulation made by virtue of the Act. Act III of 1864 contained a practically similar provision, which was re-enacted in the Bill of 1872, but omitted from the Act of 1876.

The omission is probably accidental, but does not appear to be of much consequence, as the general provisions of the Code of Criminal Procedure appear to apply to offences against bye-laws and are to the same effect as the section under consideration. The breach of a bye-law apparently comes under the definition of an offence in section 4, clause (*p*), and the general provisions of the Code therefore would seem to apply to it.

It may be noted, however, that by the common law of England penalties under bye-laws are ordinarily only recoverable by action of debt or *assumpsit*, and that an indictment does not lie with regard to them.

By section 67 all fines paid or levied in any Municipality under this Act, shall be credited to the Municipal Fund. The following circular relates to certain other classes of fines:—

Municipal—No. 25T—M., dated the 6th April 1885.

I am directed to acknowledge the receipt of your letter No. 126L—GM., dated the 3rd February last, in which you suggest that, as the charge of maintaining the police in Municipalities is now borne by Government, the following fines realized within Municipal limits through the action of the police should no longer be credited to Municipalities, but should form assets of the Provincial Revenues:—

(*a*) Fines levied under section 14 of the Gambling Act II (B.C.) of 1867;

(*b*) Fines levied for neglect of duty, absence, &c., from Police-officers paid by Municipalities; and

(*c*) Fines levied under section 34 of the Police Act V of 1861, for nuisances committed within Municipal limits.

2. In reply, I am directed to say that, after a full consideration of the question, the Lieutenant-Governor is pleased to direct that fines levied under the Gambling Act, and those realized from the police in Municipalities for neglect of duty, &c., should be credited to Government

with effect from the 1st instant. Proceeds from fines levied for nuisances committed within Municipal limits should, however, be made over to Municipalities as heretofore.

How notice, &c., may be served.

*356. (367) Every notice, bill, form, summons or notice of demand under this Act may be served personally on, or presented to, the person to whom the same is addressed:

or be left at his usual place of abode, with some adult male member or servant of his family;

or if it cannot be so served, presented or delivered, may be put on some conspicuous part of his place of abode,

or of the land, building, or other thing in respect of which the notice, bill, form, summons or notice of demand is intended to be served.

Service of notice on owner or occupier of land.

*357. (368) When any notice is required to be given to the owner or to the occupier of any land, such notice, addressed to the owner or occupier as the case may require, may be served on the occupier of such land, or otherwise in the manner in the last preceding section mentioned:

Provided that when the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, they shall, if such place of abode be within the limits of their authority, cause every notice required to be given to the owner of any land to be served on such owner, or left with some adult male member or servant of his family;

and if the place of abode of the owner be not within such limits, they shall send every such notice by post in a registered cover addressed to his place of abode, and such service shall be deemed to be good service of the notice.

When the name of the owner or occupier is not known, it shall be sufficient to designate him as "the owner" or "the occupier" of the land in respect of which the notice is served.

Tax not invalid for want of form.

*358. (369) No assessment or rating of tax on property shall be invalid for error or defect of form, and it shall be enough in any assessment, valuation or rating for the purpose of making such tax, if the property so assessed or valued is so described

as to be generally known, and it shall not be necessary to name the owner or occupier thereof.

Holder of license to produce it when required.

*359. (370) Every person to whom a license has been granted under this Act shall, at all reasonable times, while such license shall remain in force, if thereunto required by the authorities which granted the license or by any person authorized by them in that behalf, produce such license to the said authorities or to the person so authorized.

Penalty.

Whoever fails to produce his license when required to produce the same by any person authorized under this section to demand the production thereof, shall be liable to a fine not exceeding one hundred rupees.

Recovery of moneys due to the Commissioners.

360. (371) All costs, expenses, fees, tolls, or other moneys due under this Act to the Commissioners of any Municipality, may be recovered in the manner provided in sections one hundred and twenty to one hundred and twenty-nine, both inclusive.

That is to say, by the presentation in the first place of a bill, to be followed, if necessary, by a notice of demand in the form marked (A) in the Fourth Schedule, and finally by distress and sale of moveable property. Section 129 affords the alternative course of bringing a suit in a Civil Court.

*Due under this Act.* If, therefore, fees could be levied under bye-laws made under section 350, such fees would not be recoverable under this section. Fees due under bye-laws could not be held to be fees due under this Act. Compare notes to section 350.

It is obvious that the Commissioners have no power to levy fees without distinct authority to do so. The practice, therefore, said to prevail in some Municipalities of levying fees for the consecration of pipal or other sacred trees on the sides of public roads, is absolutely illegal.

Power to sell unclaimed holdings for money due.

361. (372) If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges, recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and after the expiry of not less than three months from the date of the last publication, unless the amount

recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase-money.

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

Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a Court of competent jurisdiction from any person beneficially interested in such property.

Under the corresponding section, the surplus proceeds were repayable within three years, and if not claimed could then be credited to the Municipal Fund. Under the present section they will be credited at once to the Fund, and the ordinary law of limitation is the only restriction on their repayment. Similar alterations have been made in all the sections of the Act which deal with the matter of surplus proceeds.

Compensation for damages.

362. (373) The Commissioners may make compensation out of the Municipal Fund to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

"Damage" is defined by Wharton to be "a loss or injury by the fault of another, *e. g.*, by an unlawful act or omission; any hurt or hindrance that a person receives in his estate; also the compensation to be fixed by the jury when they find a verdict for the plaintiff." The object of the section appears to be to give local authorities the power of compromising civil suits to recover damages which may be brought against them. The next section provides that they must always have an opportunity of so doing. It does not appear that the section is intended to confer a power of giving compensation in cases of *damnum absque injuriâ* where no action would ordinarily lie.

By the Railway Clauses Consolidation Act, 1845, sec. 6, it is provided that the company shall make full compensation for all damages sustained by reason of the exercise in regard to matters specified of the powers vested in the company. In *Ricket* v. *Metropolitan Railway Company* (L. R., 2 H. L., 175), it was held "that no case comes within the Statute unless when some damage has been occasioned . . . . in respect of which, but for the Statute the complaining party might have maintained an action . . . . . Any other construction would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature." *Semble*, therefore, that the present section would apply to cases where in consequence of the statutory powers not having been properly exercised, or having been exceeded, an action would lie, and also to cases where damage had been occasioned by the proper exercise of the statutory powers, for which an action would lie save for their existence. Compare the concluding portion of the note to the next section.

No action to be brought against the Commissioners or their officers until after one month's notice of cause of action.

363. (374) No suit shall be brought against the Commissioners of any Municipality, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners, and also (if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit; and unless such notice be proved, the Court shall find for the defendant.

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

If the Commissioners or their officer, or any person to whom any such notice is given, shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

To what classes of suits similarly worded provisions in other Municipal Acts apply, is a point which has given rise to a considerable amount of judicial discussion, and to some conflicting decisions. Thus, in *Poorno Chunder Roy* v. *Balfour*, 535 C. R., 9 W. R., Bayley, J., held, that similar provisions contained in section 87 of Act III of 1864 applied to a suit to recover possession of land. Phear, J., questioned this, but concurred in dismissing the suit on other grounds. In *Abhoyanath Bose* v. *The Chairman of the Municipal Committee of Kishnagur*, 92 C. R., 7 W. R., Norman, J., held, that the same section applied to a suit brought to restrain the Commissioners from interfering with a road claimed to be a private one.[6] In *Price* v. *Khilat Chandra Ghose*, 5 B. L. R., App., 50, it was held that the same section did not apply to suits to recover possession of immoveable property, but only to actions for damages. In *The Municipal Committee of Moradabad* v. *Chatri Singh*, I. L. R., 1 All., 269, a similar view was taken. In *Mayandi* v. *Mcquhae*, I. L. R., 2 Mad., 124, it was held that a similar provision in Madras Act III of 1871 (section 68) did not apply to a suit to recover money due under a contract, a breach of a contract not being a *thing done* under the Act. In *Manni Kasanudhan* v. *Crooke*, I. L. R., 2 All., 296, it was held that such provisions only apply to suits in which relief of a pecuniary nature is claimed for something done under the Act, and for which the persons performing them are personally liable for damages.

It may be now accepted as established law that the provisions in question only apply to suits arising out of a pecuniary claim for acts done by the Commissioners or their subordinates, in excess of their statutory powers.