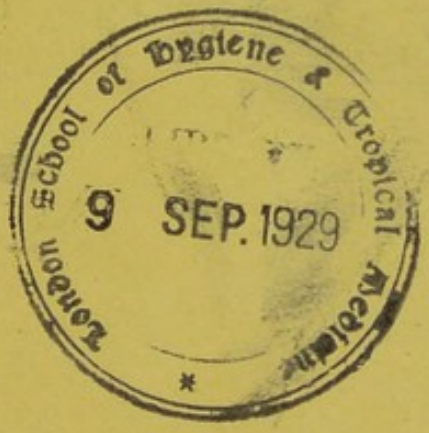
The Public Health (London) Act, 1891 : with an appendix containing statutes affecting the metropolis / by Alexander MacMorran and E.J. Naldrett.



THE PUBLIC HEALTH (LONDON) ACT, 1891.

THE

Public Health (London) Act,

1891.

WITH AN APPENDIX CONTAINING STATUTES
AFFECTING THE METROPOLIS.

Second Edition.

BY

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PREFACE

TO THE SECOND EDITION.

THIS Work contains the text of the Public Health (London) Act, 1891, and the enactments applied by it, with full notes and references to many cases decided by the Courts. It also contains an Appendix in which will be found the whole or some part of the text of Statutes amending and extending the earlier Act or dealing with matters connected with the Public Health of the Metropolis, also the whole or relevant parts of the text of a number of Local Acts of the London County Council and the Corporation of the City of London relating to the same subject. Many of the notes to the numerous sections of the 1891 Act have been re-written, and all the notes have been revised and brought down to date. The dates of the cases cited have now been inserted. There are many references in the Public Health (London) Act, 1891, to "drain" and "sewer," but the Act does not contain any interpretation of these terms. The Editors have, therefore, set out in

the notes to s. 141 the meaning given to these expressions in the Metropolis Management Acts, 1855 and 1862, together with notes of the numerous decisions of the Courts dealing with questions of "drain," "combined drain," and "sewer."

The Editors desire to acknowledge their obligation to the Work "Lumley's Public Health," from which notes in some cases have been adopted without alteration.

A. M.
E. J. N.

Temple,
March, 1910.

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——— *v.* Higgon (1840), 9 L. J. M. C. 29; 6 M. & W. 49; 8 D. P. C. 212; 4 Jur. 125 51

——— (St. Mary, Battersea, Vestry) *v.* Southwark and Vauxhall Water Co. (1893), 57 J. P. 806; 69 L. T. 144; 41 W. R. 622; 5 R. 432 123

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THE PUBLIC HEALTH (LONDON) ACT, 1891.

54 & 55 VICT. CAP. 76.

An Act to consolidate and amend the Laws relating to Public Health in London. [5th August 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sanitary authority to inspect district for detection of nuisances.

1. It shall be the duty of every sanitary authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act for the purpose of abating the same, and otherwise to put in force the powers vested in them relating to public health and local government, so as to secure the proper sanitary condition of all premises within their district.

A Memorandum, which it has not been thought necessary to reproduce in this Work, dated November, 1891, stating the effect of the passing of this Act, was sent by the Local Government Board to all sanitary authorities in the county of London shortly after the passing of the Act. The attention of the several boards of guardians, the London County Council, and the Metropolitan Asylums Managers, was also drawn to the provisions of the Act.

Several statutes have since been passed amending provisions of the Public Health (London) Act, 1891, as will be seen by the statutes set out in the Appendix.

By s. 5 of the London Government Act, 1899 (62 & 63 Vict. c. 14), the Local Government Board are empowered, on the application of the London County Council and of the majority of the borough councils, to make a Provisional Order for transferring to

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the borough councils any power exercisable by the London County Council, or for transferring to the County Council any power exercisable by the borough councils; they may also on the joint application of the London County Council and the Common Council of the City of London, make a Provisional Order transferring any power from the County Council to the Common Council, or from the Common Council to the County Council; but no Order has yet been issued by the Local Government Board dealing with any such powers.

This section is a re-enactment in substance of 29 & 30 Vict. c. 90, s. 20, and 48 & 49 Vict. c. 72, s. 7, repealed by this Act. The case of *Ex parte Bassett, In re West Ham Local Board* (1857), 7 El. & Bl. 280; 21 J. P. 85; 26 L. J. M. C. 64; 28 L. T. (o.s.) 267; 3 Jur. (N.S.) 136, was decided before the date of these enactments. That case must not therefore be assumed to be an authority for the proposition that *mandamus* will not lie to a sanitary authority to compel them to take steps to abate a nuisance. It is probable, however, that the existence of another remedy under ss. 100, 101, *infra*, would be the answer to an application for a *mandamus*. See *Pasmore* v. *Oswaldtwistle Urban District Council*, [1898] A. C. 387; 62 J. P. 628; 67 L. J. Q. B. 635; 78 L. T. (N.S.) 569; but compare with *R.* v. *St. Mary, Islington*, Times, August 3rd, 1898; 20 M. C. C. 376; and *R.* or *Lee District Board* v. *London County Council* (1900), 64 J. P. 20; 82 L. T. (N.S.) 396; 16 T. L. R. 89. With regard to the form of the remedy, in *R.* v. *St. Giles, Camberwell* (*Vestry of*) (1897), 61 J. P. 217; 66 L. J. Q. B. 337; 45 W. R. 335, it was held that the prerogative writ of *mandamus* would not be granted, the proper proceeding being an action for a declaration of right and for a *mandamus*. See also *Rose* v. *Stepney Borough Council*, [1902] 1 K. B. 317; 66 J. P. 183; 71 L. J. K. B. 238; 86 L. T. 21; 50 W. R. 412, and *R.* v. *Bermondsey Borough Council* (1908), 72 J. P. 330; 99 L. T. 14; 6 L. G. R. 852.

The first part of the section is identical with s. 92 of the Public Health Act, 1875.

It may be mentioned that by s. 32 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), it is provided that it shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain whether any dwelling-house therein is in a state so dangerous or injurious to health as to be unfit for human habitation.

If the sanitary authority make default in the performance of the duty imposed upon them by this section, the county council may, under s. 100, do what is necessary and recover the expenses from the sanitary authority; or the county council may complain to the Local Government Board under s. 101, and the Local Government Board can then enforce the performance of the duty in manner therein provided.

For the definition of a "sanitary authority," see s. 99, *post*, and see the notes thereto.

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Nuisances (General).

2.—(1) For the purposes of this Act,—

What nuisances may be abated summarily.

(a) Any premises (*a*) in such a state as to be a nuisance or injurious or dangerous to health (*b*) ;

(b) Any pool, ditch, gutter, watercourse, cistern, water-closet, earth-closet, privy, urinal, cess-pool, drain, dung-pit, or ashpit, so foul or in such a state as to be a nuisance or injurious or dangerous to health (*c*) ;

(c) Any animal kept in such place or manner as to be a nuisance or injurious or dangerous to health (*d*) ;

(d) Any accumulation or deposit which is a nuisance or injurious or dangerous to health (*e*) ;

(e) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family (*f*) ;

(f) Any such absence from premises of water fittings as is a nuisance by virtue of section thirty-three of the Metropolis Water Act, 1871, set out in the First Schedule to this Act (*g*) ; and

34 & 35 Vict. c. 113.

(g) Any factory, workshop, or workplace which is not a factory subject to the provisions of the Factory and Workshop Act, 1878, relating to cleanliness, ventilation, and overcrowding (*h*), and

41 & 42 Vict. c. 16.

(i) Is not kept in a cleanly state and free from effluvia arising from any drain, privy, earth-closet, water-closet, urinal, or other nuisance, or

(ii) Is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or

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(iii) Is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein,

shall be nuisances liable to be dealt with summarily under this Act.

(2) Provided that—

(i) Any accumulation or deposit necessary for the effectual carrying on of any business or manufacture shall not be punishable as a nuisance under this section, if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health ; and

(ii) In considering whether any dwelling-house or part of a dwelling-house which is used also as a factory, workshop, or workplace, or whether any factory, workshop, or workplace used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstance of such other user (*i*).

Premises.

(*a*) For the definition of the expression "premises," see s. 141, *post*. See also s. 95, *post*, as to tents, vans, etc., used for human habitation, and s. 110, *post*, as to ships.

Sewage works not included.

(*b*) It has been held that the corresponding provisions of the Public Health Act, 1875, s. 91, do not apply to a nuisance arising from sewage tanks and works constructed under that Act by a local board, and that a court of summary jurisdiction had, therefore, no power, on proof of a nuisance so caused, to make an order for the abatement of the nuisance (*R.* v. *Parlby* (1889), 22 Q. B. D. 520 ; 53 J. P. 327 ; 58 L. J. M. C. 49 ; 60 L. T. (N.S.) 422 ; 37 W. R. 335 ; 5 T. L. R. 257). In the course of his judgment WILLS, J., referring to the clause of the Public Health Act, 1875, corresponding to clause (a) of this sub-section, said : "It is clear that the expression 'premises in such a state as to be a nuisance,' has not the wide application claimed for it by the respondents, who say that it is answered by any premises on which a nuisance exists. If that were so, the enumeration of, at all events, the several kinds of nuisance specified under the subsequent heads would be unnecessary ; we do not attempt to define every class of case

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to which the first head applies, but we think it is confined to cases in which the premises themselves are decayed, dilapidated, dirty, or out of order, as, for instance, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy or impregnated with disease, or where foul matter has been allowed to soak into walls or floors, or where they are so dilapidated as to be a source of danger to life or limb." In the case of nuisances not within this Act, the parties aggrieved are left to their remedy by action. See *Downing* v. *Falmouth United Sewerage Board* (1888), 4 T. L. R. 552. See also *Fulham Vestry* v. *London County Council*, [1897] 2 Q. B. 76; 61 J. P. 440; 66 L. J. Q. B. 515; 76 L. T. 691; 45 W. R. 620. The facts of this case are set out in note (*c*), *infra*, to this section. It is the duty at common law of the owner of vacant land to prevent his land from being a public nuisance, although such a nuisance may be caused by the acts of other persons; and the Attorney-General, on behalf of the public, is entitled to an injunction to prevent such owner from committing a breach of that duty (*Att.-Gen.* v. *Tod-Heatley*, [1897] 1 Ch. 560; 66 L. J. Ch. 275; 76 L. T. 174; 45 W. R. 394).

In *Att.-Gen. (at the relation of the Strand District Board of Works)* v. *Kirk* (1896), 12 T. L. R. 514, the plaintiffs moved for an interlocutory injunction to restrain the defendant, a builder, from allowing an excavation or trench in Little Newport Street to remain open, and from allowing the footpath on the south side of the street to remain without a proper pavement. The defendant contended that the licence from the plaintiff under which he opened the street had expired, and in consequence of his having failed to carry out a building agreement in respect of a site adjoining the street, the freeholder had determined it and claimed possession of the site. The Court of Appeal, finding that the defendant was not out of possession, restrained him from allowing the excavation or trench to remain so as to be dangerous to the street, or the sewer, or the adjoining houses, and also from allowing the excavation or trench to remain in such a state as to be or create a nuisance, or to be or become injurious to the public health.

What is a nuisance within the section.

Upon similar words in the Nuisances Removal Act, England, 1855 (18 & 19 Vict. c. 121), s. 10 (now repealed), it was held that the percolation and dripping of water from a railway bridge on to the road beneath was not a nuisance within the Act (*Great Western Rail. Co.* v. *Bishop* (1872), L. R. 7 Q. B. 550; 37 J. P. 5; 41 L. J. M. C. 120; 26 L. T. (N.S.) 905; 20 W. R. 969). But though the word nuisance, as used in this section, does not include every common law nuisance, it is not necessary that a nuisance, in order to be within this Act, should also be injurious or dangerous to health, inasmuch as the terms are disjunctive, nuisance *or* injurious *or* dangerous. It is sufficient if the nuisance is one which interferes with personal comfort (*per* STEPHEN, J., in *Bishop Auckland Local Board* v. *Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138; 47 J. P. 389; 52 L. J. M. C. 38; 48 L. T. (N.S.) 223; 31 W. R. 288). In that

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case an accumulation or deposit of cinders, ashes, and refuse, which were allowed to smoulder and throw off strong fumes or effluvia, were held to be a nuisance and within the corresponding words of s. 91 of the Public Health Act, 1875, though it was not injurious to health. Similar decisions were given upon similar words in ss. 47 and 114 of that Act. See *Banbury Sanitary Authority* v. *Page* (1881), 8 Q. B. D. 97 ; 46 J. P. 184 ; 51 L. J. M. C. 21 ; 45 L. T. (N.S.) 759 ; 30 W. R. 415 ; *Malton Board of Health* v. *Malton Farmers' Manure Co.* (1879), 4 Ex. D. 302 ; 44 J. P. 155 ; 49 L. J. M. C. 90 ; 40 L. T. (N.S.) 755 ; 27 W. R. 802 ; *Houldershaw* v. *Martin* (1885), 49 J. P. 179 ; 1 T. L. R. 323.

User immaterial.

The words of the clause are "premises in such a state," etc. It would appear, therefore, that they apply only to premises which, but for their condition, would not be a nuisance, and not to premises which are a nuisance by reason of the purposes for which they are used. Thus, it is submitted that they would not apply to premises used simply for an offensive trade so long as the condition of the premises was not in question. See s. 19, *post*, as to offensive trades. Nor would they apply to a building which was a nuisance only by reason of its being used as a hospital for infectious diseases, as in *Metropolitan Asylums Board* v. *Hill* (1881), 6 App. Cas. 193 ; 45 J. P. 664 ; 50 L. J. Q. B. 353 ; 44 L. T. (N.S.) 653 ; 29 W. R. 617 ; *Bendelow* v. *Guardians of Wortley Union* (1887), 4 T. L. R. 67 ; *Garton* v. *Guildford, Godalming and Woking Joint Hospital Board*, Times, March 23rd, 1895. On the other hand, it is submitted that a house which is a nuisance by reason of its being ruinous and likely to fall down might be a nuisance within this section. A house in such a condition may be a nuisance at common law (*R.* v. *Watts* (1703), 1 Salk. 357. And see *Chauntler* v. *Robinson*, (1849), 4 Exch. 163 ; *Leslie* v. *Pounds* (1812), 4 Taunt. 649 ; *Silverton* v. *Marriott* (1888), 52 J. P. 677 ; 59 L. T. (N.S.) 61). As to the liability of a person for allowing premises to be out of repair, and so a nuisance whereby injury is caused, see *Payne* v. *Rogers* (1794), 2 Bl. H. 350 ; *Todd* v. *Flight* (1860), 9 C. B. (N.S.) 377 ; 30 L. J. C. P. 21 ; *Gandy* v. *Jubber* (1865), 9 B. & S. 15 ; 13 W. R. 1022 ; *Pretty* v. *Bickmore* (1873), L. R. 8 C. P. 401 ; 37 J. P. 552 ; 28 L. T. (N.S.) 704 ; 21 W. R. 733 ; *Nelson* v. *Liverpool Brewery Co.* (1877), 2 C. P. D. 311 ; 46 L. J. C. P. 675 ; 25 W. R. 877 ; *Gwinnell* v. *Eamer* (1875), L. R. 10 C. P. 658 ; 32 L. T. (N.S.) 835 ; *Sandford* v. *Clarke* (1888), 21 Q. B. D. 398 ; 52 J. P. 773 ; 57 L. J. Q. B. 507 ; 59 L. T. (N.S.) 226 ; 37 W. R. 28 ; *Braithwaite* v. *Watson* (1889), 5 T. L. R. 331 ; *Bowen* v. *Anderson*, [1894], 1 Q. B. 164 ; 58 J. P. 213 ; 42 W. R. 236 ; *Lane* v. *Cox*, [1897] 1 Q. B. 415 ; 66 L. J. Q. B. 193 ; 76 L. T. 135 ; 45 W. R. 261 ; *Harrold* v. *Watney*, [1898] 2 Q. B. 320 ; 67 L. J. Q. B. 771 ; 78 L. T. (N.S.) 788 ; 46 W. R. 642 ; *Cavalier* v. *Pope*, [1906] A. C. 428 ; 75 L. J. K. B. 609 ; 95 L. T. (N.S.) 65 ; 22 T. L. R. 648 ; *Malone* v. *Laskey and Another*, [1907] 2 K. B. 141 ; 76 L. J. K. B. 1134 ; 97 L. T. (N.S.) 324 ; 23 T. L. R. 399 ; *Kennedy* v. *Bruce* (1907), Scotch Sessions Cases, 845. As to a

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nuisance arising from a gipsy encampment, see *Att.-Gen.* v. *Brown*, Times, July 23rd, 1898. Whenever the legislature has authorised a proprietor to make a particular use of his land, and the authority is permissive and not imperative, the legislature must be held to have intended that the use sanctioned is not to be in prejudice of the common law rights of others (*Canadian Pacific Rail. Co.* v. *Parke*, [1899] A. C. 535 ; 68 L. J. P. C. 89 ; 81 L. T. 127 ; 48 W. R. 118).

In some cases of nuisances which might fall within this clause another remedy may be found under the byelaws made under s. 16, *post*.

By s. 8 (1) of the Housing of the Working Classes Act, 1903 (3 Edw. 7 c. 39), it is provided that if in the opinion of the local authority any dwelling-house is not reasonably capable of being made fit for human habitation, or is in such a state that the occupation thereof should be immediately discontinued, it shall not be necessary for them before obtaining a closing order, to serve a notice on the owner or occupier of the premises to abate the nuisance, and a justice may issue a summons for a closing order and a closing order may be granted, although such a notice has not been served.

(*c*) This clause is taken from 18 & 19 Vict. c. 121, s. 8 (now repealed), with the addition of the words "cistern, water-closet, earth-closet, . . . dung-pit." These words do not occur in the corresponding clause of the Public Health Act, 1875, s. 91.

As to the meanings of the expressions "ashpit" and "cistern" respectively, see s. 141, *post*.

See s. 16, *post*, as to byelaws for preventing nuisances from offensive matter running out of any manufactory, etc., closing of cesspools and privies, disposal of refuse, etc. ; and s. 39 as to byelaws with respect to water-closets, etc. See also ss. 41 and 42, *post*.

What drains, etc. within the section.

It should be observed that the clause does not refer to a sewer, but only to a drain. See *per* WILLS, J., in *R.* v. *Parlby*, *supra*. It has been held that it does not apply to public sewers, and therefore that justices have no jurisdiction to make a summary order on the London County Council in respect of a main sewer vested in the council and forming part of the main drainage system of London (*Fulham Vestry* v. *London County Council*, [1897] 2 Q. B. 76 ; 61 J. P. 440 ; 66 L. J. Q. B. 515 ; 76 L. T. (N.S.) 691 ; 45 W. R. 620). There is no definition of a drain in this Act, but it would probably be held to have the same meaning as in the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120). That Act provides by s. 250 that the word "drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any block or group of houses by a combined operation under the order of any vestry or district

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board; and the word "sewer" shall mean and include sewers and drains of every description, except drains to which the word "drain," interpreted as aforesaid, applies. It is the duty of the sanitary authority to keep in proper condition the sewers vested in them (18 & 19 Vict. c. 120, s. 69). Therefore, in many cases where complaint has been made of a nuisance in a drain, the defence has been that the so-called drain is a sewer. See the cases cited in the notes to s. 141, *post*.

The owner and occupier of a house within a sanitary district was summoned at petty sessions by the sanitary authority for causing the water-closet attached to the house to discharge night soil into the water channel under the main street of N., a town within the district, causing a dangerous nuisance. It was proved that the channel or drain in question was, from its size and from having a gravel bottom, unsuited to receive and carry off fæcal matter, and was only intended to carry off surface water. There was no other sewer in N. into which the sewage from the houses could be discharged, but the sanitary authority had made arrangements for the carting away of sewage weekly. There was no evidence of any nuisance on the defendant's premises, but it appeared that the drain or channel was in a most offensive state; and the justice being satisfied that a nuisance existed ordered the defendant to disconnect the soil-pipe of the water-closet with the drain in the main street, so as to prevent any deposit or accumulation from the water-closet being discharged into the drain. On a case stated:—*Held* (*diss.* DOWSE, B.), that the justice's order was wrong and should be quashed (*Molloy* v. *Gray* (1889), 24 L. R. Ir. 258).

An owner of a publichouse erected a urinal in a private passage leading out of the street, and enclosed it between doors, which he kept locked at night. There was a space between the line of area railings in the street and the urinal door nearest to the street, which space he shut off from the street with an iron gate placed flush with the line of railings. This gate was never locked. It was proved that persons habitually used the space between the door and the gate in such a manner as to cause to the neighbours a nuisance, which he took no steps to prevent:—*Held*, by KAY, J., that he was responsible for such user, it being a probable consequence of the manner in which he had arranged the premises (*Chibnall* v. *Paul & Son* (1881), 29 W. R. 536).

The appellants were possessed of chemical works at H., and were entitled to discharge refuse by two separate drains into a public sewer. By the one drain liquid impregnated with muriatic acid was discharged, and by the other drain liquid impregnated with sulphur. Upon their combination in the sewer sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No nuisance existed in the appellants' drains. The respondents had not properly flushed, cleansed, and trapped the sewer. Complaint having been made by the respondents of the escape of the sulphuretted hydrogen gas, an order for the abatement thereof was made by justices on the

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appellants :—*Held*, that the escape of the gas was a nuisance within the meaning of the corresponding provisions of 18 & 19 Vict. c. 121, s. 8 (now repealed), that it arose from the acts of the appellants, and that the respondents could lawfully make complaint thereof, although they themselves might have contributed to the existence of the nuisance (*St. Helen's Chemical Co.* v. *Corporation of St. Helens* (1876), 1 Ex. D. 196 ; 40 J. P. 491 ; 45 L. J. M. C. 150 ; 34 L. T. 397). It is to be observed that this decision was given with reference to 18 & 19 Vict. c. 121, which contained no definition of drain or sewer. See also *Kinson Pottery Co.* v. *Poole Corporation* [1899] 2 Q. B. 41 ; 63 J. P. 580 ; 68 L. J. Q. B. 819 ; 81 L. T. 24 ; 47 W. R. 607.

On a complaint written upon an anonymous postcard, the inspector of a sanitary authority in London on March 26th, 1904, visited certain premises, but found no evidence of a nuisance. On May 17th, 1906, the sanitary authority having served the occupier of these premises with a notice under s. 82 of the Metropolis Management Act, 1855, and s. 40 of the Public Health (London) Act, 1891, entered on the premises and opened up the ground, when it was found that the drain was made with clay joints, which clay had entirely perished. Subsequently, notices having been served on the owner to abate a nuisance, under the Act of 1891, on his failing to comply with the notices, a summons was taken out, and in October, the magistrate finding that there was "a leaking drain," made an order upon him to abate the nuisance under s. 4 of this Act :—*Held*, that the magistrate having found that there was "a leaking drain," had not merely found that there was a defective drain, but that there was a leaking drain which was a nuisance within the meaning of s. 4.

In this case, BRAY, J., reserved his decision as to whether a defective drain could be in itself a nuisance (*Farmer* v. *Long* (1908), 72 J. P. 91).

(*d*) See the proviso in the next sub-section. See also s. 16, *post*, as to the making of byelaws for the prevention of the keeping of animals on any premises so as to be a nuisance or injurious to health ; and s. 17, which relates to the keeping of swine.

Keeping of animals.

The appellant, being owner of a market held in a town, erected sheep pens on the pavement in front of the houses, and took toll for the sheep offered therein for sale. For fifty-five years and upwards the occupiers of the houses before which the pens were set up, had been in the habit of clearing away the droppings of the sheep, and appellant's servants never cleared them away except in cases where houses were unoccupied. A complaint was lodged by the inspector of nuisances against the appellant for not removing the nuisance thus caused by the sheep, and the justices issued their prohibition to the appellant. It was held that appellant was a "person through whose act, default, or sufferance," the nuisance arose, within the meaning of s. 12 of the Nuisances Removal Act, 1855, and that the ground enclosed by the hurdles and used as pens was "land or tenement" within the

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meaning of the said Act. It was held also, that the nuisance was a recurring nuisance (*Draper* v. *Sperring* (1861), 10 C. B. (N.S.) 113 ; 25 J. P. 566 ; 30 L. J. M. C. 225 ; 4 L. T. (N.S.) 365).

Noisome accumulations.

(*e*) See the proviso in the next sub-section as to accumulation or deposits arising in any trade or manufacture.

Byelaws made under s. 16, *post*, may relate to some accumulations or deposits which may be nuisances within this clause. See also ss. 22, 29—36, as to street, house, and trade refuse.

A statement of claim alleged that the surface of the defendant's land had been artificially raised by earth placed thereon, and that, in consequence, rain-water falling on the defendant's land made its way through the defendant's wall into the adjoining house of the plaintiff and caused substantial damage. It was held, upon demurrer, that the statement of claim disclosed a good cause of action (*Hurdman* v. *North Eastern Rail. Co.* (1878), 3 C. B. D. 168 ; 42 J. P. 388 ; 47 L. J. C. P. 368). It is submitted that such an accumulation or deposit would be a nuisance within this clause.

Where a stableman kept dung accumulating so that the neighbouring inhabitants had to shut their windows, it was held that he was liable to be convicted under a local Act which imposed a penalty for keeping offensive matter so as to cause a nuisance (*Smith* v. *Waghorn* (1863), 27 J. P. 744).

A pier and harbour company in whom a harbour was vested were held bound, under 18 & 19 Vict. c. 121, s. 12 (now repealed), to remove seaweed which by the action of the sea was drifted into the harbour, and being left there became a nuisance (*Proprietors of Margate Pier and Harbour* v. *Margate Town Council* (1869), 33 J. P. 437 ; 20 L. T. (N.S.) 564).

It is the duty at common law of the owner of vacant land to prevent his land from being a public nuisance, although such nuisance may be caused by the acts of other persons, and the Attorney-General, on behalf of the public, is entitled to an injunction to prevent such owner from committing a breach of that duty (*Att.-Gen.* v. *Tod Heatley*, [1897] 1 Ch. 560 ; 66 L. J. Ch. 275 ; 76 L. T. (N.S.) 174 ; 45 W. R. 394). And see *Att.-Gen.* v. *Kirk* (1896), 12 T. L. R. 514, *ante*, p. 5.

In Ireland it has been held that the accumulation or deposit must have an element of permanency, and that the loading and unloading of manure in the ordinary course from a railway company's waggons for delivery to customers was not within the corresponding enactment (*Great Northern Rail. Co.* v. *Lurgan Commissioners*, [1897] 2 I. R. 340).

See also *Att.-Gen.* v. *South Eastern and Chatham Rail. Co.'s Managing Committee*, Times, July 10th, 1902, and *Att.-Gen.* v. *Keymer Brick and Tile Co.* (1903), 67 J. P. 353 ; Times, July 16th ; 1 L. G. R. 654.

Over-crowding.

(*f*) The words "whether or not members of the same family" did not occur in the Sanitary Act, 1866 (29 & 30 Vict. c. 90, s. 19).

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It may be doubted whether these words were necessary, having regard to the decision in *Rye Union (Guardians of)* v. *Payne* (1875), 39 J. P. 375 ; 44 L. J. M. C. 148). They occur, however, in the corresponding clause of s. 91 of the Public Health Act, 1875.

As to the meaning of the expression "house," see s. 141, *post*.

See the proviso in the next sub-section, where the house is used as a dwelling-house, and also as a factory, workshop, or workplace.

In a Scotch case, decided by the High Court of Justiciary, *Home* v. *Local Authority of Kelso* (1876), 3 Coup. 239, it was held that when a landlord let along with a farm a cottage, into which the tenant put a bailiff, and the cottage was overcrowded by the bailiff's family, the tenant and not the landlord was liable for the nuisance.

A building belonging to the trustees of a religious association, and used for purposes of religious service in the daytime, was used at night as a shelter for the homeless and destitute poor. It contained no sleeping accommodation, but the persons admitted slept on the chairs used to seat the congregation or on the bare floor :—*Held*, that it was a house within the above section. Orders as to the number of persons to be admitted were given by the superintendent of the philanthropic work of the religious association to the caretaker of the building apparently on his own responsibility :—*Held*, that the superintendent was the person by whose act, default, or sufferance the nuisance from overcrowding arose (*R.* v. *Mead* (1895), 59 J. P. 150 ; 64 L. J. M. C. 169 ; 11 T. L. R. 242).

A similar shelter belonging to the Salvation Army was held to be within this section, and the court refused to quash the conviction, though the premises were not therein specifically referred to as a *house*. The court also held that the persons sheltered were "inmates" (*R.* v. *Slade* (1896), 60 J. P. 358 ; 65 L. J. M. C. 108 ; 74 L. T. (N.S.) 656 ; Times, May 5th). In *Wimbledon Urban District Council* v. *Hastings* (1902), 67 J. P. 45 ; 87 L. T. 118, it was held that "house" in s. 91 (5) of the Public Health Act, 1875, includes a day school where there are no boarders and where none of the members of the staff reside.

And see s. 7, *post*, as to the effect of two convictions for overcrowding. See also s. 95, which applies the provisions in the clause to tents, vans, sheds, or similar structures used for human habitation.

(*g*) See this enactment in the First Schedule, *post*.

(*h*) This section only applies to factories, etc. which are not subject to the provisions of the Factory and Workshop Act, 1878, relating to cleanliness, ventilation, and overcrowding. This Act was repealed by the Factory and Workshop Act, 1901. See s. 161 and the Seventh Schedule of the last-named Act. The Act of 1901 consolidates with amendments the provisions of the earlier Factory and Workshop Acts. A nuisance under this section can only be dealt with under the Act if there is not already a remedy

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under the Factory and Workshop Act, 1901. Section 3 of the last-named Act provides that a workshop shall, for the purposes of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein if the number of cubic feet of space in any room therein bears to the number of persons employed at one time in the room a proportion less that 250, or, during any period of overtime, 400 cubic feet of space to every person. These figures may be modified by a Secretary of State.

(*i*) The first of these provisoes is taken from 18 & 19 Vict. c. 121, s. 8 (now repealed), and corresponds to the first proviso in s. 91 of the Public Health Act, 1875.

The second proviso is new.

Information of nuisances to sanitary authority.

3. Information of a nuisance liable to be dealt with summarily under this Act in the district of a sanitary authority may be given to that authority by any person, and it shall be the duty of every officer of that authority and of every relieving officer, in accordance with the regulations of the authority having control over him, to give that information ; and it shall be the duty of the said authority to make the said regulations, and also the duty of the sanitary authority to give such directions to their officers as will secure the existence of the nuisance being immediately brought to the notice of any person who may be required to abate it, and the officer shall do so by serving a written intimation.

Under 18 & 19 Vict. c. 121, s. 10 (now repealed), information of a nuisance might have been given by any person aggrieved thereby or by any of the following persons : The sanitary inspector or any paid officer under the said local authority ; two or more inhabitant householders of the parish or place to which the notice related ; the relieving officer of the union or parish ; any constable or any officer of the constabulary or police force of the district or place.

Under the corresponding section of the Public Health Act, 1875, s. 93, information of a nuisance may be given to a local authority by any person aggrieved, or by any two inhabitant householders, or by any officer of the authority, or by any relieving officer or constable or police officer of the district. The text simplifies the law by allowing any person to give information. The rest of the section relating to the duties of officers and the directions to be given to officers by the sanitary authority is new. See, further, as

to the duties expressly imposed by the Act on sanitary inspectors, s. 107 (3), *post*.

The written intimation to be given by an officer under the section does not appear to supersede or take the place of the formal notice which the sanitary authority must themselves give under the next section.

Recovery of expenses from local authority by owners.

In *Thompson and Norris Manufacturing Co.* v. *Hawes and Another* (1895), 59 J. P. 580 ; 73 L. T. (N.S.) 369, a sanitary authority caused an intimation to be given, addressed to the owners of premises, to the effect that if certain necessary works were not completed within a specified time they would commence proceedings against them "by the service of a statutory notice." Thereupon the occupiers, without forwarding the document to the owners, caused the work to be executed, and then sought to recover the amount expended thereon from the owners. It was held that the occupiers, not being compellable to execute the work had acted as mere volunteers, and had no claim to be reimbursed by the owners.

It would appear from the judgment of CHANNELL, J., in *North* v. *Walthamstow Urban District Council* (1898), 62 J. P. 836 ; 67 L. J. Q. B. 972, that an intimation, under this section, is sufficient to make the sanitary authority liable to repay the cost incurred in abating the nuisance if that nuisance arose from the condition of a sewer as distinguished from a drain. See also *Ellis* v. *Bromley Rural District Council* (1899), 63 J. P. 711 ; 81 L. T. (N.S.) 224. In *Proctor* v. *Islington Borough Council* (1902), 67 J. P. 164 ; 18 T. L. R. 505, the defendants served upon the plaintiff written notice to the effect that certain drains upon the plaintiff's premises were in a defective condition. In consequence, the plaintiff incurred expense in executing the works required to remedy the defect. It was admitted that the works were works upon a sewer which it was the duty of the local authority to maintain. WRIGHT, J., held that the plaintiff could not recover the expenses she had incurred ; the plaintiff had not done the work under compulsion or at such a time as the defendants themselves were bound to perform the work. This case came before the Court of Appeal, and the court, by consent of the parties, assessed an amount to be paid to the plaintiff.

In *Harris and Another* v. *Hickman*, [1904] 1 K. B. 13 ; 68 J. P. 65 ; 73 L. J. K. B. 31 ; 89 L. T. 722 ; 20 T. L. R. 18 ; 2 L. G. R. 1, while the defendant was in occupation of the plaintiff's house the sanitary inspector of the district served upon the owners of the house an intimation under this section that the house was in such a state as to be a nuisance owing to the drain being defective. The owners gave notice to the defendant, and required him to do the work necessary to abate the nuisance. Upon the defendant refusing to do so, the owners proceeded to do the work themselves, at once, without waiting to be served by the sanitary authority with a notice under s. 4 of the Act requiring them to do the work. In an action by the owners to recover the expenses incurred by them in doing the work from the defendant under his covenant

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to pay all outgoings, WRIGHT, J., held that the owners, having done the work immediately upon receipt of the intimation of the existence of the nuisance and before service of any notice requiring them to abate it, did it voluntarily and not under any obligation, and that the expenditure was consequently not an "outgoing" within the meaning of the covenant. In *Oliver* v. *Camberwell Borough Council* (1904), 68 J. P. 165; 90 L. T. 285; 52 W. R. 511; 2 L. G. R. 617, an owner of premises received a written intimation under s. 3, duly signed by the officer of the sanitary authority, making known to him the existence of a nuisance at his premises, and requesting him to abate the same within seven days, otherwise the sanitary authority would commence proceedings against him by the service of a statutory notice. The owner, without waiting for the service of the statutory notice under s. 4 of the Act requiring him to abate the nuisance, did the necessary works to abate the nuisance, in the course of which he discovered that the work was a sewer and not a drain. He completed the work, and brought an action against the sanitary authority to recover the expenses as for work done by him under compulsion which the sanitary authority were legally compellable to do :—*Held*, but only on the authority of *Thompson and Norris Manufacturing Co.* v. *Hawes*, *supra*, that work done under an "intimation" given under s. 3 is not work done under compulsion, and that as the owner had not waited for the statutory notice under s. 4, but had done the work under the "intimation" notice, the work was not done by him under compulsion, and he was not entitled to recover the expenses of the work. In *Haedicke* v. *Friern Barnet Urban District Council*, [1904] 2 K. B. 807; 68 J. P. 473; 73 L. J. K. B. 976; 20 T. L. R. 567, reversed on appeal on another ground, [1905] 1 K. B. 110; 69 J. P. 45; 74 L. J. K. B. 130; 91 L. T. (N.S.) 750; 53 W. R. 211; 21 T. L. R. 49; 3 L. G. R. 20, CHANNELL, J., in his judgment referred to the above-mentioned cases, and expressed the opinion that the decision in *North* v. *Walthamstow Urban District Council*, *supra*, was correct. A distinction is also there drawn, in the matter of compulsion, between cases of landlord and tenant where money paid under an alleged compulsion of a local authority was being sued for by the one against the other, and cases where one person sued another in respect of money alleged to have been paid by him by reason of pressure put upon him by the person whom he is suing. The case of *Oliver* v. *Camberwell Borough Council* came before the Court of Appeal, and was settled in the course of the argument (Law Times, Nov. 12th, 1904, p. 34).

In a more recent case, where a group of premises drained by a combined operation discharged their drainage through a common pipe or conduit into a public sewer, the pipe being defective and causing a nuisance, the defendants served "intimation" notices on several owners, including the plaintiffs, requiring them to repair the pipe and abate the nuisance, and threatening proceedings if the said notice should not be complied with. The plaintiffs denied liability, did the work required under protest, and brought

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an action to recover the cost of the work and damages for injury to their premises caused by the defective condition of the said pipe. It was held by CHANNELL, J., that the said pipe was a sewer and repairable by the defendants, and that although service of an intimation notice does not by itself amount to compulsion, when work is done in compliance with such a notice under protest, or without admitting liability, such work is done under compulsion and not voluntarily, and the expenses of doing such work can be recovered from the local authority, which was in fact liable to do it. The above-mentioned cases are referred to by CHANNELL, J., in his judgment (*Wilson's Music and General Printing Co. v. Finsbury Borough Council* (1908), 72 J. P. 37).

See the reference to the foregoing and other cases in the notes to s. 121, *post*.

As to the respective liabilities of landlord and tenant in respect of costs and expenses which are recoverable under this Act by a sanitary authority from an owner or occupier of premises, see s. 121, *post*, and the notes thereto.

Notice requiring abatement of nuisance (*a*).

4.—(1) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act (*b*) the sanitary authority shall, if satisfied of the existence of a nuisance, serve a notice (*c*) on the person by whose act, default, or sufferance the nuisance arises or continues (*d*), or, if such person cannot be found, on the occupier or owner (*e*) of the premises (*f*) on which the nuisance arises, requiring him to abate the same within the time specified in the notice (*g*), and to execute such works and do such things as may be necessary for that purpose (*h*), and, if the sanitary authority think it desirable (but not otherwise), specifying any works to be executed (*i*).

(2) The sanitary authority may also by the same or another notice served on such occupier, owner, or person require him to do what is necessary for preventing the recurrence of the nuisance, and, if they think it desirable, specify any works to be executed for that purpose, and may serve that notice notwithstanding that the nuisance may for the time have been abated, if the sanitary authority consider that it is likely to recur on the same premises (*k*).

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(3) Provided that—

(a) Where the nuisance arises from any want or defect of a structural character (*l*), or where the premises (*m*) are unoccupied (*n*), the notice shall be served on the owner (*o*) :

(b) Where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the occupier or owner of the premises, the sanitary authority may themselves abate the same and may do what is necessary to prevent the recurrence thereof (*p*) :

(c) Where the medical officer of health certifies to the sanitary authority that any house or part of a house in their district is so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, the sanitary authority shall take proceedings under this section for the abatement of such nuisance (*q*) :

(d) Where the nuisance is such absence of water-fittings as is declared a nuisance by section thirty-three of the Metropolis Water Act, 1871 (set out in the First Schedule to this Act), such absence shall be deemed to render the premises unfit for human habitation unless and until the contrary is shown to the satisfaction of the court (*r*).

34 & 35 Vict. c. 113.

(4) Where a notice has been served on a person under this section, and either—

(a) The nuisance arose from the wilful act or default of the said person ; or

(b) Such person makes default in complying with any of the requisitions of the notice within the time specified,

he shall be liable to a fine not exceeding ten pounds for each offence, whether any such nuisance order as in this Act mentioned is or is not made upon him (*s*).

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(*a*) This sub-section is taken from 29 & 30 Vict. c. 90, s. 21 (now repealed), which it reproduces in substance with the exception of the concluding words, which are new.

(*b*) See s. 2 (1), *ante*.

(*c*) A form of this notice will be found in Sched. 3, *post*. As to the authentication and service of notice, see ss. 127, 128, *post*. It should be observed that the notice must be given by the local authority, or a committee appointed under s. 99 (4), *post*. It cannot be given by the clerk or other officer of his own accord without the previous direction of the sanitary authority. See *St. Leonard, Shoreditch* (*Vestry of*) v. *Holmes* (1885), 50 J. P. 132.

Form and authentication of notice.

A committee appointed by a metropolitan vestry under s. 58 of the Metropolis Management Act, 1855, for the purpose (*inter alia*) of executing the Metropolis Management Acts, so far as they related to the public health of the parish, being informed by the sanitary inspector that a nuisance existed upon certain premises endangering the health of the inhabitants, directed the inspector to serve notice upon the owner of the premises under the said Acts requiring him to abate the nuisance, and in default to take proceedings. The inspector, in pursuance of such direction, served the required notice, and, upon the owner failing to comply with it, laid an information against him for penalties under the said Acts, and a summons was issued. After the issue of the summons and before the hearing of the information, the vestry by resolution approved the acts of the committee in causing the notice to be served and the information to be laid:—*Held*, that the approval of the vestry, although given after the service of the notice and the issue of the summons, was sufficient, and that the owner was liable to be convicted (*Firth* v. *Staines*, [1897] 2 Q. B. 70; 61 J. P. 452; 66 L. J. Q. B. 510; 76 L. T. 496; 45 W. R. 575; 13 T. L. R. 394).

See s. 120 as to the service of the notice upon one of several persons jointly liable.

This notice need not be given in cases under s. 21, *post* (*Bird* v. *St. Mary Abbott, Kensington* (*Vestry of*), [1895] 1 Q. B. 912; 59 J. P. 391; 64 L. J. M. C. 215; 72 L. T. (N.S.) 599).

(*d*) The owner or occupier is not to be served as such if the person by whose act, default, or sufferance the nuisance arises can be found. See *Richmond Union* v. *Dean and Chapter of St. Paul's* (1868), 32 J. P. 374; 18 L. T. (N.S.) 522. But it is not always easy to decide as between owner and occupier which of them should be treated as liable for the nuisance as the person by whose act, default, or sufferance the nuisance has arisen. The following cases may be referred to as indicating the principles which should be followed in deciding the question. If the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for such nuisance being continued or created during the term. He is also liable if he let a building which requires particular care to prevent the occupation from being a nuisance, and the nuisance

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occur for the want of such care on the part of the tenant. If a party buy a reversion during the tenancy, and the tenant afterwards during his term erect a nuisance, the reversioner is not liable for it; but if such reversioner re-let, allowing the nuisance to continue, he is liable for such continuance. And such purchaser is liable to be indicted for the continuance of the nuisance, if the original reversioner would have been liable, though the purchaser has had no opportunity of putting an end to the tenant's interest or abating the nuisance (*R.* v. *Pedley* (1834), 1 A. & E. 822; 3 L. J. M. C. 119. See also *Todd* v. *Flight* (1860), 9 C. B. (N.S.) 377; 30 L. J. C. P. 21). From this decision it would seem to follow that when an owner or reversioner would be liable to be indicted for a nuisance, and is, therefore, to be regarded as the person by whose act, default, or sufferance the nuisance arises or continues, the local authority may proceed against him under this part of the section. But, of course, it does not also follow that the tenant may not also be a person by whose act, etc., the nuisance arises. Thus, in *Russell* v. *Shenton* (1842), 3 Q. B. 449; 11 L. J. Q. B. 289, it was held that the occupier and not the owner was primâ facie liable for damages for a nuisance consisting of defective drains; and the principle thus laid down appears to be of general application, although the proviso in the latter part of this section might possibly apply to the case of drains defective in point of construction. See also *per* PARKE, B., in *Chauntler* v. *Robinson* (1849), 4 Exch., at p. 169; 19 L. J. Ex. 170. And it has been held that if the lessee of property proceeding by the licence of the lessor performs acts, which amount to a nuisance, both of them are liable at law and in equity (*White* v. *Jameson* (1874), L. R. 18 Eq. 303; 38 J. P. 694; 22 W. R. 761). In *Broder* v. *Saillard* (1876), 2 Ch. D. 692; 45 L. J. Ch. 414; 24 W. R. 456, it was held that the occupier of a house is liable for allowing the continuance on his premises of any artificial work which causes an injury to a neighbour, even though it has been put there before he took possession (*Broder* v. *Saillard* was followed in *Reinhardt* v. *Mentasti* (1889), 42 Ch. D. 685; 58 L. J. Ch. 787; 61 L. T. (N.S.) 328; 38 W. R. 10; 5 T. L. R. 709. And see *Tarry* v. *Ashton* (1876), 1 Q. B. D. 314; 40 J. P. 439; 45 L. J. Q. B. 260; 34 L. T. (N.S.) 97; 24 W. R. 581; *Silverton* v. *Marriott* (1888), 52 J. P. 677; 59 L. T. (N.S.) 61). In *Gandy* v. *Jubber* (1864—1865), 5 B. & S. 78, 485; 9 B. & S. 15, the tenancy was from year to year, and the Court of Queen's Bench held that the landlord might have re-entered at the end of each year, and that he was, therefore, liable for the consequences resulting from an accident caused by a grating in front of the house having been for some years in a defective state. In the Exchequer Chamber this decision was overruled on the ground that it proceeded on a misapprehension of the peculiar relations existing between the landlord and tenant in the case of a tenancy from year to year. Such a tenancy requires something to be done between the landlord and tenant in order to determine the tenancy. The same principle applies to a tenancy from week to week. See *Bowen* v. *Anderson*, [1894] 1 Q. B. 164; 58 J. P. 213; 42 W. R. 236; 10 R. 47, disapproving of a contrary

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decision in *Sandford* v. *Clarke* (1875), 21 Q. B. D. 398 ; 52 J. P. 773 ; 57 L. J. Q. B. 507 ; 59 L. T. (N.S.) 226 ; 37 W. R. 28. And see *Winter* v. *Baker* (1887), 3 T. L. R. 569. A dictum of LITTLEDALE, J., in *R.* v. *Pedly*, to the effect that if a reversioner allows a nuisance to continue after he might have determined the tenancy he is liable, appears to be overruled by *Gandy* v. *Jubber*, but, as explained in *Sandford* v. *Clarke*, only in so far as it applies to a tenancy from year to year. See also *R.* v. *Barrett* (1862), 32 L. J. M. C. 36 ; *R.* v. *Stannard* (1863), 33 L. J. M. C. 61. When the nuisance consists of the dangerous condition of the premises demised to the tenant, and the tenant is liable to repair under a covenant, the landlord is not liable in respect of the nuisance, unless he has done some act authorising the continuance of the dangerous state of the premises (*Pretty* v. *Bickmore* (1873), L. R. 8 C. P. 401 ; 37 J. P. 552 ; 28 L. T. (N.S.) 704 ; 21 W. R. 733. And see *Nelson* v. *Liverpool Brewery Co.* (1877), 2 C. P. D. 311 ; 46 L. J. C. P. 675 ; 25 W. R. 877 ; *Cavalier* v. *Pope*, [1906] A. C. 428 ; 75 L. J. K. B. 609 ; 95 L. T. (N.S.) 65 ; 22 T. L. R. 648 ; *Malone* v. *Laskey and Another*, [1907] 2 K. B. 141 ; 76 L. J. K. B. 1134 ; 97 L. T. (N.S.) 324 ; 23 T. L. R. 399 ; and *Kennedy* v. *Bruce* (1907), Scotch Sessions Cases, 845). This rule applies even when the dangerous condition of the premises existed at the time of the demise, the lessee occupying under an obligation to repair (*Gwinnell* v. *Eamer* (1875), L. R. 10 C. P. 658 ; 32 L. T. (N.S.) 835). A. let to B. a field for the purpose of its being worked as a lime quarry. The ordinary way of getting the limestone was by means of blasting, and A. authorised the quarrying of the stone and the erection of lime kilns in the field. A nuisance was caused to the adjoining occupier by the blasting and by the smoke from the kilns, and he brought an action against A. and B. On demurrer by A. :— *Held*, that he, the landlord, was liable, although the nuisance was actually created by the act of his tenant, for the terms of the demise were an authority from him to B. to create the nuisance, which was, therefore, the necessary consequence of the mode of occupation contemplated in the demise (*Harris* v. *James and Another* (1876), 45 L. J. Q. B. 545 ; 35 L. T. (N.S.) 240). The court characterised the previous case of *Rich* v. *Basterfield* (1847), 4 C. B. 783 ; 16 L. J. C. P. 273, as one of excessive refinement. There A., the owner of a house with a fireplace and chimney, demised it to a tenant from week to week. The tenant lighted fires, and from the position of the chimney the emission of the smoke was a nuisance to B., the owner of the adjoining house. More than one week elapsed, during which A. did not determine the tenancy. In an action by B. against A. it was held that A. was not liable, as the tenant might by burning coke, or by abstaining to light fires, or in some similar way have used the premises without creating a nuisance. The owner is, of course, liable for the existence of a nuisance consisting of or arising out of the non-repair of premises when he has taken upon himself the duty of repairing (*Leslie* v. *Pounds* (1812), 4 Taunt. 649 ; *Payne* v. *Rogers* (1794), 2 Bl. H. 350) ; or where the lessee is bound by his

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agreement to do the act which leads to the damage or matter of complaint (*Burt* v. *Victoria Graving Co., Limited* (1882), 47 L. T. (N.S.) 378), for in this case the lessee resembles an agent of the lessor for the purposes of such act. See also *Kieffer* v. *Le Seminaire du Quebec*, [1903] A. C. 85 ; 72 L. J. P. C. 18 ; 87 L. T. (N.S.) 484 ; 19 T. L. R. 50.

It has been decided in Scotland that where a landlord let along with a farm a cottage, into which the tenant put a bailiff, and the cottage was overcrowded by the bailiff's family, the tenant and not the landlord was liable for the nuisance (*Home* v. *Kelso Local Authority* (1876), 3 Coup. 239).

It is submitted that, in general, the occupier and not the owner is the person by whose act, default, or sufferance a nuisance consisting of overcrowding arises. See *R.* v. *Mead; R.* v. *Slade*, *ante*, p. 11.

Where sheep were penned in pens fixed by the owner of a market on the highway of the market, and tolls were received by him for the same, it was held that the droppings of the sheep left therein constituted a recurring nuisance which arose from the default, permission, or sufferance of the owner of the market, for which he was liable (*Draper* v. *Sperring* (1861), 10 C. B. (N.S.) 113 ; 25 J. P. 566 ; 30 L. J. M. C. 225 ; 4 L. T. (N.S.) 365).

B. drained his premises into a barrel drain, which also received the sewage of other premises. This drain passed for about 300 yards under a turnpike road, and thence the sewage was conveyed by an open drain through certain land not belonging to B., and ultimately into an open drain about half a mile from B.'s premises, by the side of a road on land not B.'s. This open drain was a nuisance, the matter from B.'s premises in itself being sufficient to cause a nuisance. On complaint the justices ordered B. to abate the nuisance by cutting off all communication from his premises to the barrel drain. F. was the owner of six houses let to tenants. He had constructed a drain from the houses under land not his own by leave of the owner, by which the sewage was conveyed into and along a watercourse, and the accumulation at the mouth of the drain was a nuisance. On complaint the justices ordered F. to abate the nuisance :—*Held*, that the orders were rightly made on B. and F., for that they were the persons by whose act respectively the nuisances arose. In proceedings under the Act, the question whether or not the persons against whom the proceedings are taken have a legal right to cause their sewage to flow in the given channel, etc. is immaterial (*Brown* v. *Bussell*, *Francombe* v. *Freeman* (1868), L. R. 3 Q. B. 251 ; 9 B. & S. 1 ; 32 J. P. 196 ; 37 L. J. M. C. 65 ; 18 L. T. (N.S.) 19 ; 16 W. R. 611).

See the observations of MATHEW, J., on *Brown* v. *Bussell* in *Fordom* or *Wycombe Union* v. *Parsons*, [1894] 2 Q. B. 780 ; 58 J. P. 765 ; 64 L. J. M. C. 22 ; 71 L. T. (N.S.) 428 ; 10 R. 426. See also *Kinson Pottery Co.* v. *Poole Corporation*, [1899] 2 Q. B. 41 ; 63 J. P. 580 ; 68 L. J. Q. B. 819 ; 81 L. T. 24 ; 47 W. R. 607 ;

and *Wincanton Rural District Council* v. *Parsons*, [1905] 2 K. B. 34 ; 69 J. P. 242 ; 74 L. J. K. B. 533 ; 93 L. T. 13 ; 3 L. G. R. 771.

A harbour company were held to be the persons through whose default a nuisance from the accumulation of sea-weed in the harbour arose or continued (*Margate Pier and Harbour (Proprietors of)* v. *Margate Town Council* (1869), 33 J. P. 437 ; 20 L. T. (N.S.) 564).

Where there was a flow of sewage from several houses without appreciable damage from each, but the accumulation caused a nuisance on other properties, the occupiers of each of the houses were held liable (*Hendon Union (Guardians of)* v. *Bowles* (1869), 34 J. P. 19 ; 20 L. T. (N.S.) 609 ; 16 W. R. 510). See s. 120, *post*, as to the procedure when a nuisance is caused by the acts of two or more persons ; *Lambton* v. *Mellish*, [1894] 3 Ch. 163 ; 58 J. P. 835 ; 63 L. J. Ch. 929 ; 71 L. T. (N.S.) 385 ; 43 W. R. 5 ; 10 T. L. R. 601 ; and *Nathan* v. *Rouse*, [1905] 1 K. B. 527 ; 69 J. P. 135 ; 74 L. J. K. B. 285 ; 92 L. T. 321 ; 3 L. G. R. 354.

As to the persons liable for the evolution of sulphuretted hydrogen gas in a sewer, see *St. Helen's Chemical Co.* v. *St. Helen's (Corporation of)*, *ante*, p. 8.

The appellant rented land of the owner of houses and other land in the neighbourhood. The landowner, without the appellant's consent, made a sewer under the land occupied by the appellant. Pecuniary compensation was claimed at the time, but for two years the sewage of several houses passed through the sewer. The appellant, being unable to get satisfaction from his landlord, at length stopped up the sewer, and the local board obtained a conviction against him under ss. 94 and 96 of the Public Health Act, 1875, although no nuisance existed on his land. It was held, on a case stated, that the appellant was a person by whose act the nuisance arose or continued, and that he was rightly convicted (*Riddell* v. *Spear* (1879), 43 J. P. 317 ; 40 L. T. (N.S.) 130).

The drainage from a gaol in the township of W., which is outside the borough of L., built there by the corporation of L., and duly declared to be the common gaol of that borough, was carried thence by open drains overland in the township of B., not belonging to the corporation, and caused a nuisance in B. The corporation of L. were thereupon summoned by the Nuisances Removal Committee of B. under 18 & 19 Vict. c. 121 (now repealed). It was held that the corporation of L., and not the justices having the management of the gaol, were the proper persons to be summoned and ordered to do what was necessary under that Act (*Ex parte Mayor, etc. of Liverpool* (1857), 22 J. P. 562 ; 27 L. J. M. C. 89).

It should be observed that it is only when the person cannot be found by whose act, etc. the nuisance arises that the notice may be served on the owner or occupier as such. The local authority may serve either the owner or the occupier subject to the provision in sub-s. (3). Moreover, the provision in the text has to be read

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with sub-s. (3) (b), so that where the person causing the nuisance cannot be found, the liability of the owner of the premises to abate it only arises when it is shown that it continues by his act, default, or sufferance (*Thames* (*Conservators of River*) v. *London* (*Port Sanitary Authority of*), [1894] 1 Q. B. 647 ; 58 J. P. 335 ; 63 L. J. M. C. 121 ; 69 L. T. (N.S.) 803 ; 10 T. L. R. 161 ; and see *Broadbent* v. *Shepherd* (1900), 65 J. P. 70 ; 83 L. T. (N.S.) 504 ; 49 W. R. 205 ; *Broadbent* v. *Shepherd* (No. 2), [1901] 2 K. B. 274 ; 65 J. P. 499 ; 70 L. J. K. B. 628 ; 84 L. T. (N.S.) 844 ; 49 W. R. 521 ; and *Swinburn* v. *Hammersmith Borough Council* (1903), 67 J. P. 258 ; 88 L. T. 596 ; 2 L. G. R. 280).

As to the liability of the superintendent of a shelter, see *R.* v. *Mead* ; *R.* v. *Slade*, *ante*, p. 11. See also *Att.-Gen.* v. *Kirk* (1896), 12 T. L. R. 514, *ante*, p. 5.

In determining upon whom the notice should be served the sanitary authority may have to consider whether it is in the power of the person served to comply with it. Thus, if a nuisance exists on the lands of A., which has been caused by B., B. has no power to enter on A.'s land to abate the nuisance, and it was held that he cannot be ordered to do so (*Scarborough* (*Mayor of*) v. *Scarborough Rural Sanitary Authority* (1876), 1 Ex. D. 344 ; 40 J. P. 726 ; 34 L. T. (N.S.) 768). This case was followed in *R.* v. *Trimble* (1877), 41 J. P. 455 ; 36 L. T. (N.S.) 608, where it was suggested by COCKBURN, L.C.J., that the order should be made on the owner of the premises where the nuisance exists. But the authority of these cases is seriously shaken by *Parker* v. *Inge* (1886), 17 Q. B. D. 584 ; 51 J. P. 20 ; 55 L. J. M. C. 149 ; 55 L. T. (N.S.) 300. In that case a local authority served the owner of premises with a notice, under s. 94 of the Public Health Act, 1875, requiring him within seven days to abate a nuisance arising from the defective construction of a structural convenience, and for that purpose to execute certain specified works. Having failed to comply with the notice, the owner was summoned under s. 95 before a court of summary jurisdiction, and on the hearing it was proved that the premises in question were occupied by a tenant of the owner under a lease for twenty-one years, containing the usual covenants :— *Held*, that the owner, even although he could not enter upon the premises and execute the works without the tenant's permission, had made default in complying with the requisitions of the notice within the meaning of s. 95, and, therefore, that the justices had jurisdiction to make an order under s. 96, requiring him to abate the nuisance. The decision in *Scarborough* (*Mayor of*) v. *Scarborough Rural Sanitary Authority* has, however, been followed in a recent Irish case, *Letterkenny Commissioners* v. *Collins* (1891), 28 L. R. Ir. 235.

As to questions of liability, as between landlord and tenant, see s. 121, *post*, and the notes thereto.

(*e*) See the definition of the expression "owner" in s. 141, *post*.

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It should be noticed that the occupier or owner is only liable as such when the person cannot be found by whose act, default, or sufferance the nuisance arises or continues. See note (*d*), *ante*, and *Thames Conservators* v. *London* (*Port Sanitary Authority of*), *ante*, p. 22.

(*f*) See the definition of "premises" in s. 141, *post*.

Contents of notice.

(*g*) A notice requiring the abatement of a nuisance forthwith after service thereof, sufficiently specifies the time within which the nuisance must be abated (*Thomas* v. *Western Steam Trawling Co.* (1894), 59 J. P. 232 ; and see *Thomas* v. *Nokes* (1868), L. R. 6 Eq. 521).

Meaning of "abatement."

(*h*) The abatement of the nuisance may involve the pulling down of the premises if they are unfit for habitation. See *Brown* v. *Biggleswade Union*, cited in 43 J. P. 554.

Contents of notice.

(*i*) The concluding words of the sub-section are new, and give the sanitary authority a discretion whether they will prescribe the necessary work or not. This discretion is not conferred upon sanitary authorities by the Public Health Act, 1875, s. 94, and a notice under that section must always state the works prescribed (*Ex parte Saunders* (1883), 11 Q. B. D. 191 ; 47 J. P. 404 ; 52 L. J. M. C. 89 ; *R.* v. *Llewellyn* (1884), 13 Q. B. D. 681 ; 49 J. P. 151 ; 33 W. R. 150 ; *R.* v. *Kent JJ.* (1885), 49 J. P. 404 ; 55 L. J. M. C. 9 ; *R.* v. *Wheatley* (1885), 16 Q. B. D. 34 ; 50 J. P. 424 ; 55 L. J. M. C. 11 ; 34 W. R. 257 ; *R.* v. *Horrocks* (1900), 69 L. J. K. B. 688 ; 82 L. T. (N.S.) 767 ; *Millard* v. *Wastall*, [1898] 1 Q. B. 342 ; 62 J. P. 135 ; 67 L. J. Q. B. 277 ; 77 L. T. 692 ; 46 W. R. 258 ; *Central London Railway* v. *Hammersmith Borough Council* (1904), 73 L. J. K. B. 623 ; *Tough* v. *Hopkins*, [1904] 1 K. B. 804 ; 68 J. P. 274 ; 73 L. J. K. B. 128 ; 90 L. T. (N.S.) 672 ; 52 W. R. 605 ; 20 T. L. R. 323 ; 2 L. G. R. 1213).

(*k*) This is a new provision. The preceding sub-section deals with the abatement of the nuisance. The notice mentioned in the text is intended to prevent its recurrence. The sanitary authority have a discretion with regard to the specifying of the necessary works as in the preceding sub-section. See note (*i*), *supra*.

For the definition of the terms "owner" and "premises," see s. 141, *post*.

As to the authentication and service of the notice, see note (*c*), *ante*, p. 17.

(*l*) The words of the Public Health Act, 1875, s. 94, are "the want or defective construction of any structural convenience," but the meaning appears to be the same. Structural conveniences appear to be such things as a landlord would provide in a house for the purpose of letting it to a tenant. Thus, an owner was held liable for defective construction of a privy (*Cook* v. *Montagu* (1872), L. R. 7 Q. B. 418 ; 37 J. P. 53 ; 41 L. J. M. C. 149) ; and for defects in a watercloset and sink drains (*Parker* v. *Inge* (1886), 17 Q. B. D. 584 ; 51 J. P. 20 ; 55 L. J. M. C. 149 ; 55 L. T. (N.S.) 300).

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Where notice was served on the occupier, and in the course of doing the work to abate the nuisance it was found that it was caused by a structural defect, it was held that the occupier could recover the expenses from the owner (*Gebhardt* v. *Saunders*, [1892] 2 Q. B. 452 ; 56 J. P. 741 ; 67 L. T. (N.S.) 684 ; 40 W. R. 571). With this case should be compared *Thompson* v. *Norris* (1895), 59 J. P. 580 ; 73 L. T. (N.S.) 369, the facts of which are set out at p. 14, *ante*. For the cases where the sanitary authority have been held liable to reimburse an owner who has incurred expense in abating a nuisance on a sewer pursuant to a notice under this section, see the note to s. 11, *post*, and pursuant to an intimation notice under s. 3, see the note to s. 3, *ante*.

(*m*) See the definition of the term "premises" in s. 141, *post*.

(*n*) It has been held that where property abutting on a highway becomes, through the wrongful act of strangers, a nuisance to the public lawfully using the highway, the owner of such property has a duty cast upon him, from the moment he becomes aware of the danger, to take steps to prevent his property becoming a source of injury to the public (*Silverton* v. *Marriott* (1888), 52 J. P. 677 ; 59 L. T. (N.S.) 61).

(*o*) For the definition of the term "owner," see s. 141, *post*.

As to the liability of an owner when the premises are occupied by a tenant, see *Parker* v. *Inge*, the facts of which are stated in note (*d*), *supra*.

(*p*) This proviso is taken with a slight amendment from 29 & 30 Vict. c. 90, s. 21. It corresponds with the second proviso in s. 94 of the Public Health Act, 1875. See *Thames Conservators* v. *Port Sanitary Authority of London*, *ante*, p. 22. As to the overcrowding of tents, vans, etc., see s. 95, *post*.

The words of the proviso are permissive, but it is submitted that it is the duty of the sanitary authority to act when they apply.

(*q*) This is an amendment of 18 & 19 Vict. c. 121, s. 29 (now repealed). The amendment consists in the extension of the provision to a part of a house, and in the insertion of the words, "whether or not members of the same family." See note (*f*) to s. 2, *ante*, p. 10. It will be observed that the words of this clause are imperative.

As to the meaning of the term "sanitary authority," see s. 99 ; and as to the meaning of the expression "house," see s. 141, *post*.

(*r*) See Sched. 1, *post*. The effect of this proviso is that under the next section a closing order may be made.

(*s*) This sub-section is new. It renders the person by whose act, default, or sufferance a nuisance has been caused liable to a penalty, though it may not be necessary to proceed against him under the next section. See, with reference to it, the observations in the notes to s. 11 (1), *post*.

As to the recovery of the penalty, see s. 117, *post*.

For the definition of a nuisance order, see the next section.

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5.—(1) If either—

On non-compliance with notice, order to be made.

(a) The person on whom a notice to abate a nuisance has been served as aforesaid (*a*) makes default in complying with any of the requisitions thereof within the time specified ; or

(b) The nuisance, although abated since the service of the notice, is, in the opinion of the sanitary authority, likely to recur on the same premises (*b*),

the sanitary authority shall make a complaint, and the petty sessional court hearing the complaint may make on such person a summary order (in this Act referred to as a nuisance order) (*c*).

(2) A nuisance order may be an abatement order, a prohibition order, or a closing order, or a combination of such orders (*d*).

(3) An abatement order may require a person to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within the time specified in the order.

(4) A prohibition order may prohibit the recurrence of a nuisance (*e*).

(5) An abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance (*f*).

(6) A closing order may prohibit a dwelling-house from being used for human habitation.

(7) A closing order shall only be made where it is proved to the satisfaction of the court that by reason of a nuisance a dwelling-house is unfit for human habitation, and if such proof is given the court shall make a closing order, and may impose a fine not exceeding twenty pounds (*g*).

(8) A petty sessional court, when satisfied that the dwelling-house has been rendered fit for human habitation,

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may declare that it is so satisfied and cancel the closing order (*h*).

(9) If a person fails to comply with the provisions of a nuisance order with respect to the abatement of a nuisance, he shall, unless he satisfies the court that he has used all due diligence to carry out such order, be liable to a fine not exceeding twenty shillings a day during his default; and if a person knowingly and wilfully acts contrary to a prohibition or closing order he shall be liable to a fine not exceeding forty shillings a day during such contrary action; moreover the sanitary authority may enter the premises to which a nuisance order relates, and abate or remove the nuisance, and do whatever may be necessary in execution of such order (*i*).

(*a*) This refers to the notice served under s. 4, *ante*.

(*b*) The contingency here provided for may arise though a notice has not been served under s. 4 (2), *ante*.

As to the meaning of the expression "premises," see s. 141, *post*.

(*c*) Forms of the summons and order are contained in the Third Schedule, *post*. As a summary order is an order made pursuant to the Summary Jurisdiction Acts (see 42 & 43 Vict. c. 49, s. 51, and see also s. 117 of this Act, *post*), the complaint must be made within the six months limited by 11 & 12 Vict. c. 43, s. 11. The period of limitation will apparently begin to run from the expiration of the time specified in the notice for the execution of the works required for the abatement of the nuisance or for preventing its recurrence, unless the offence is a continuing one, as in *Higgins* v. *Northwich Union* (1870), 34 J. P. 806; 22 L. T. (N.S.) 752; *R.* v. *Waterhouse* (1872), L. R. 7 Q. B. 545; 36 J. P. 471; 41 L. J. M. C. 115; 26 L. T. (N.S.) 761; 20 W. R. 712. As to the meaning of the expression "petty sessional court," see note (*h*), *infra*.

As to the duty of the sanitary authority to obtain the order, see s. 1, *ante*. As to legal proceedings generally, see ss. 115—124, *post*.

As to the discretion of a magistrate to issue a summons, see *Rex* v. *Bros* (1901), 66 J. P. 54; 85 L. T. 581; 20 Cox C. C. 89.

As to appeal against the order, see s. 6, *post*.

An order under s. 96 of the Public Health Act, 1875, was made by three justices sitting in petty sessions, requiring the defendant to abate a nuisance existing on his premises, and to execute certain works necessary for that purpose. The order when drawn

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up was signed by only one of the justices:—*Held*, that the order was invalid (*Wing* v. *Epsom Urban District Council*, [1904] 1 K. B. 798; 68 J. P. 259; 73 L. J. K. B. 389; 90 L. T. 543; 52 W. R. 461; 20 T. L. R. 310; 2 L. G. R. 714).

(*d*) Forms of these orders will be found in the Third Schedule.

Where justices make an order for the abatement of a nuisance under s. 112 of the Public Health (Ireland) Act, 1878 (corresponding to s. 96 of the English Public Health Act, 1875), the order of the justices is not the entry in the order book, but the document drawn up in accordance with Form C., Sched. C. of the Act (corresponding to Form C., Sched. IV., of the English Act). If the order so drawn up is good in form, its validity is not affected by the fact that the entry in the order book would be bad on its face as an order (*Rex* v. *Down JJ.*, [1905] 2 I. R. 648).

(*e*) It will be for the court to decide whether, under the circumstances, any order should be made. The court may order some only of the requisitions in the notice to be complied with, or, disregarding the requisitions altogether, order the nuisance to be otherwise abated. The works necessary to be done must be stated in the order if the defendant so requires. See sub-s. (5).

Contents of order.

(*f*) Under the corresponding section of the Public Health Act, 1875, s. 96, the court must specify the works required to be done, otherwise the order is bad (*R.* v. *Wheatley* (1885), 16 Q. B. D. 34; 50 J. P. 424; 55 L. J. M. C. 11; 34 W. R. 257). An order of justices "to take such steps as may be necessary to abate a nuisance arising from an accumulation of slaughter-house offal and filth in fields, so that the same shall no longer be a nuisance or injurious to health," was held to be bad as to the part which dealt with the abatement of the nuisance, as it did not specify the work necessary under s. 96 of the Public Health Act, 1875, but that the part that prohibited the recurrence of the nuisance was good, as in preventing such recurrence there was no necessity of doing any work at all (*R.* v. *Horrocks* (1900), 69 L. J. K. B. 688; 82 L. T. (N.S.) 767).

A notice to abate a nuisance caused by quantities of black smoke issuing from a factory chimney need not necessarily specify the works required to be done in order to abate the nuisance (*Millard* v. *Wastall*, [1898] 1 Q. B. 342; 62 J. P. 135; 67 L. J. Q. B. 277; 77 L. T. 692; 46 W. R. 258).

A prohibition order made under s. 5 in respect of a nuisance arising from the emission of black smoke from a chimney is not invalid because it does not specify the works to be executed by the defendant for the purpose of abating or preventing the recurrence of the nuisance, notwithstanding that the defendant may have required them to be specified (*Central London Rail. Co.* v. *Hammersmith Borough Council*, and *Tough* v. *Hopkins*, *ante*, p. 23).

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The court must specify the works required to be executed under the provision in the text if the defendant so requires. If he does not so require it need not be done unless the court deem it desirable to do so.

(*g*) Under s. 4 (3) (d), the absence of water fittings is to be deemed to render a house unfit for human habitation unless the contrary is shown to the satisfaction of the court.

When a closing order is made it is left to the discretion of the court whether they will impose a fine or not. As to the recovery of the penalty, see s. 117, *post*. The form of order in the Third Schedule does not provide for this penalty, and it is not clear whether it should be part of the order or form a separate conviction.

Petty sessional court.

(*h*) The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 (12), provides that the expression "petty sessional court" shall, as respects England and Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace. Sub-section (13) provides that the expression "petty sessional court-house" shall, as respects England and Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions, at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London, or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate, is authorised by law to do alone any act authorised to be done by more than one justice of the peace.

(*i*) As to the recovery of these penalties, see s. 117, *post*.

The limitation of six months within which complaint must be made, as provided by 11 & 12 Vict. c. 43, s. 11, applies to proceedings for acting contrary to a closing order, in breach of the above sub-section, and therefore a conviction for such an offence, which imposes a fine in respect of every day during a period exceeding six months, is bad (*R.* v. *Slade, Ex parte Saunders*, [1895] 2 Q. B. 247 ; 59 J. P. 471 ; 64 L. J. M. C. 232 ; 73 L. T. (N.S.) 343).

A conviction which inflicts future daily penalties is bad ; but that part of a conviction can be separated from the rest of the conviction (*Scarborough (Mayor, etc. of)* v. *Scarborough Rural Sanitary Authority* (1876), 1 Ex. D. 344 ; 40 J. P. 726 ; 34 L. T.

608 ; *Chepstow Electric Light, etc. Co.* v. *Chepstow Gas, etc. Co.*, [1905] 1 K. B. 198 ; 69 J. P. 72 ; 74 L. J. K. B. 24 ; 92 L. T. (N.S.) 27 ; 21 T. L. R. 35 ; 3 L. G. R. 49).

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Where an order was made under the corresponding provisions of 18 & 19 Vict. c. 121, ss. 13, 14 (now repealed), upon an owner to abate a nuisance, and in his default upon the sanitary authority, it was held that he was liable to the penalty upon his default, though the local authority failed to act under the order (*Tomlins* v. *Great Stanmore* (*Nuisances Removal Committee of*) (1865), 29 J. P. 117 ; 12 L. T. (N.S.) 118).

As to the recovery of the expenses incurred by the sanitary authority in abating or removing a nuisance, see ss. 11, 120, 121, *post*.

Provision as to appeal against order.

6.—(1) Where a person appeals to the court of quarter sessions against a nuisance order, no liability to a fine shall arise, nor, save as in this section mentioned, shall any proceedings be taken or work done under such order until after the determination or abandonment of such appeal (*a*).

(2) There shall be no appeal to quarter sessions against a nuisance order, unless it is or includes a prohibition or closing order, or requires the execution of structural works (*b*).

(3) Where a nuisance order is made and a person does not comply with it and appeals against it to the court of quarter sessions, and such appeal is dismissed or is abandoned, the appellant shall be liable to a fine not exceeding twenty shillings a day during the non-compliance with the order, unless he satisfies the court before whom proceedings are taken for imposing a fine that there was substantial ground for the appeal, and that the appeal was not brought merely for the purpose of delay, and where the appeal is heard by the court of quarter sessions, that court may, on dismissing the appeal, impose the fine as if the court were a petty sessional court (*c*).

(4) Where a nuisance order is made on any person and appealed against, and the court which made the order is of opinion that the continuance of the nuisance will be

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injurious or dangerous to health, and that the immediate abatement thereof will not cause any injury which cannot be compensated by damages, the court may authorise the sanitary authority immediately to abate the nuisance; but the sanitary authority, if they do so, and the appeal is successful, shall pay the cost of such abatement and the damages (if any) sustained by the said person by reason of such abatement; but, if the appeal is dismissed or abandoned, the sanitary authority may recover the cost of the abatement in a summary manner from the said person (*d*).

(*a*) As to when appeal lies against a nuisance order, see sub-s. (2).

The right of appeal, except as limited by this section, is given by s. 125, *post*. For the procedure on the appeal, see the notes to that section.

When notice of appeal has been given it will operate as a stay of proceedings, subject, however, to the provisions of sub-s. (4).

(*b*) In other words, appeal will always lie against a prohibition order or a closing order, but never against an abatement order unless it requires the execution of structural works.

Where there was a nuisance arising from open drains which could only be abated by the constructing of a covered drain, and the justices made an order to abate the nuisance, and to do such works and acts as were necessary to abate the same, it was held the order was not one to do structural works so as to give a right of appeal (*Ex parte Mayor, etc. of Liverpool* (1857), 22 J. P. 562; 27 L. J. M. C. 89).

This provision as to structural works applies only to private nuisances in respect of which summary orders may be made (*R.* v. *Middleton* (1859), 23 J. P. 453; 28 L. J. M. C. 41).

(*c*) This provision is new. It is evidently intended to prevent frivolous appeals or appeals for mere delay. If an appeal is abandoned, it will be necessary to take proceedings to recover the fine. If the appeal is heard and dismissed, the quarter sessions may impose the fine, or, if it does not, proceedings may be taken before a court of summary jurisdiction. It may be doubted whether there was any need of this sub-section, having regard to s. 5 (9), for an appeal is only a stay, and if abandoned or dismissed does not affect liability.

(*d*) The Act does not provide for the recovery of damages from the sanitary authority, and the liability is, therefore, as it appears, enforceable only by action, according to the general rule, that

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where an Act creates an obligation to pay money, and contains no provision for its recovery, an action will lie. See *per* PARKE, B., in *Shepherd* v. *Hills* (1855), 11 Exch. 67.

The costs recoverable in a summary manner by the sanitary authority under the above sub-section are recoverable before a court of summary jurisdiction. See s. 117, *post*.

Provision in case of two convictions for overcrowding.

7. Where two convictions for offences relating to the overcrowding of a house or part of a house in any district have taken place within a period of three months (whether the persons convicted were or were not the same), a petty sessional court may, on the application of the sanitary authority, order the house to be closed for such period as the court may deem necessary.

The word "convictions" is here used. This seems to imply not only that orders have been made for the abatement or prohibition of the nuisance, but that fines have been imposed. A mere order to abate is not a conviction; but if a person has been convicted and fined under s. 4 (4), s. 5 (7), or s. 5 (9), the provision in the text would apply.

For the meaning of the expression "petty sessional court," see the note to s. 5 (8), *ante*, p. 28.

In certain cases order may be addressed to sanitary authority.

8. Whenever it appears to the satisfaction of the petty sessional court that the person by whose act, default, or sufferance, a nuisance liable to be dealt with summarily under this Act arises or the owner or occupier of the premises is not known or cannot be found, then the nuisance order may be addressed to, and if so addressed shall be executed by, the sanitary authority.

For the meaning of the expression "petty sessional court," see note (*h*), *ante*, p. 28.

This section is taken from 18 & 19 Vict. c. 121, s. 17 (now repealed). It corresponds with s. 100 of the Public Health Act, 1875.

The proviso in s. 4 (3) (b) applies only when the person causing the nuisance cannot be found, and it is clear that the owner and occupier are not responsible. In that case no order is necessary. But when neither the person causing the nuisance nor the owner nor occupier can be found, then an order may be made on the sanitary authority under this section. It would appear that this order can only be made when the complaint is made by a

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Power to sell manure, etc.

9. Any matter or thing removed by the sanitary authority in abating, or doing what is necessary to prevent the recurrence of, a nuisance liable to be dealt with summarily under this Act may be sold by public auction or, if the authority think the circumstances of the case require it, may be sold otherwise, or be disposed of without sale; and the money arising from the sale may be retained by the sanitary authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Under 18 & 19 Vict. c. 121, s. 18 (now repealed), it was necessary to give five days' notice by bills distributed in the locality, unless the justices directed an immediate sale or disposal of the matter or thing where the delay would be prejudicial to the public health.

The corresponding section of the Public Health Act, 1875, is s. 101.

Power of entry.

10. The sanitary authority shall have a right to enter from time to time any premises (*a*)—

(a) For the purpose of examining as to the existence thereon of any nuisance liable to be dealt with summarily under this Act, at any hour by day (*b*), or in the case of a nuisance arising in respect of any business, then at any hour when that business is in progress or is usually carried on (*c*), and

(b) Where under this Act a nuisance has been ascertained to exist, or a nuisance order has been made, then at any such hour as aforesaid, until the nuisance is abated, or the works ordered to be done are completed, or the closing order is cancelled, as the case may be, and

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(c) Where a nuisance order has not been complied with, or has been infringed, at all reasonable hours, including all hours during which business therein is in progress or is usually carried on, for the purpose of executing the order.

(*a*) The power of entry here conferred may be exercised by any members or officers of the sanitary authority, or any person authorised by them generally, or in any particular case. See s. 115, *post*, which contains general provisions as to the powers of entry under this Act, and how admission is to be procured if denied by the occupier. And see also *Vines* v. *North London Collegiate School* (1899), 63 J. P. 244 ; *Consett Urban Council* v. *Crawford*, [1903] 2 K. B. 183 ; 67 J. P. 309 ; 72 L. J. K. B. 571 ; 88 L. T. 836 ; 51 W. R. 669 ; 1 L. G. R. 558 ; *Wimbledon Urban Council* v. *Hastings*, [1902] 67 J. P. 45 ; 87 L. T. 118, cited in the notes in that section, as to the cases in which the right of entry can be enforced.

(*b*) "Day" means the period between 6 a.m. and 9 p.m. See s. 141, *post*. The hours mentioned in 18 & 19 Vict. c. 121, s. 11 (repealed by this Act), were from 9 a.m. to 6 p.m.

(*c*) In a case of overcrowding a warrant may be obtained authorising entry at any hour of the day or night. See s. 114 (6), *post*.

Costs of execution of provisions relating to nuisances.

11.—(1) All reasonable costs and expenses incurred in serving notice, making a complaint, or obtaining a nuisance order, or in carrying the order into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made ; or if the order is made on the sanitary authority, or, if no order is made, but the nuisance is proved to have existed when the notice was served or the complaint made, then of the person by whose act, default, or sufferance, the nuisance was caused ; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises (*a*).

(2) Such costs and expenses, and any fines incurred in relation to any such nuisance, may be recovered in a summary manner or in the county court or High Court, and the court shall have power to divide costs, expenses,

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and fines between persons by whose acts, defaults, or sufferance a nuisance is caused, as to it may seem just (*b*).

(*a*) This provision is taken from 18 & 19 Vict. c. 121, s. 19 (now repealed), and it corresponds with s. 104 of the Public Health Act, 1875.

The section seems to provide for the recovery even of costs which might have been ordered to be paid by the court of summary jurisdiction under the general power contained in 11 & 12 Vict. c. 43, s. 18. It gives the sanitary authority an absolute right to these costs and expenses.

For the definition of the term "owner," see s. 141, *post*.

Contracts between landlord and tenant.

The plaintiff was tenant from year to year of a house in which a nuisance arose by reason of water and sewage collecting in the cellar owing to a stoppage in the drains. The sanitary authority acting under s. 4 (1), *ante*, served a notice on the premises directed to the owner or occupier, requiring the nuisance to be abated. They did not serve on the owner a notice under s. 4 (3), which provides for the service on the owner of a notice to abate in cases where the nuisance arises from any want or defect of a structural character. The plaintiff did the necessary work, and in the course of doing it, discovered that the nuisance arose from a structural defect in the drain. It was held that the plaintiff was entitled under the provision in the text to recover from the defendants the costs and expenses incurred in abating the nuisance as money paid by him for the use and at the request of the defendants, and that the costs and expenses incurred in carrying "the order" into effect must be taken to include the costs and expenses of carrying into effect the "notice" from the sanitary authority, although no nuisance order under s. 5 had been obtained (*Gebhardt* v. *Saunders*, [1892] 2 Q. B. 452; 56 J. P. 741; 67 L. T. (N.S.) 684; 40 W. R. 571). This decision was followed in a recent case. There, the drainage of two adjoining houses being so defective as to be a nuisance, the sanitary authority served a notice under s. 4 (1) upon the owner of the houses requiring him to abate the nuisance. The drainage of the houses was carried away by means of a single pipe, and the owner, being under the belief that this combined system of drainage had been authorised by an order of the sanitary authority, and that the liability to repair the pipe consequently lay upon him, executed the works prescribed by the notice. In fact the combined plan of drainage had not been authorised by any such order, and the liability to repair the pipe was by that act imposed upon the sanitary authority. On discovery of the mistake he sought to recover from the sanitary authority. It was held that "the expenses of carrying the order into effect" mentioned in the text, included the expenses of doing work in obedience to an abatement notice, and that, consequently, the owner, whether he was compellable to do the work or not, could recover the expense from the sanitary authority as the persons by whose default the nuisance was caused (*Andrew* v. *St. Olave's District Board*, [1898] 1 Q. B. 775; 62 J. P. 328; 67 L. J.

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Q. B. 592 ; 78 L. T. (N.S.) 504 ; 46 W. R. 424). In the judgments in both of these cases there are expressions which appear to imply that the person on whom a nuisance notice has been served is liable to a penalty under s. 4 (4) if he fails to obey the notice without regard to whether he is really the person liable to abate the nuisance under the Act. It is submitted that this is not the effect of the Act and that a person not legally liable may disregard the notice. In such a case, however, if he does abate the nuisance, he may recover the costs on the principle indicated by CHANNELL, J., in *North* v. *Walthamstow Urban District Council* (1898), 62 J. P. 836 ; 67 L. J. Q. B. 972). It was there held that where a person is called upon by the sanitary authority to abate, and does abate, a nuisance by doing work which the sanitary authority themselves are liable to do, and where that person afterwards seeks to recover from them the cost of the work, on the principle that where one person is compelled to do work which another is legally compellable to do, the cost of the work may be recovered by the one as money paid at the other's request, regard must be had to the fact that in the case of a nuisance, prompt action by some one is imperative ; and because of that fact it is not necessary to show that there was actual, direct or irresistible compulsion in order to bring the case within the principle above enumerated. It is sufficient to show that the sanitary authority took steps which practically amounted to compulsion. The case of *Self* v. *Hove Commissioners*, [1895] 1 Q. B. 685 ; 59 J. P. 103 ; 64 L. J. Q. B. 217 ; 72 L. T. (N.S.) 234 ; 43 W. R. 300, in so far as it decides the contrary, must now be regarded as overruled.

As to liability, in cases where a statutory notice has not been served, but an intimation notice only under s. 3 of the Act, see the cases cited in the note to that section, *ante*, p. 13. In *Reeve* v. *Sadler* (1903), 67 J. P. 63 ; 88 L. T. 95 ; 51 W. R. 603 ; 1 L. G. R. 441, it was held that where an adjoining owner does work on a common drain on his premises in pursuance of a sanitary notice, he cannot recover a proportion of the expenses of such work from his adjoining owner, although the drainage of such last-mentioned owner passes through such common drain and another notice has been served upon him in respect thereof. And see *Nathan* v. *Rouse*, [1905] 1 K. B. 527 ; 69 J. P. 135 ; 74 L. J. K. B. 285 ; 92 L. T. 321 ; 21 T. L. R. 222 ; 3 L. G. R. 354.

It may be added here that in an action against a sanitary authority to recover expenses incurred under a nuisance notice the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), applies. The action must, therefore, be commenced within six months, and if it is unsuccessful, the defendants will be entitled to their costs as between solicitor and client (*Cree* v. *St. Pancras (Vestry of)* (1899), 68 L. J. Q. B. 389).

The cost of the execution of sanitary works required by a local authority under the powers of this Act falls as between a tenant for life and remainderman of the premises in respect of which the

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works are executed upon the corpus of the property (*In re Lever, Cordwell* v. *Lever* (No. 1), [1897] 1 Ch. 32 ; 66 L. J. Ch. 66 ; 75 L. T. 383 ; 45 W. R. 172 ; and see *In re Barney, Harrison* v. *Barney*, [1894] 3 Ch. 562 ; 63 L. J. Ch. 676 ; 71 L. T. 180 ; 43 W. R. 105). The matter has been held, however, to be one of discretion to be exercised according to the circumstances of each case. See *In re Farnham's Settlement*, [1904] 2 Ch. 561 ; 73 L. J. Ch. 667 ; 91 L. T. 781 ; *In re Thomas, Weatherall* v. *Thomas*, [1900] 1 Ch. 319 ; 69 L. J. Ch. 198 ; 48 W. R. 409 ; *In re Copland's Settlement, Johns* v. *Carden*, [1900] 1 Ch. 326 ; 69 L. J. Ch. 240 ; 82 L. T. (N.S.) 194 ; *In re Partington, Reigh* v. *Kane*, [1902] 1 Ch. 711 ; 86 L. T. (N.S.) 194 ; 71 L. J. Ch. 472 ; 50 W. R. 388 ; 18 T. L. R. 387. See also *Re Smith's Settled Estates*, [1901] 1 Ch. 689 ; 70 L. J. Ch. 273 ; *In re Leigh's Settled Estates*, [1902] 2 Ch. 274 ; 66 J. P. 600 ; 71 L. J. Ch. 668 ; 86 L. T. 884 ; 50 W. R. 570 ; *In re Pizzi, Scrivener and Others* v. *Aldridge and Others*, [1907] 1 Ch. 67 ; 71 J. P. 58 ; 76 L. J. Ch. 87 ; 95 L. T. 722 ; 5 L. G. R. 86.

The words "for the time being owner of such premises" were not in 18 & 19 Vict. c. 121, s. 19, and accordingly it was held under that section that the expenses could not be recovered from a person who was not owner when they were incurred (*Blything Union (Guardians of)* v. *Warton* (1863), 3 B. & S. 352 ; 27 J. P. 87 ; 32 L. J. M. C. 132 ; 7 L. T. (N.S.) 672 ; 11 W. R. 306).

(*b*) The words "in a summary manner" mean in manner provided by the Summary Jurisdiction Acts. See s. 117, *post*.

Jurisdiction of county court.

With reference to a corresponding provision in 11 & 12 Vict. c. 123, s. 3, it was held that whatever may have been the amount of the costs, and although a question of title to the land on which the nuisance existed arose, the county court had jurisdiction by the express terms of the Act (*R.* v. *Harden* (1853), 2 E. & B. 188 ; 22 L. J. Q. B. 299 ; 22 L. T. (O.S.) 228 ; 2 W. R. 164 ; *Hertford Union (Guardians of)* v. *Kimpton* (1855), 11 Exch. 295 ; 19 J. P. 678 ; 25 L. J. M. C. 41 ; 25 L. T. (O.S.) 185 ; 3 W. R. 521). But that Act provided for the recovery of the costs and expenses in any county court, or before two justices. No reference was made to a superior court, as in the text, and it is submitted, therefore, that while there is a remedy provided by the above subsection for the recovery of costs, etc., to any amount in a summary manner, the county court can only be resorted to in cases where the amount sought to be recovered is within its jurisdiction.

Limitation of time.

The limitation imposed by 11 & 12 Vict. c. 43, s. 11, of the time within which complaints may be made before justices applies to actions in the county court under this section to recover the costs and expenses incurred in and about obtaining and carrying into effect a nuisance order, so that the action must be commenced within six months from the time when the costs and expenses were incurred (*Hammersmith (Vestry of)* v. *Lowenfeld*, [1896] 2 Q. B. 278 ; 60 J. P. 600 ; 65 L. J. Q. B. 662 ; 75 L. T. (N.S.) 182 ; 45 W. R. 60). The court considered themselves bound by

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Tottenham Local Board v. *Rowell* (1876), 1 Ex. D. 514 ; 46 L. J. Q. B. 432 ; 35 L. T. (N.S.) 887 ; 25 W. R. 135 ; but this decision cannot easily be reconciled with *Leeds* (*Mayor, etc. of*) v. *Robshaw* (1887), 51 J. P. 441. These cases have, however, since been distinguished, and *Hammersmith* v. *Lowenfeld* doubted, in the Court of Appeal in *Blackburn* (*Mayor, etc. of*) v. *Saunderson*, [1902] 1 K. B. 794 ; 66 J. P. 452 ; 71 L. J. K. B. 590 ; 86 L. T. (N.S.) 304, a case decided on a local improvement Act. And see *Hampstead* (*Borough of*) v. *Caunt*, [1903] 2 K. B. 1 ; 67 J. P. 344 ; 72 L. J. K. B. 440 ; 88 L. T. 599 ; 51 W. R. 700 ; 1 L. G. R. 507 ; and *Nathan* v. *Rouse*, [1905] 1 K. B. 527 ; 69 J. P. 135 ; 74 L. J. K. B. 285 ; 92 L. T. 321 ; 21 T. L. R. 222 ; 3 L. G. R. 354.

With reference to the apportionment of the costs, etc. among persons jointly liable, see also s. 120, *post*, as to proceedings against one or more of such persons. See also s. 121 and the notes thereto, as to the recovery of expenses from an owner of premises.

Power of individual to complain to justice of nuisance.

12.—(1) Complaint of the existence of a nuisance liable to be dealt with summarily under this Act on any premises within the district of any sanitary authority may be made by any person, and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders, fines for disobedience of orders, appeal, and otherwise, as in the case of a like complaint by the sanitary authority (*a*).

(2) Provided that the court may, if it thinks fit,—

(a) Adjourn the hearing or further hearing of the complaint for the purpose of having an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for that purpose ; and

(b) Authorise any constable or other person to do all necessary acts for executing an order made on a complaint under this section, and to recover the expenses from the person on whom the order is made in a summary manner (*b*).

(3) Any constable or other person authorised under this section shall have the like powers, and be subject to the like restrictions as if he were an officer of the sanitary

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authority authorised under the foregoing provisions of this Act to enter any premises and do any acts thereon (*c*).

(*a*) This section replaces 23 & 24 Vict. c. 77, s. 13, as amended by 37 & 38 Vict. c. 89, s. 53 (both sections are repealed by this Act). Under these Acts, the complaint might be made by any inhabitant of the parish or place, any owner of premises therein, or any other person aggrieved or injuriously affected thereby. Now the complaint may be made by any person.

When a complaint is made by a private individual under this section a previous notice under s. 4 is not necessary. See *Cocker* v. *Cardwell* (1869), L. R. 5 Q. B. 15 ; 10 B. & S. 797 ; 34 J. P. 516 ; 39 L. J. M. C. 28 ; 21 L. T. (N.S.) 457 ; 18 W. R. 212.

It was held under the corresponding section of the Public Health Act, 1875, s. 105, that on the complaint of a private person, justices could not make an order for the abatement of a nuisance arising from sewage works (*R.* v. *Parlby*, *ante*, p. 4). In his judgment, WILLS, J., said : "We think the contention is right that as far as the person or body complained of is concerned, the magistrates have jurisdiction to entertain complaints against a local board as well as against an individual. If the limitation we had suggested did not exist, it would be thus in the power of any individual, in a district, to summon a local board for a nuisance committed by them in the management of their sewage works, and, if this view be sustainable, that when they are guilty of such a nuisance, the proviso upon which their statutory powers hang is violated, and the case is to be treated as if those statutory powers no longer existed, it would follow that, upon the breakdown of the system in a particular street or locality occasioning a nuisance, it would be within the competence of two justices to direct that the existing system should be abandoned, and a new method of treating the sewage resorted to, or they might order the sewers in a particular locality to be cut off from the general system, and thus create a far greater evil than that to be remedied, or they might order remedial works which might be entirely irreconcilable with the general system of the district. Indeed, there is no limit to the extravagance of the consequences that might flow from such a conflict of powers." This section does not impose a statutory duty on the owner of premises to keep them in a sanitary condition, or so as not to be a nuisance so as to enable the tenant to counter-claim damages for breach of such duty in an action for rent (*Hildige* v. *O'Farrell* (1880), 6 L. R. Ir. 493).

(*b*) The constable or other person will, by virtue of the authority given to him by the court, do the necessary works in default of the person upon whom the order is made. He will, in fact, take the place of the sanitary authority under s. 5, *ante*, p. 25.

As to the recovery of the expenses in a summary manner, see s. 117, *post*.

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(*c*) The foregoing provisions of the Act above referred to are contained in s. 10, *ante*, p. 32. See also s. 115, *post*, which regulates the exercise of the right of entry generally.

As to the meaning of the expression "premises," see s. 141, *post*.

Proceedings in High Court for abatement of nuisances.

13. The sanitary authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in the High Court to enforce the abatement or prohibition of any nuisance liable to be dealt with summarily under this Act, or for the recovery of any fines from, or for the punishment of, any persons offending against the provisions of this Act relating to such nuisances, and may pay as expenses of the execution of this Act their expenses of and incident to all such proceedings.

This section is taken from 18 & 19 Vict. c. 121, s. 3 (now repealed), and corresponds to s. 107 of the Public Health Act, 1875. It will chiefly, if not exclusively, be acted upon where it is considered necessary to apply for an injunction. There can hardly be any object in resorting to the High Court for the recovery of fines or the punishment of offenders.

It was held under the corresponding section of the Public Health Act, 1875, that such proceedings must be ordinary proceedings known to the law, and that, in the absence of special damage, a local authority cannot sue in respect of a public nuisance, except with the sanction of the Attorney-General, by action in the nature of an information (*Wallasey Local Board* v. *Gracey* (1887), 36 Ch. D. 593 ; 51 J. P. 740 ; 56 L. J. Ch. 739 ; 57 L. T. (N.S.) 51 ; 35 W. R. 694 ; *Tottenham Urban District Council* v. *Williamson*, [1896] 2 Q. B. 353 ; 60 J. P. 725 ; 65 L. J. Q. B. 591 ; 75 L. T. (N.S.) 238 ; 44 W. R. 676. See also *Stoke Parish Council* v. *Price*, [1899] 2 Ch. 277 ; 63 J. P. 502 ; 68 L. J. Ch. 447 ; 80 L. T. (N.S.) 643 ; 47 W. R. 663 ; *Devonport* (*Mayor, etc. of*) v. *Tozer*, [1903] 1 Ch. 759 ; 67 J. P. 279 ; 72 L. J. Ch. 411 ; 88 L. T. (N.S.) 113 ; 52 W. R. 6 ; 19 T. L. R. 257 ; 1 L. G. R. 421 ; and *Att.-Gen.* v. *Ashbourne Recreation Ground*, [1903] 1 Ch. 101 ; 67 J. P. 73 ; 72 L. J. Ch. 67 ; 87 L. T. (N.S.) 561 ; 51 W. R. 125 ; 19 T. L. R. 39 ; 1 L. G. R. 146). A local authority may act as relators in an action brought by the Attorney-General for the purpose of abating a public nuisance, and may themselves maintain an action for damages for a nuisance affecting property of which they are the actual owners (*Att.-Gen.* v. *Logan*, [1891] 2 Q. B. 100 ; 55 J. P. 615 ; 65 L. T. (N.S.) 162 ; 7 T. L. R. 279). Where there is a public nuisance the Attorney-General is entitled on behalf of the public to an injunction (*Att.-Gen.* v. *Tod Heatley*, [1897] 1 Ch. 560 ; 66 L. J. Ch. 275 ; 76 L. T. (N.S.) 174 ;

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45 W. R. 394. See also *Boyer* v. *Paddington Borough Council*, [1903] 1 Ch. 109 ; 67 J. P. 23 ; 72 L. J. Ch. 28 ; 87 L. T. 564 ; 51 W. R. 109 ; 1 L. G. R, 98 ; in the Court of Appeal, [1903] 2 Ch. 556 ; 68 J. P. 49 ; 72 L. J. Ch. 695 ; 89 L. T. 383 ; 52 W. R. 114 ; 1 L. G. R. 696 ; *Paddington Borough Council* v. *Att.-Gen.*, [1906] A. C. 1 ; 70 J. P. 41 ; 75 L. J. Ch. 4 ; 93 L. T. 673 ; 54 W. R. 317 ; 22 T. L. R. 55 ; 4 L. G. R. 19 ; *Att.-Gen.* v. *Squires* (1906), 70 J. P. 545 ; Times, November 12th ; *Att.-Gen.* v. *Keymer Brick Co.* (1903), 67 J. P. 434 ; 1 L. G. R. 654 ; *Sheringham Urban District Council* v. *Holsey* (1904), 68 J. P. 394 ; 91 L. T. 225 ; 20 T. L. R. 402 ; *Wednesbury Corporation* v. *Lodge Holes Colliery Co., Limited*, [1907] 1 K. B. 78 ; 71 J. P. 73 ; 76 L. J. K. B. 68 ; 95 L. T. 815 ; 23 T. L. R. 80 ; 5 L. G. R. 43 ; *Att.-Gen.* v. *Garner* (1907), 71 J. P. 357).

As to the procedure for obtaining the *fiat* of the Attorney-General see Garrett on Nuisances, 3rd ed., pp. 383 *et seq.* ; Daniell's Chancery Forms, 5th ed., by Burney, p. 33. See *Att.-Gen.* v. *Wilson*, (1900) 70 L. J. Ch. 234 ; 83 L. T. 646 ; 49 W. R. 195 ; and *London County Council* v. *Att.-Gen.*, [1902] A. C. 165 ; 66 J. P. 340 ; 71 L. J. Ch. 268 ; 86 L. T. 161 ; 50 W. R. 497.

An injunction will not be granted by the court when the injury complained of is trivial (*Llandudno Urban District Council* v. *Wood*, [1899] 2 Ch. 705 ; 63 J. P. 775 ; 68 L. J. Ch. 623 ; 81 L. T. (N.S.) 170 ; 48 W. R. 43 ; *Behrens* v. *Richards*, [1905] 2 Ch. 614 ; 69 J. P. 381 ; 74 L. J. Ch. 615).

As to the expenses of the execution of the Act, see s. 103, *post*.

Power to proceed where cause of nuisance arises without district.

14.—(1) Where a nuisance liable to be dealt with summarily under this Act appears to be wholly or partially caused by some act, default, or sufferance committed or taking place without the district the inhabitants of which are affected by the nuisance, the sanitary authority for that district may take or cause to be taken against any person in respect of such act, default, or sufferance any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences as if such act, default, or sufferance were committed or took place wholly within their district ; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act, default, or sufferance is alleged to be committed or take place (*a*).

38 & 39 Vict. c. 55.

(2) Section one hundred and eight of the Public Health Act, 1875, set out in the First Schedule to this Act, shall

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continue to extend to London, with the substitution of a sanitary authority under this Act for any nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis shall include a nuisance within the meaning of this Act (*b*).

(*a*) This provision is taken from s. 108 of the Public Health Act, 1875, one of the few sections of that Act which applied to the metropolis. Having regard to its express enactment here, it is not easy to understand why it has been retained in the Schedule to this Act.

The clause removes the difficulty caused by the decision in *R.* v. *Cotton* (1858), 1 El. & El. 203 ; 23 J. P. 532 ; 28 L. J. M. C. 22 ; 32 L. T. (o.s.) 125 ; 7 W. R. 62 ; 5 Jur. (N.S.) 311. There certain brewers in the parish of R., poured refuse into a river in that parish, and thereby created a nuisance in a part of the same river in the parish of D., where there was a local authority, whose jurisdiction did not include the parish of R. It was held that the local authority could not legally complain, and that the justices could make no order.

As to the sanitary authorities and their districts, see s. 99, *post*, and the notes thereto.

(*b*) See the First Schedule, *post*. And see note (*a*), *supra*.

Penalty for injuring closet, etc. so as to cause a nuisance.

15. If a person causes any drain, water-closet, earth-closet, privy, or ashpit to be a nuisance or injurious or dangerous to health by wilfully destroying or damaging the same, or any water-supply, apparatus, pipe, or work connected therewith, or by otherwise wilfully stopping up, or wilfully interfering with, or improperly using the same, or any such water-supply, apparatus, pipe, or work, he shall be liable to a fine not exceeding five pounds.

This is a new provision.

As already stated there is no definition of a drain in this Act. See the note (*c*) to s. 2, *ante*, p. 7. A definition of an "ashpit" is contained in s. 141, *post*.

It is submitted that it is an improper use of a water-closet or drain to put into it substances which would stop or interfere with its due working.

As to the recovery of the fine, see s. 117, *post*.

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Penalties in respect of particular Nuisances.

Byelaws by sanitary authority and county council as to cleansing streets and prevention of nuisances.

16.—(1) Every sanitary authority (*a*) shall make byelaws (*b*)—

(a) For the prevention of nuisances arising from any snow, ice, salt, dust, ashes, rubbish, offal, carrion, fish, or filth, or other matter or thing in any street (*c*) ; and

(b) For preventing nuisances arising from any offensive matter running out of any manufactory, brewery, slaughter-house (*cc*), knacker's yard (*cc*), butcher's or fishmonger's shop, or dunghill, into any uncovered place, whether or not surrounded by a wall or fence ; and

(c) For the prevention of the keeping of animals on any premises (*cc*) in such place or manner as to be a nuisance or injurious or dangerous to health (*d*) ; and

(d) As to the paving of yards and open spaces in connexion with dwelling-houses.

(2) The county council (*e*) shall make byelaws—

(a) For prescribing the times for the removal or carriage by road or water of any fœcal or offensive or noxious matter or liquid in or through London (*f*), and providing that the carriage or vessel used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid, and as to prevent any nuisance arising therefrom ; and

(b) As to the closing and filling up of cesspools and privies, and as to the removal and disposal of refuse, and as to the duties of the occupier of any premises in connexion with house refuse (*cc*), so as to facilitate the removal of it by the scavengers of the sanitary authority (*g*).

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(3) It shall be the duty of every sanitary authority to observe and enforce any byelaws made under this section (*h*).

(4) Except as otherwise provided by the byelaws, a constable may arrest without warrant and take before a justice any person whom he finds committing an offence against such byelaws and who refuses to give his true name and address (*i*).

(5) Provided that the byelaws shall not make it an offence to lay sand or other material in any street in time of frost to prevent accidents, or litter or other matter to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the same is laid, and when the occasion ceases duly removed, in accordance with the byelaws (*k*).

(*a*) The sanitary authorities are enumerated in s. 99, *post*, and the notes thereto.

(*b*) As to the making of byelaws, see s. 114, *post*.

The Local Government Board have issued a series of model byelaws under this section. Byelaws based upon this model series are in force in each of the metropolitan boroughs and in the city of London.

Byelaws under this section have also been made by the corporation of the city of London acting as the port sanitary authority, the necessary power having been conferred upon that authority by an Order of the Local Government Board dated December 29th, 1894. See note to s. 112, *post*.

(*c*) See the proviso to this clause in sub-s. (4). The word "street" is defined in s. 141, *post*. This clause is somewhat wider in its operation than the corresponding enactment in s. 44 of the Public Health Act, 1875. Sweeping mud into a sewer was held to be an offence against 18 & 19 Vict. c. 120, s. 205, which forbids the sweeping into any sewer of any "soil, rubbish, or filth, or any other thing" (*Metropolitan Board of Works* v. *Eaton* (1884), 48 J. P. 611 ; 50 L. T. (N.S.) 634).

A railway company received in their goods yard a truck of manure, which had been carried by them in the ordinary course of their business. It arrived on the Sunday, and notice was at once given to the consignee, who proceeded to remove it on the Monday, and on being emptied it gave forth a very offensive smell. The magistrates convicted the appellants of a breach of the following byelaw : "No person shall deposit, throw or allow to run, lodge, or accumulate upon the surface of any street, square, court, highway or place, or on any waste or unoccupied ground, or on any uncovered drain, ditch, watercourse, sink, pond, or other collection of water,

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or expose or cause to be exposed in any other manner whatever within the district, any animal or vegetable matter, fish offal, ordure, blood, bones, manure, shells, broken glass, china or earthenware, dust, ashes, house refuse, waste or runnings from any manufactory, or other offensive or noxious matter whatever" :— *Held*, that the magistrates were wrong (*London, Brighton, and South Coast Rail. Co.* v. *Hayward's Heath Urban Council* (1899), 80 L. T. 266).

(*cc*) As to the meanings of the expressions "slaughter-house," knacker's yard," "premises," and "house refuse," respectively, see s. 141, *post*.

(*d*) See also as to the keeping of swine, s. 17, *post*.

In *Everett* v. *Grapes* (1861), 25 J. P. 644 ; 3 L. T. (N.S.) 669, it was held, under 5 & 6 Will. 4, c. 76, s. 90, that a byelaw aimed against keeping pigs in a borough generally, instead of keeping them so as not to be a nuisance, was bad. But see *Wanstead Local Board of Health* v. *Wooster* (1873), 37 J. P. 403 ; 38 J. P. 21 ; 55 L. T. 81, where a byelaw preventing any occupier of a house keeping pigs within 100 feet of a dwelling-house was held to be valid on the ground that the doing so was likely to be a nuisance, so that it might be prohibited altogether. It was decided in the same case that the byelaw might require the removal of filth, etc. without any previous requisition by the local authority. But the principle of this decision was held to apply only to urban and not to rural districts. Therefore, where a rural authority, having urban powers under this section, made a byelaw prohibiting the keeping of swine within the distance of fifty feet from any dwelling-house within their district, it was held that the byelaw was unreasonable and bad (*Heap* v. *Burnley Union* (1884), 12 Q. B. D. 617 ; 48 J. P. 359 ; 53 L. J. M. C. 76 ; 32 W. R. 661). Lord COLERIDGE, L.C.J., said it was impossible to attempt to lay down what, under all circumstances, would be a reasonable byelaw ; but it seemed to him unreasonable to say, that in country districts nobody should keep a pig within fifty feet of his dwelling-house. The corresponding section of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52, s. 54), enables urban authorities to make byelaws for "the regulation of the keeping of animals on any premises, or for the prevention of such keeping, so as to be injurious to health." A byelaw under this section was as follows : "No swine shall be kept in any yard within a distance of twenty-one feet from a dwelling-house or public building, or any building in which any persons may be or may be intended to be employed in any manufacture, trade, or business, without the special permission of the sanitary authority." It was held that this byelaw was valid (*Lutton* v. *Doherty* (1885), 16 L. R. Ir. 493). It is not necessary in order to procure a conviction under such a byelaw that a nuisance has been caused by the defendant's disobedience of the byelaw (*Tong Street Local Board* v. *Seed* (1874), 39 J. P. 278). A byelaw imposed a penalty for keeping swine within fifty yards of a dwelling-house. M., in course of business, used to sell swine elsewhere in the morning and bring them within fifty yards, etc.

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and keep them till the evening, when they were sent off by railway. The justices held that because the pigs were not fed and kept all night this could not be a "keeping" within the byelaw. It was held that the justices were wrong, and that keeping them all night was not necessary to the offence (*Steers* v. *Manton* (1893), 57 J. P. 584).

(*e*) This means the London County Council. See s. 141, *post*. As the byelaws in question have to be observed and enforced by the sanitary authority, the proviso to s. 114, *post*, relating to the making of byelaws, will apply. The byelaws of the county council will not apply in the city of London. See s. 133, *post*.

The byelaws made and for the time being in force under this section are to be found in the published Byelaws and Regulations of the London County Council.

(*f*) This means the administrative county of London. See s. 141, *post*.

(*g*) Although no byelaw was made under this section, and the provision in 18 & 19 Vict. c. 120, s. 126, was repealed by s. 142 (4), *post*, it was held that an occupier who refused to allow his refuse to be removed at the usual weekly period was guilty of an offence against s. 116 (1) (a), though no nuisance was alleged (*Borrow* v. *Howland* (1896), 60 J. P. 391 ; 74 L. T. 787 ; 12 T. L. R. 414 ; 18 Cox C. C. 368).

(*h*) It has already been pointed out that this sub-section renders the proviso in s. 114, *post*, applicable to byelaws made by the county council under this section.

The county council may prosecute in default of the sanitary authority under s. 100, *post*. And complaint of such default may be made to the Local Government Board under s. 101, *post*.

(*i*) This is an unusual provision, but it may be necessary to exercise it in the metropolis, where it is impossible for a constable to recognise the offender in every case.

The person arrested must be "found committing" the offence. Neglecting to do something required by the byelaws, or merely suffering something to be done contrary to the byelaws, would not be sufficient. See *Horley* v. *Rogers* (1860), 24 J. P. 261 ; 29 L. J. M. C. 140.

No arrest can be made if the true name and address be given, but the sub-section does not provide for the detention of the person arrested for the purpose of verifying the name and address given by him. Therefore, if an offender gives a name and address, it will be imprudent for the constable to detain him.

(*k*) The byelaws may regulate, though they must not prohibit, the laying of things in the streets to prevent accidents, etc.

Penalty for keeping swine in unfit place.

17.—(1) A person shall not—

(a) Feed or keep any swine in any locality, premises (*a*), or place which is unfit for the keeping of swine,

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or in which the feeding or keeping of swine may create a nuisance or be injurious to health, or

(b) Permit any swine to stray or go about in any street (*b*) or public place (*c*).

(2) If any person acts in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to forfeit the swine, and to a further fine not exceeding ten shillings for every day during which he continues such offence after notice from the sanitary authority to discontinue the same (*d*).

(3) Any swine found straying or going about in any street (*b*) or public place may be seized and removed by any constable (*e*).

(4) Any premises within forty yards of any street or public place shall be deemed for the purposes of this section to be a place unfit for keeping swine (*f*).

(*a*) and (*b*) As to the meanings of the expressions "premises" and "street," respectively, see s. 141, *post*.

(*c*) This section is taken from 25 & 26 Vict. c. 102, s. 91 ; 57 Geo. 3, c. xxix, s. 68, and 2 & 3 Vict. c. 47, s. 60 (5) (now repealed).

See the preceding section, which enables byelaws to be made for preventing the keeping of animals so as to be a nuisance.

Keeping swine in a city is a nuisance at common law (*R.* v. *Wigg* (1705), Salk. 460).

This enactment forbids the keeping of swine in improper places, and the keeping of swine in proper places, but in an improper manner. See *Digby* v. *West Ham Local Board* (1858), 22 J. P. 304. If the keeping of the swine is a nuisance, it need not also be injurious to health (*Banbury Sanitary Authority* v. *Page* (1881), 8 Q. B. D. 97 ; 46 J. P. 184 ; 51 L. J. M. C. 21 ; 45 L. T. (N.S.) 759 ; 30 W. R. 415).

The corresponding section of the Public Health Act, 1875, s. 47, forbids the keeping of swine in a dwelling-house. It would, no doubt, be held that a dwelling-house is a place which is unfit for the keeping of swine within the meaning of the section. As to what amounts to keeping swine, see *Steers* v. *Manton* (1893), 57 J. P. 584.

(*d*) As to the recovery of these penalties, see s. 117, *post*.

As to the forfeiture, see s. 119 (2), *post*.

It should be observed that this section affords an alternative remedy in some cases, which might otherwise be dealt with under those sections of this Act which relate to nuisances generally. See s. 2, *ante*, p. 3.

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(*e*) The section does not go on to say what the constable is to do with the swine when he has removed it. It appears, however, from s. 117 (2) that there is no forfeiture of the swine under the preceding sub-section without an order of the court stating how the swine is to be sold or disposed of.

(*f*) This provision applies to the whole metropolis. Formerly it applied only to such parts as were subject to the 57 Geo. 3, c. xxix (*Chelsea* (*Vestry of*) v. *King* (1864), 29 J. P. 39 ; 34 L. J. M. C. 9).

Power to prohibit keeping of animals in unfit place.

18. Where it is proved to the satisfaction of a petty sessional court that any locality, premises, or place are or is unfit for the keeping of any animal, the court may by summary order prohibit the using thereof for that purpose for the future.

This section is new.

A summary order is an order made under the Summary Jurisdiction Acts. See 42 & 43 Vict. c. 49, s. 51 (3).

As to the meaning of the expression "petty sessional court," see note (*h*), on p. 28, *ante*, and as to the meaning of the expression "premises," see s. 141, *post*.

Offensive Trades.

Prohibition and regulation of establishing anew certain offensive businesses, and byelaws as to offensive businesses.

19.—(1) If any person—

(a) Establishes anew (*a*) the following businesses, or any of them ; that is to say, the business of blood boiler, bone boiler, manure manufacturer, soap boiler, tallow melter, or knacker (*b*) ; or

(b) Establishes anew (*a*), without the sanction of the county council, the following businesses, or any of them ; that is to say, the business of fellmonger, tripe boiler, slaughterer of cattle or horses, or any other business which the county council may declare by order confirmed by the Local Government Board and published in the London Gazette to be an offensive business (*c*),

he shall be liable to a fine not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on the same when established shall be liable to a fine not exceeding fifty pounds for every day during which he so carries on the same (*d*) :

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(2) Provided that this enactment shall not render any person liable to a fine for establishing anew with the sanction of the county council, or carrying on, the business of soap boiler, if and as long as that business is a business in which tallow or any animal fat or oil other than olein is not used by admixture with alkali for the production of soap (*e*).

(3) The county council shall give their sanction by order (*f*), but, at least (*g*) fourteen days before making any such order, shall make public the application for it, by serving on the sanitary authority within whose district the premises on which the business is proposed to be established are situate, and by advertising, notice (*h*) of the application and of the time and place at which they will be willing to hear all persons objecting to the order, and by causing a copy of the notice to be affixed in a conspicuous part of the said premises; and they shall consider any objections made at that time and place, and shall grant or withhold their sanction as they think expedient (*i*).

(4) The county council may make byelaws for regulating the conduct of any businesses specified in this section, which are for the time being lawfully carried on in London, and the structure of the premises on which any such business is being carried on, and the mode in which the said application is to be made (*k*).

(5) Any such byelaw may empower a petty sessional court by summary order to deprive any person, either temporarily or permanently, of the right of carrying on any business to which such byelaw relates, as a punishment for breaking the same, and any person disobeying such order shall be liable to a fine not exceeding fifty pounds for every day during which such disobedience continues (*l*).

(6) Any sanitary authority or person aggrieved by any proposed byelaw under this section, or by any proposed alteration or repeal of a byelaw, may forward notice of his objection to the Local Government Board, who shall consider the same (*m*).

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(7) There shall be charged for an order of the county council under this section, and carried to the county fund, such fee not exceeding forty shillings, as the county council may fix (*n*).

(8) For the purposes of this section, a business shall be deemed to be established anew not only if it is established newly, but also if it is removed from any one set of premises to any other premises, or if it is renewed on the same set of premises after having been discontinued for a period of nine months or upwards, or if any premises on which it is for the time being carried on are enlarged without the sanction of the county council; but a business shall not be deemed to be established anew on any premises by reason only that the ownership of such premises is wholly or partially changed, or that the building in which it is established having been wholly or partially pulled down or burnt down has been reconstructed without any extension of its area (*o*).

(9) Nothing in this section shall render an order of the county council necessary to authorise the slaughter of cattle at the metropolitan cattle market, or at the cattle market at Deptford, or shall authorise the making of bye-laws affecting either of those markets or the slaughterhouses erected thereat either before or after the commencement of this Act (*p*).

(10) In the application of this section to the city of London, the commissioners of sewers shall be substituted for the county council, and the consolidated rate for the county fund (*q*).

Further provisions regarding dangerous and noxious businesses are contained in the London Building Act, 1894, ss. 118—121, 200 (8).

This section is taken from 37 & 38 Vict. c. 67, ss. 2, 3, which is repealed by this Act.

(*a*) As to the meaning of these words, see sub-s. (8).

(*b*) The word "knacker" is defined by s. 141, *post*. It should be observed that this clause absolutely prohibits the newly establishing in the metropolis the businesses of blood boiling, etc. As to the business of a soap boiler, see sub-s. (2).

(*c*) The county council are now substituted for the Metropolitan Board of Works. See sub-s. (10). The provision as to the declaring of the business to be offensive avoids the difficulty arising

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in the corresponding section of the Public Health Act, 1875, where there are general words applying to any offensive trade or business, and it has not always been easy to decide what trades fell within the description of offensive trades. Thus, it was held that brick-making was not an offensive trade (*Wanstead Local Board* v. *Hill* (1863), 13 C. B. (N.S.) 479 ; 32 L. J. M. C. 135 ; 7 L. T. (N.S.) 744 ; 11 W. R. 368) ; nor a manure manufactory (*Cardwell* v. *Newquay Local Board* (1875), 39 J. P. 742) ; nor a fried fish shop (*Boyton* v. *Braintree Local Board* (1884), 48 J. P. 582 ; 52 L. T. (N.S.) 99 ; but a rag and bone business was held to be offensive (*Passey* v. *Oxford Local Board* (1879), 43 J. P. 622).

In the case of *Att.-Gen.* v. *Cole & Son*, [1901] 1 Ch. 205 ; 65 J. P. 88 ; 70 L. J. Ch. 148 ; 83 L. T. 725, the defendant carried on the trade of a fat melter, and the nuisance complained of was alleged to arise from the emanation of noxious gases from the defendant's works. In an action to restrain the nuisance, KEKEWICH, J., held that the question whether the defendant is acting reasonably from his own point of view is not material, and if he is carrying on business so as to cause a nuisance to his neighbours he is not acting reasonably as regards them, and may be restrained by injunction, although he may be conducting his business in a proper manner.

An injunction was granted restraining the defendant, a restaurant keeper, from allowing the escape of noxious odours to the injury of his neighbour's premises (*Dore* v. *Securini* (1887), 31 Sol. J. 726). A small-pox hospital is not a noxious or offensive business within the meaning of s. 112 of the Public Health Act, 1875 (*Withington Local Board* v. *Manchester* (*Mayor, etc. of*), [1893] 2 Ch. 19 ; 57 J. P. 340 ; 62 L. J. Ch. 393 ; 68 L. T. (N.S.) 330 ; 41 W. R. 306). As to gut-scraping and sorting, see *London County Council* v. *Hirsch* (1899), 63 J. P. 822 ; 81 L. T. (N.S.) 447.

The expression "slaughterer of cattle" is defined in s. 141, *post*.

As to the mode in which the sanction of the county council is to be given, see sub-s. (3), *infra*. The county council is the London County Council. See s. 141, *post*.

The London County Council have by an order dated June 29th, 1904, declared the dressing of fish skins to be an offensive business under this section, and their order was duly confirmed by the Local Government Board on July 30th, 1904.

Copies of the byelaws in force in regard to the following trades, viz., blood boiler, slaughterer of cattle, animal charcoal manufacturer, blood drier, fellmonger, dresser of fish skins, bone boiler, manure manufacturer, tallow melter, soap boiler, gut scraper, catgut maker or catgut manufacturer, fat melter or fat extractor, glue and size manufacturer, tripe boiler, and knacker, are to be found in the published Byelaws and Regulations of the London County Council.

(*d*) As to the recovery of these penalties, see s. 117, *post*.

(*e*) This is a new provision.

As to the sanction of the county council, see sub-s. (3).

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(*f*) As to the fee to be charged for the order, see sub-s. (7). As to the form of the order and its authentication, see s. 127 (2), *post*.

(*g*) This means fourteen clear days, exclusive of the day of giving the notice and the day of making the order (*R.* v. *Shropshire JJ.* (1838), 8 A. & E. 173 ; *Young* v. *Higgon* (1840), 6 M. & W. 49).

(*h*) The byelaws under sub-s. (4), as they have been made, provide for the mode of application. As to the mode of service of the notice on the sanitary authority, see s. 128 (2), *post*. The Act does not provide for notices by advertisement. The provision as to fixing a copy on the premises is new.

(*i*) It is entirely in the discretion of the county council to grant or withhold their sanction ; and see *Darney* v. *Calder District Committee* (1904), 7 F. 239, where a condition was held to be an inseparable part of a sanction. The expression "premises" is defined in s. 141, *post*.

(*k*) As to the making of byelaws, see s. 114, *post*.

Section 6 (4) of the London Government Act, 1899 (62 & 63 Vict. c. 14), provides that "It shall be the duty of each borough council to enforce within their borough the byelaws and regulations for the time being in force with respect to dairies and milk, and with respect to slaughter-houses, knackers' yards, and offensive businesses, and for the purpose of performing this duty the borough council shall in all cases have the same powers of entry as they have in the case of slaughter-houses and knackers' yards, and if the council make default in performing this duty, the provisions of the Public Health (London) Act, 1891, shall apply as if the default were a default under that Act."

See the provisions in ss. 9, 10 of the London County Council (General Powers) Act, 1908, set out in the Appendix, *post*, conferring upon the London County Council and the Corporation of the City of London the power to make byelaws with respect to the businesses of a vendor of fried fish, a fish curer, or a rag and bone dealer, the premises in or upon which any such business is carried on, and the apparatus, utensils, and appliances used for the purposes of or in connection with any such business, and providing for the enforcement of such byelaws by the sanitary authorities.

The byelaws made or continued and now in force relating to offensive businesses are referred to at the end of note (*c*), *supra*.

A local Act in the city of London authorised commissioners to make rules for the management of any place used as a slaughter-house or for the killing of cattle. A rule made under this Act directed that proper accommodation or poundage should be provided for cattle apart from the place where meat is stored, and that animals should not be kept there more than twelve hours before they were killed. The defendant kept a pound in a separate street 100 yards from his slaughter-house, and disobeyed the rules as to his pound, and was convicted :—*Held*, the rule was *ultra vires* except as regards pounds which were parts of slaughter-houses, and that this pound not being part of the slaughter-house, the conviction was wrong (*Nicklinson* v. *Newman* (1869), 33 J. P. 644).

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Where byelaws were made under this Act as follows: "An occupier of a slaughter-house (a) shall not slaughter or permit to be slaughtered any animal in any pound, pen or lair, or in any part of the premises other than the slaughter-house; . . . (c) shall not slaughter or permit to be slaughtered any animal within public view or within the view of any other animal," it was held that these byelaws were not repugnant to the common law, and that upon breach of them the occupier of a slaughter-house was liable for the act of his servant, although the offence of the servant was committed without the knowledge and contrary to the express order of his master (*Collman* v. *Mills*, [1897] 1 Q. B. 396; 61 J. P. 102; 66 L. J. Q. B. 170; 75 L. T. (N.S.) 590; 18 Cox C. C. 481).

(*l*) For the meaning of the expression "petty sessional court," see note (*h*), *ante*, p. 28.

A summary order is an order of a court of summary jurisdiction made pursuant to the Summary Jurisdiction Acts (42 & 43 Vict. c. 49, s. 51 (3)).

As to the recovery of the fine, see s. 117, *post*.

(*m*) It may be doubted whether this provision is now necessary, having regard to s. 184 of the Public Health Act, 1875, which is incorporated by s. 114, *post*. It has, however, been repeated from 37 & 38 Vict. c. 67, s. 4.

(*n*) The order referred to is that giving the sanction of the county council to the establishment of a business mentioned in this section. See sub-s. (3).

(*o*) This provision is taken from 37 & 38 Vict. c. 67, s. 13, which is repealed by this Act. There is no corresponding provision in the Public Health Act, 1875.

As to the manner in which the sanction of the county council is to be given, see sub-s. (3). A cattle market company, cattle never having been slaughtered in the market before, erected a building in which they allowed persons to slaughter cattle on payment of 2*s*. a head, the company finding the tackle attached to the building, but the persons slaughtering bringing their own implements. It was held that the company were liable to the penalty under the corresponding provisions of 11 & 12 Vict. c. 83, s. 61, for having established the business of slaughterers of cattle (*Liverpool Cattle Market Co.* v. *Hodson* (1867), L. R. 2 Q. B. 131; 31 J. P. 245; 8 B. & S. 184; 36 L. J. M. C. 30; 15 L. T. (N.S.) 534; 15 W. R. 563).

For the meaning of the expressions "premises" and "building," see s. 141, *post*.

(*p*) This provision is taken from 37 & 38 Vict. c. 67, s. 15.

For the definition of a "slaughterer of cattle" and "slaughter-house," see s. 141, *post*.

"Slaughter-house," as used in the Towns Improvement Clauses Act, 1847, and the Local Government Act, 1858, includes not merely the premises where the actual slaughtering of cattle takes place, but also the premises used for processes connected with or incident to the slaughtering; and premises in use for those processes, even though no actual slaughtering of cattle takes place

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within them, are used as slaughter-houses within s. 126 of the Towns Improvement Clauses Act, 1847 (*Hides* v. *Littlejohn* (1896), 60 J. P. 101 ; 74 L. T. 24 ; 18 Cox C. C. 219).

(*q*) The commissioners of sewers were the sanitary authority for the city of London. See ss. 99, 103, *post*.

The authority for the execution of this Act in the city of London is now the common council, to whom the powers of the commissioners of sewers were transferred by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii).

Licensing of cow-houses and slaughter-houses.

20.—(1) A person carrying on the business of a slaughterer of cattle or horses, knacker, or dairyman, shall not use any premises in London (outside the city of London) as a slaughter-house, or knacker's yard, or a cow-house or place for the keeping of cows, without a licence from the county council, and if he does he shall for each offence be liable to a fine not exceeding five pounds, and the fact that cattle have been taken into unlicensed premises shall be primâ facie evidence that an offence under this section has been committed (*a*).

(2) A licence under this section shall expire on such day in every year as the county council fix, and when a licence is first granted shall expire on the day so fixed which secondly occurs after the grant of the licence, and a fee not exceeding five shillings to be carried to the county fund may be charged for the licence (*b*).

(3) Not less than fourteen days before a licence for any premises is granted or renewed under this section, notice of the intention to apply for it shall be served on the sanitary authority of the district in which the premises are situate, and that sanitary authority, if they think fit, may show cause against the grant or renewal of the licence (*c*).

(4) An objection shall not be entertained to the renewal of a licence under this section, unless seven days previous notice of the objection has been served on the applicant, save that, on an objection being made of which notice has not been given, the county council may, if they think it just so to do, direct notice thereof to be served on the applicant, and adjourn the question of the renewal to a future day, and require the attendance of the applicant on that day, and then hear the case, and

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consider the objection, as if the said notice had been duly given (*d*).

(5) Where a committee of the county council determine to refuse, or to recommend the council to refuse, the renewal of any licence under this section, the county council shall, on written application made within seven days after such determination is made known to the applicant, hear the applicant against such refusal (*e*).

(6) For the purposes of this section a licence shall be deemed to be renewed where a further licence is granted in immediate succession to a prior licence for the same premises (*f*).

(7) The sanitary authority shall have a right to enter any slaughter-house or knacker's yard at any hour by day or at any hour when business is in progress or is usually carried on therein, for the purpose of examining whether there is any contravention therein of this Act or of any byelaw made thereunder (*g*).

(8) Nothing in this section shall extend to slaughter-houses (*a*) erected before or after the commencement of this Act in the metropolitan cattle market under the authority of the Metropolitan Market Act, 1851, or the Metropolitan Market Act, 1857.

(*a*) The expressions "slaughterer of cattle," "slaughter-house," "dairyman," "knacker," "knacker's yard," and "premises," are defined by s. 141, *post*.

Under the repealed sections, 25 & 26 Vict. c. 102, s. 93, and 37 & 38 Vict. c. 67, s. 10, the licences were granted by justices in special sessions, but the powers of the justices were transferred to the London County Council by s. 45 of the Local Government Act, 1888.

The repealed section did not apply to a slaughterer of horses or knacker.

As to the recovery of the fine, see s. 117, *post*.

The concluding words of the section that the taking of cattle into unlicensed premises shall be primâ facie evidence of an offence presumably applies only to the offence of keeping cows without a licence.

A person carrying on the business of a farmer within the metropolitan police area, and keeping cows in a shed upon his premises as incidental to such a business is not "a person carrying on the business of a dairyman" within the meaning of this section as defined by s. 141, *post*, so as to require a licence (*Umfreville* v. *London County Council* (1896), 61 J. P. 84 ; 66 L. J. Q. B. 177 ;

75 L. T. 550 ; 13 T. L. R. 109 ; 18 Cox C. C. 464). See also *Southwall* v. *Lewis* (1880), 45 J. P. 206. **Sect. 20.**

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(*b*) If the day fixed for the expiration of a licence is December 31st, a licence first granted on January 1st will not expire on the following December 31st, but on December 31st in the next year.

(*c*) As to the mode of service of the notice on the sanitary authority, see s. 128 (2), *post*.

(*d*) This provision does not apply to the grant of a licence for the first time, but only to a renewal.

As to when a licence is deemed to be renewed, see sub-s. (6).

The sanitary authority may, no doubt, object, but the text does not provide that any other person or body may do so. Compare s. 19 (3), *ante*, p. 48.

(*e*) The power of the county council to delegate their powers and duties to a committee is given to them by s. 22 of the Municipal Corporations Act, 1882, which is incorporated with and amended by the Local Government Act, 1888, ss. 75, 82. When the powers and duties of the county council, as to licences under this section, are delegated to a committee, and the committee refuse to grant or renew a licence, an appeal will lie to the whole council.

(*f*) A further licence will be required on the expiration of a licence as explained by sub-s. (2).

(*g*) The powers of the sanitary authority as to entry on premises are regulated by s. 115, *post*.

The expressions "slaughter-house," "day," and "knacker's yard," are defined by s. 141, *post*. The same section provides that "day" means from 6 a.m. to 9 p.m.

Byelaws may be made under ss. 16, 19, *ante*, pp. 42, 47, affecting slaughter-houses or knackers' yards.

Section 6 (4) of the London Government Act, 1899 (62 & 63 Vict. c. 14), provides that : "It shall be the duty of each borough council to enforce within their borough the byelaws and regulations for the time being in force with respect to dairies and milk, and with respect to slaughter-houses, knackers' yards, and offensive businesses, and for the purpose of performing this duty the borough council shall in all cases have the same powers of entry as they have in the case of slaughter-houses and knackers' yards, and if the council make default in performing this duty, the provisions of the Public Health (London) Act, 1891, shall apply as if the default were a default under that Act."

See also the provisions of ss. 53—56 of the London County Council (General Powers) Act, 1903, in the Appendix, *post*.

The byelaws made or continued and now in force relating to slaughter-houses are to be found in the published Byelaws and Regulations of the London County Council.

21.—(1) Where any manufactory, building, or premises used for any trade, business, process, or manufacture, causing effluvia (*a*), is certified to the sanitary authority by their medical officer of health, or by any two legally

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nuisance arising from offensive trade.

qualified medical practitioners (*b*), or by any ten inhabitants of the district of such authority, to be a nuisance or injurious or dangerous to the health of any of the inhabitants of the district (*c*), such authority shall (*d*) make a complaint, and if it appears to the petty sessional court (*e*) hearing the complaint that the trade, business, process, or manufacture carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious or dangerous to the health of any of the inhabitants of the district, then, unless it is shown that such person has used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier) shall be liable to a fine not exceeding fifty pounds (*f*).

(2) Provided that the court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem practicable, and order to be carried into effect, for abating the nuisance, or mitigating or preventing the injurious effects of the effluvia (*g*).

(3) The sanitary authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in the High Court against any person in respect of the matters alleged in such certificate (*h*).

(4) The sanitary authority may take proceedings under this section in respect of a manufactory, building, or premises situate without their district, so, however, that the summary proceedings shall be had before a court having jurisdiction in the district where the manufactory, building, or premises are situate (*i*).

38 & 39 Vict. c. 55.

(5) Section one hundred and fifteen of the Public Health Act, 1875 (set out in the First Schedule to this Act), shall continue to extend to London, with the substitution of a sanitary authority under this Act for a nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis or to any building, manufactory, or place in the metro-

polis which is injurious to health, shall include any nuisance within the meaning of this Act, and any manufactory, building, or place which is dangerous to health (*k*). Sect. 21.

This section is taken from 18 & 19 Vict. c. 121, ss. 27, 30, and 29 & 30 Vict. c. 90, s. 18, now repealed. It corresponds to s. 114 of the Public Health Act, 1875. The expressions "building," "premises," and "owner," are defined in s. 141, *post*.

(*a*) The section applies to any manufacture in which effluvia are given off, though the business may not be an offensive trade within s. 19, *ante*.

(*b*) By 49 & 50 Vict. c. 48, s. 27, a registered medical practitioner is defined to mean a person registered under the Medical Acts, *i.e.*, the 21 & 22 Vict. c. 90, and any Acts amending the same. By 21 & 22 Vict. c. 90, s. 37, the certificate will be invalid unless both of the medical practitioners signing it are duly registered. And by s. 27 of the same Act, a copy of the Medical Register purporting to be printed and published by the registrar of the general council under the direction of the council, is evidence of registration. Medical certificates.

(*c*) If the effluvia amount to a nuisance in the sense of causing annoyance and discomfort, it is sufficient to bring the trade within this section, without proving also that there is injury to health (*Malton Board of Health* v. *Malton Farmers' Manure Co.* (1879), 4 Ex. D. 302 ; 44 J. P. 155 ; 49 L. J. M. C. 90 ; 40 L. T. (N.S.) 755 ; 27 W. R. 802 ; *Houldershaw* v. *Martin* (1885), 1 T. L. R. 323). In the latter case the nuisance complained of was a fried fish shop. Injury to health immaterial.

Section 4, *ante*, which provides that the sanitary authority, if satisfied of the existence of a nuisance liable to be dealt with summarily under the Act, shall serve a notice on the person responsible for the nuisance requiring him to abate it, applies only to the class of nuisance enumerated in s. 2, and not to the nuisances arising from offensive trades dealt with by this section, and the service of such a notice is not a condition precedent to the jurisdiction of the magistrate to hear a complaint under this section (*Bird* v. *St. Mary Abbot's, Kensington* (*Vestry of*), [1895] 1 Q. B. 912 ; 59 J. P. 391 ; 64 L. J. M. C. 215 ; 72 L. T. 599). Duty of local authority.

(*d*) This word is imperative ; the sanitary authority have no discretion in the matter. If they refuse or fail to make the complaint, the county council may do so under s. 100, *post*, or proceedings may be taken against the sanitary authority under s. 101, *post*.

(*e*) The meaning of the expression "petty sessional court," has already been explained in note (*h*), *ante*, p. 28.

(*f*) As to the recovery of the penalty, see s. 117, *post*.

(*g*) This provision is imperfect, for it does not state what the final determination is to be if means are taken to abate the nuisance, or if the means ordered to be adopted prove ineffective. Probably the sub-section means that the court may adjourn the hearing

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sine die and fine the defendant, if after the lapse of a reasonable time effective measures are not taken to abate the nuisance.

(*h*) See the similar provision in s. 13, *ante*, p. 39, and the notes to that section. It is for the sanitary authority, in their discretion, to determine whether proceedings shall be taken in the High Court instead of proceeding under sub-s. (1) before a petty sessional court. For a case in which proceedings for an injunction were taken under the corresponding section of the Public Health Act, 1875, see *Att.-Gen.* v. *Smith*, Times, June 7th, 1894.

(*i*) This sub-section is taken from the Public Health Act, 1875, s. 115, which applies to the metropolis.

(*k*) See the First Schedule, *post*.

It is difficult to understand what is the object of this sub-section, having regard to the preceding one, which enacts, in substance, s. 115 of the Public Health Act, 1875.

The Alkali, etc. Works Regulation Act, 1906, provides that if any sanitary authority apply to the central authority for an additional inspector under the Act, and undertake to pay a proportion of his salary or remuneration, not being less than one half, the Local Government Board may (if they see fit), with the sanction of the Treasury, appoint an additional inspector under that Act, to reside within a convenient distance of the works he is required to inspect; and that such inspector shall have the same powers, and be subject to the same power of removal and to the same regulations and liabilities as other inspectors under this Act (s. 14). A sanitary authority may complain to the central authority that any work to which the Act applies is carried on in contravention of the Act, and that a nuisance is occasioned thereby to any of the inhabitants of their district, and the central authority are to make an inquiry into the matters complained of, and afterwards direct such proceedings to be taken by an inspector as they think fit and just. The sanitary authority may be required to pay the cost of the inquiry (s. 22). Any expenses of a sanitary authority under the Act are to be defrayed as general expenses incurred by the authority in the execution of the Public Health Act (s. 24). The expression "sanitary authority" means any person entrusted with the execution of the Public Health Act. In London, this is the Public Health (London) Act, 1891, and amending Acts. The central authority is the Local Government Board (s. 27).

Provision as to nuisance created by sanitary authority in dealing with refuse.

22.—(1) The removal of house refuse and street refuse by a sanitary authority when collected or deposited by that authority shall be deemed to be a business carried on by that authority within the meaning of the last preceding section, and a complaint or proceedings under that section in relation to any such business may be made or taken by the county council in like manner as if the council were a sanitary authority (*a*).

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(2) Any premises used by a sanitary authority for the treatment or disposal of any street refuse or house refuse, as distinct from the removal thereof, which are a nuisance or injurious or dangerous to health, shall be a nuisance liable to be dealt with summarily under this Act, and for the purpose of the application thereto of the provisions of this Act relating to such nuisances the county council shall be deemed to be a sanitary authority (*b*).

(*a*) This section is new.

The expressions "house refuse," "street refuse," and "premises," are defined by s. 141, *post*. As to the removal of refuse, see s. 29, and the following sections.

Under the provision in the text, the county council will be enabled to proceed against a sanitary authority, and they will be bound to do so upon a certificate given, as provided by the preceding section.

(*b*) This sub-section will apply to places used for the sifting or destruction of refuse. The county council will be required to give a notice to the sanitary authority, under s. 4, and proceed before a court of summary jurisdiction, under s. 5, if the nuisance is not abated.

Smoke Consumption.

Furnaces and steam vessels to consume their own smoke.

23.—(1) Every furnace employed in the working of engines by steam, and every furnace employed in any public bath or washhouse, or in any mill, factory, printing house, dyehouse, iron foundry, glasshouse, distillery, brewhouse, sugar refinery, bakehouse, gasworks, waterworks, or other buildings used for the purpose of trade or manufacture (although a steam engine be not used or employed therein), shall be constructed so as to consume or burn the smoke arising from such furnace (*a*).

(2) If any person being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier—

(a) Uses any such furnace which is not constructed so as to consume or burn the smoke arising therefrom; or

(b) So negligently uses any such furnace as that the smoke arising therefrom is not effectually consumed or burnt; or

(c) Carries on any trade or business which occasions any noxious or offensive effluvia, or otherwise annoys the neighbourhood or inhabitants, without using

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the best practicable means for preventing or counteracting such effluvia or other annoyance ;

such person shall be liable to a fine not exceeding five pounds, and on a second conviction to a fine of ten pounds, and on each subsequent conviction to a fine double the amount of the fine imposed on the last preceding conviction (*b*).

(3) Every steam engine and furnace used in the working of any steam vessel on the river Thames, either above London Bridge, or plying to and fro between London Bridge and any place on the river Thames westward of the Nore light, shall be constructed so as to consume or burn the smoke arising from such engine and furnace ; and if any such steam engine or furnace is not so constructed, or being so constructed is wilfully or negligently used so that the smoke arising therefrom is not effectually consumed or burnt, the owner or master of such vessel shall be liable to a fine not exceeding five pounds, and on a second conviction to a fine of ten pounds, and on every subsequent conviction to a fine of double the amount of the fine imposed on the last preceding conviction (*c*).

(4) Provided that in this section the words "consume or burn the smoke" shall not be held in all cases to mean "consume or burn all the smoke," and the court hearing an information against a person may remit the fine if of opinion that such person has so constructed his furnace as to consume or burn, as far as possible, all the smoke arising from such furnace, and has carefully attended to the same, and consumed or burned, as far as possible, the smoke arising from such furnace (*d*).

(5) It shall be the duty of every sanitary authority to enforce the provisions of this section, and an information shall not be laid for the recovery of any fine under this section except under the direction of a sanitary authority (*e*).

(6) The provisions of this Act with respect to the admission of the sanitary authority into any premises for any purposes in relation to nuisances, and with respect to the giving of information of a nuisance, shall apply in like

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manner as if they were herein re-enacted, and in terms made applicable to this section (*f*).

(7) This section shall extend to the port of London, and as respects the port shall be enforced by the port sanitary authority (*g*).

(8) Nothing in this section shall alter or repeal any of the provisions of the City of London Sewers Act, 1851, or of the Whitechapel Improvement Act, 1853 (*h*). 14 & 15 Vict. c. 75; 16 & 17 Vict. c. cxli.

The expressions "bakehouse," "premises," and "owner," are defined in s. 141, *post*. As to what is meant by consuming or burning the smoke, see sub-s. (4).

(*a*) This sub-section is taken from 16 & 17 Vict. c. 128, s. 1, as amended by 19 & 20 Vict. c. 107, s. 2, repealed by this Act.

(*b*) This sub-section is taken from 16 & 17 Vict. c. 128, s. 1, repealed by this Act.

As to what is meant by consuming or burning smoke, see sub-s. (4). The defendant, who was the owner and occupier of certain premises in the metropolis used for the purpose of manufacture was summoned under 16 & 17 Vict. c. 128, s. 1, for negligently using a furnace in such premises, so that the smoke arising therefrom was not effectually consumed. The furnace in question was constructed so as to consume its own smoke, if carefully used; and the emission of smoke complained of was caused by the carelessness of the stoker employed by the defendant to attend to the furnace. The defendant was not personally guilty of any negligence in connection with the matter. It was held that defendant was not criminally responsible for the negligence of his servant, and could not be convicted of the offence (*Chisholm* v. *Doulton*, (1889), 22 Q. B. D. 736; 53 J. P. 550; 58 L. J. M. C. 133; 60 L. T. 96; 37 W. R. 749; 5 T. L. R. 250, 437).

Upon similar words in a local Act, it was held that where the owner used furnaces properly constructed, and employed a competent person to use them, but without his knowledge his servant negligently used them so that smoke was not consumed, the servant only, and not the master, could be convicted (*Willcock* v. *Sands* (1868), 32 J. P. 565).

A furnace which is properly constructed may be so improperly used as to render the person using it liable to a fine under this section (*Dumfries Commissioners* v. *Murphy* (1884), 11 Ct. of Sess. Cas., 4th ser., p. 694).

As to the recovery of the fines, see s. 117, *post*.

(*c*) This sub-section is taken from 16 & 17 Vict. c. 128, s. 2, as amended by 19 & 20 Vict. c. 107, s. 1 (repealed by this Act). A steamer plied chiefly in the river, tugging vessels between the docks and parts westward of the Nore light; but also occasionally tugged vessels towards the sea eastward of that point. It was held that the vessel came within the corresponding provisions of the repealed Acts (*Walker* v. *Evans* (1859), 24 J. P. 40; 29 L. J. M. C. 22). As to the recovery of the fines, see s. 117, *post*.

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As to the liability of a railway company for smoke nuisances caused by locomotives, see 8 & 9 Vict. c. 20, s. 114, and 31 & 32 Vict. c. 119, s. 16. The latter section was passed to provide for circumstances to which it was held that the former did not apply. See *Manchester, Sheffield, etc., Rail. Co.* v. *Wood* (1859), 2 El. & El. 344 ; 24 J. P. 38 ; 29 L. J. M. C. 29 ; 1 L. T. (N.S.) 31 ; *South Eastern and Chatham Rail. Co.* v. *London County Council* (1901), 65 J. P. 568 ; 84 L. T. 632 ; *London County Council* v. *Great Eastern Rail. Co.*, [1906] 2 K. B. 312 ; 70 J. P. 356 ; 75 L. J. K. B. 290 ; 94 L. T. (N.S.) 586 ; 54 W. R. 537 ; 22 T. L. R. 513 ; 4 L. G. R. 925. See also as to a nuisance caused by smoke and noxious vapour from an engine-shed, *Smith* v. *Midland Rail. Co.* (1877), 37 L. T. (N.S.) 224 ; 25 W. R. 861.

(*d*) This sub-section is taken from 16 & 17 Vict. c. 128, s. 3, now repealed.

(*e*) This sub-section is taken from 16 & 17 Vict. c. 128, s. 5, and 19 & 20 Vict. c. 107, s. 3, now repealed. If the sanitary authority make default in enforcing these provisions, the county council may substitute the necessary proceedings under s. 100, *post*, or proceedings may be taken against the sanitary authority under s. 101, *post*.

(*f*) This provision is taken from 29 & 30 Vict. c. 90, s. 20, now repealed.

The powers of a sanitary authority with regard to the entry upon premises are regulated by s. 115, *post*. As to the giving of information of a nuisance, see s. 3, *ante*.

(*g*) As to the port sanitary authority, see s. 111, *post*.

(*h*) This saving is repeated from 16 & 17 Vict. c. 128, s. 7, now repealed.

The Whitechapel Improvement Act, 1853, except ss. 4 and 43—47, which do not relate to the subject of this section, was repealed by the Borough of Stepney (Whitechapel) Scheme, 1901, approved by Order in Council of March 25th, 1901, made under the London Government Act, 1899.

Summary proceedings for abatement of nuisance caused by smoke.

24.—

(a) Any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gas-work, or in any manufacturing or trade process whatsoever ; and

(b) Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance (*a*) ;

shall be nuisances liable to be dealt with summarily under this Act, and the provisions of this Act relating to those nuisances shall apply accordingly (*b*) :

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Provided that the court hearing a complaint against a person in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, shall hold that no nuisance is created, and dismiss the complaint, if satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof (*c*).

(*a*) Section 91 of 38 & 39 Vict. c. 55, which contains a similar provision to that in clause (b) was held to apply to the chimney of a coal mine, subject to the exemption contained in s. 334 of that Act (*Patterson* v. *Chamber Colliery Co.* (1892), 56 J. P. 200; 8 T. L. R. 278).

(*b*) Ten several complaints were preferred against the appellant under the Public Health (London) Act, 1891, each of which charged that at premises occupied by the appellants a nuisance existed after notice thereof had been served upon them, namely, that a chimney (not being a chimney of a private dwelling-house), did on a specified and several days send forth black smoke in such quantity as to be a nuisance within the meaning of s. 24 (b). It was proved that on the days in question black smoke issued from the chimney, which was 180 feet high, from one to six times a day for from six to seventy-five minutes at a time, sixteen minutes in all being the shortest time for which it had issued on any one day; but there was no evidence that it was a nuisance to any particular person. The magistrate found that the black smoke on each of the days amounted to a nuisance and convicted the appellants on each complaint:—*Held*, that there was evidence upon which he could properly convict the appellants on each complaint (*South London Electric Supply Corporation* v. *Perrin*, [1901] 2 K. B. 186; 65 J. P. 627; 70 L. J. K. B. 643; 84 L. T. 630; 49 W. R. 539; 17 T. L. R. 475).

As to what is a private dwelling-house for the purposes of the section, see *Queen Anne's Mansions* v. *Westminster Corporation* (1901), 46 Sol. J. 70.

A London clubhouse contained five bedrooms for the use of members, and other bedrooms for the use of the staff. In the basement there were several covered-in cooking ranges and a vertical boiler with furnace attached. The smoke from these discharged into one flue, and caused black smoke to issue from the chimney. A magistrate having dismissed a summons against the secretary for failing to comply with a notice requiring him to abate the nuisance:—*Held*, that the chimney was not the chimney of a "private dwelling-house" so as to come within the exemption contained in s. 24 (b) of the Act, and that the magistrate ought to

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have convicted the respondent (*McNair* v. *Baker*, [1904] 1 K. B. 208 ; 68 J. P. 66 ; 73 L. J. K. B. 120 ; 90 L. T. 24 ; 20 T. L. R. 95 ; 2 L. G. R. 143).

Section 24 (b) applies to the funnel of a steam tug sending forth black smoke in such quantity as to be a nuisance (*Tough* v. *Hopkins*, [1904] 1 K. B. 804 ; 68 J. P. 274 ; 73 L. J. K. B. 628 ; 90 L. T. 672 ; 52 W. R. 605 ; 20 T. L. R. 323 ; 2 L. G. R. 1213).

When an order made by justices for the abatement of a nuisance arising from a chimney sending forth black smoke in such quantity as to be a nuisance was persistently disregarded, nineteen separate informations were laid, and the same number of summonses issued in respect of as many acts of disobedience, each committed on a different day, by sending forth black smoke. At the hearing the full penalty of 10*s.* was imposed for the offence alleged in each summons, and the offenders were also ordered to pay 15*s.* costs on the first summons, and 16*s.* costs on every other. They objected that their disobedience was but one default, and that the divers acts complained of should have been charged in a single summons, to which only one set of costs would have attached ; and they obtained a rule calling upon the justices to state a case under 20 & 21 Vict. c. 43 :—*Held*, that each daily emission of smoke was a separate act of disobedience, for which a separate summons might be lawfully issued, and that under the circumstances the justices had not so exercised their discretion in awarding costs as to render the interference of the court necessary (*R.* v. *Waterhouse* (1872), L. R. 7 Q. B. 545 ; 36 J. P. 471 ; 41 L. J. M. C. 115 ; 26 L. T. (N.S.) 761 ; 20 W. R. 712).

A prohibition order made under s. 5 of the Act in respect of a nuisance arising from the emission of black smoke from a chimney is not invalid because it does not specify the works to be executed by the defendant for the purpose of abating or preventing the recurrence of the nuisance, notwithstanding that the defendant may have required them to be specified (*Central London Rail. Co.* v. *Hammersmith Borough Council* (1904), 68 J. P. 217 ; 73 L. J. K. B. 623 ; 90 L. T. 645 ; 2 L. G. R. 446, and see *Millard* v. *Wastall*, *ante*, p. 27).

On March 18th, 1904, the occupier of certain premises in London was required by notice under s. 4 of the Act forthwith to abate a nuisance consisting in a chimney sending forth black smoke. From that date to January 5th, 1906, no further nuisance due to the chimney was observed ; but on the latter date the chimney again sent forth black smoke, whereupon the occupier was summoned for an alleged breach of the notice of 1904. The magistrate dismissed the summons subject to a case in which he stated that as the notice required the abatement of the nuisance forthwith, and no further nuisance occurred until January 5th, 1906, it must be assumed that immediately upon receipt of the notice the nuisance was abated, and that he had dismissed the summons on the ground that it was out of time under s. 11 of the Summary Jurisdiction Act, 1848 :—*Held*, without deciding whether s. 11 of the Summary Jurisdiction Act, 1848, had any application to the case, that no connection between the nuisance of March,

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1904, and that of January, 1906, was established, and on the ground that the decision of the magistrate could not be reversed (*Battersea Borough Council* v. *Goerg* (1906), 71 J. P. 11 ; 5 L. G. R. 162).

(*c*) The proviso to this section applies only to the fireplaces or furnaces mentioned in clause (a). When, therefore, a person is charged with the offence of allowing a chimney to send forth black smoke in such quantity as to be a nuisance, it is no defence that the furnace was properly constructed and used (*Weekes* v. *King* (1885), 49 J. P. 709 ; 53 L. T. (N.S.) 51). An attempt was made to question this decision in *Ex parte Schofield* (1891), 39 W. R. 580, but the Divisional Court, on a motion for a rule to a magistrate to state a case, held that they were bound by *Weekes* v. *King*, and the Court of Appeal held that the matter being criminal, no appeal lay from this decision. Where a chimney, not belonging to a private house, sends forth black smoke so as to be a nuisance, it is not necessary in proceedings to abate it to prove that the smoke is injurious to health (*Gaskell* v. *Bayley* (1874), 38 J. P. 805 ; 80 L. T. (N.S.) 516). The respondents were summoned for sending forth black smoke on a certain day, from a chimney of premises belonging to them (not being the chimney of a private dwelling-house), in such quantity as to be a nuisance within 29 & 30 Vict. c. 90, s. 19. At the hearing proof was given that black smoke issued from the chimney on the day named so as to be a nuisance, and that the premises were in the occupation of the respondents and used as a factory. No evidence was adduced to show that any inquiry had been made to find out who had charge of the furnaces causing the smoke at the time of the emission and the justices discharged the respondents. It was held that the respondents were properly summoned as the persons by whose permission the nuisance arose, and were responsible as such if the person causing the smoke to issue was their servant (*Barnes* v. *Akroyd* (1872), L. R. 7 Q. B. 474 ; 37 J. P. 116 ; 41 L. J. M. C. 110 ; 26 L. T. (N.S.) 692 ; 20 W. R. 671). This decision was followed in *Niven* v. *Greaves* (1890), 54 J. P. 548. There G.'s mill sent forth black smoke more than ten minutes. The furnace was properly constructed and efficient firemen superintended, and the stoker's own negligence was the sole cause of the smoke. G. was summoned for an offence contrary to 38 & 39 Vict. c. 55, s. 96. It was held that the justices were wrong in dismissing the charge, and in holding that G. was not liable. The court distinguished *Chisholm* v. *Doulton*, *ante*, p. 61, which was decided with reference to another enactment reproduced in the last section.

The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 108, imposes a penalty on persons so negligently using a furnace as not "to consume the smoke" arising from it. The Birmingham Improvement Act, 1851 (14 & 15 Vict. c. xciii), s. 55, incorporates the above section, but provides that the words "consume the smoke" shall not be in all cases read as "consume all the smoke," and that the penalty may be remitted if the person summoned under that section has so constructed or altered his furnace as to

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consume *as far as possible* its smoke, "and has carefully attended to the same, and consumed *as far as possible*" its smoke. On an information against the appellant for so negligently using his furnace as not to consume its smoke, it was not shown that the furnace was improperly constructed ; it was found it was capable of consuming more smoke than it, in fact, did ; but to use the means provided for that purpose would render it impossible to carry on the appellant's trade with that furnace. The appellant was convicted. It was held that (assuming the furnace to be properly constructed) "as far as possible" meant as far as possible consistently with carrying on the trade in which the furnace was employed ; and that the appellant was wrongly convicted (*Cooper* v. *Woolley* (1867), L. R. 2 Ex. 88 ; 31 J. P. 135 ; 36 L. J. M. C. 27 ; 15 L. T. (N.S.) 539 ; 15 W. R. 450).

In *Barnes* v. *Norris* (1876), 41 J. P. 150, B. charged N. that black smoke issued from certain chimneys on his premises so as to cause a nuisance. There were five separate chimneys together, each used for a separate purpose. N. objected that the summons was bad for not showing from which chimney the smoke was said to issue :—*Held*, that the justices were wrong in allowing this objection, and that they ought to have heard the evidence and made their order as to one or more of the chimneys. *Semble*, *per* CLEASBY, B., that if there were several chimneys together which sent forth smoke, though each might not of itself send forth sufficient to be a nuisance, yet an offence might be committed.

As to proceedings in respect of an offence under s. 30 of the Highways and Locomotives (Amendment) Act, 1878, see *Pitt Rivers* v. *Glasse* (1891), 55 J. P. 663 ; 7 T. L. R. 438 ; *Rex* v. *Wilbraham* (1907), 71 J. P. 336 ; and *Star Omnibus Co.* (*London*), *Limited* v. *Tagg* (1907), 71 J. P. 352 ; and under that Act and the Locomotives on Highways Act, 1896, s. 1, *Hindle and Palmer* v. *Noblett* (1908), 72 J. P. 373 ; 99 L. T. 26 ; 6 L. G. R. 825.

Workshops and Bakehouses.

Lime-washing and washing of workshops.

25.—(1) Where, on the certificate of a medical officer of health or sanitary inspector (*a*), it appears to any sanitary authority that the limewashing, cleansing, or purifying of any workshop (*b*) (other than a bakehouse) (*c*), or of any part thereof, is necessary for the health of the persons employed therein, the sanitary authority shall serve notice in writing (*d*) on the owner or occupier of the workshop to limewash, cleanse, or purify the workshop or part, as the case requires, within the time specified in the notice ; and, if the person on whom notice is so served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and to a further fine not

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exceeding ten shillings for every day during which he continues to make default after conviction (*e*); and the sanitary authority may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person on whom the notice was served (*f*).

(2) This section shall apply to any factory which is not subject to the provisions of the Factory and Workshop Act, 1878, and the Acts amending the same, and to any workplace, in like manner as it applies to a workshop (*g*). 41 & 42 Vict. c. 16.

(*a*) As to the appointment of medical officers and sanitary inspectors, see ss. 106, 107, *post*.

(*b*) This Act does not contain any definition of a "workshop," but it is evident from the next sub-section that it is to be distinguished from a factory and a workplace. The Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 149, contains definitions of the terms "factory" and "workshop," and no doubt the expression "workshop" as used in the text, is intended to have the same meaning as in that Act. It is there provided that the expression "textile factory" means "Any premises wherein or within the close or curtilage of which steam, water or other mechanical power is used to move or work any machinery employed in preparing, manufacturing or finishing or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre or other like material, either separately or mixed together or mixed with any other material, or any fabric made thereof: Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works and hat works shall not be deemed to be textile factories." The expression "non-textile factory" means (a) any works, warehouses, furnaces, mills, foundries, or places named in Part I. of the Sixth Schedule (*i.e.*, print works, bleaching and dyeing works, earthenware works, lucifer-match works, percussion-cap works, cartridge works, paper-staining works, fustian-cutting works, blast furnaces, copper mills, iron mills, foundries, metal and india-rubber works, paper mills, glass works, tobacco factories, letterpress printing works, bookbinding works, flax scutch mills, electrical stations); (b) and any premises or places named in Part II. of the said Schedule (*i.e.*, hat works, rope works, bakehouses, lace warehouses, ship-building yards, quarries, pit banks, dry cleaning, carpet beating, and bottle washing works) wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there; (c) and any premises wherein, or within the close or curtilage, or precincts of which, any

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manual labour is exercised by way of trade, or for purposes of gain in or incidental to any of the following purposes, namely: (i) the making of any article, or of part of any article; or (ii) the altering, repairing, ornamenting, or finishing of any article; or (iii) the adapting for sale of any article, and wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there. The expression "factory" means textile factory and non-textile factory, or either of those descriptions of factories. The expression "tenement factory" means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories, and, for the purposes of the provisions of the Act with respect to tenement factories, all buildings situate within the same close or curtilage shall be treated as one building. The expression "workshop" means: (a) Any premises or place named in Part II. of the Sixth Schedule which are not a factory; (b) and any premises, room, or place not being a factory, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely: (i) the making of any article or of part of any article; or (ii) the altering, repairing, ornamenting, or finishing of any article; or (iii) the adapting for sale of an article, and to or over which, premises, room, or place the employer of the persons working therein has the right of access or control. The expression "workshop" includes a tenement workshop. The expression "tenement workshop" means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier. A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of the Act to be a separate factory or workshop. A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of the Act. Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop that place shall not be deemed to form part of the factory or workshop for the purposes of the Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly. A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are, in the open air.

(*c*) The expression "bakehouse" is defined by s. 141, *post*.

(*d*) As to the authentication and service of this notice, see ss. 127, 128, *post*.

(*e*) As to the recovery of this fine, see s. 117, *post*.

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(*f*) This means by complaint to a court of summary jurisdiction under the Summary Jurisdiction Acts. See 42 & 43 Vict. c. 49, s. 51 (3).

(*g*) Section 125 of the Factory and Workshop Act, 1901, is as follows: "For the purpose of their duties with respect to workshops and workplaces under this Act and under the law relating to public health, the district council and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings or otherwise as an inspector under this Act." Section 155 states: "The powers conferred by this Act on district councils shall be in addition to, and not in substitution for, any other powers which they may possess."

Subject to the exceptions named in s. 153, references in that Act to a district council and the district thereof are, as regards the city of London, to be construed as references to the court of common council and the city, and as regards any other part of the administrative county of London, as references to the council of a metropolitan borough and the metropolitan borough.

The Factory and Workshop Act, 1878, is repealed by the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22). As to the factories to which the last-named Act applies, see note (*b*), *supra*.

Section 2 of the last-named Act, as to the sanitary condition of workshops and workplaces, does not apply to any workshop or workplace to which the Public Health (London) Act, 1891, applies. See s. 2 (5) of the Factory and Workshop Act, 1901.

The Act contains no definition of a "workplace," nor is the expression defined in the Public Health Act, 1875, or the Factory and Workshop Act, 1901, though it is used in s. 91 of the former, and in s. 2 of the latter Act. It appears to apply to a place where work in the way of a trade or business is carried on, but which fails in some respects to satisfy the definition of a workshop. See *Bennett* v. *Harding*, cited in the notes to s. 38, *post*.

Enactments respecting bakehouses. 41 & 42 Vict. c. 16; 46 & 47 Vict. c. 53.

26.—(1) Sections thirty-four, thirty-five, and eighty-one of the Factory and Workshop Act, 1878, and sections fifteen and sixteen of the Factory and Workshop Act Amendment Act, 1883 (which relate to cleanliness, ventilation, and other sanitary conditions), shall, as respects every bakehouse which is a workshop, be enforced by the sanitary authority of the district in which the bakehouse is situate, and they shall be the local authority within the meaning of those sections (*a*).

(2) For the purposes of this section, the provisions of this Act with respect to the admission of the sanitary authority and their officers into any premises for any purpose in relation to nuisances shall apply in like manner

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as if they were herein re-enacted and in terms made applicable to this section ; and every person refusing or failing to allow the sanitary authority or their officer to enter any premises in pursuance of those provisions for the purposes of this section shall be subject to a fine (*b*).

(*a*) The expression "bakehouse" is defined by s. 141, *post*.

The Factory and Workshop Act, 1878, and the Factory and Workshop Act Amendment Act, 1883, are repealed by the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 161, and Sched. VII., Part I. The last-named Act contains the following provisions as to bakehouses, and it will be noticed that s. 101 is to have effect as if it were included among the provisions relating to bakehouses which are referred to in s. 26 of the Public Health (London) Act, 1891 :

(iii) *Bakehouses.*

97.—(1) It shall not be lawful to let or suffer to be occupied or to occupy any room or place as a bakehouse, unless the following regulations are complied with :

(a) A water-closet, earth-closet, privy or ashpit must not be within or communicate directly with the bakehouse ;

(b) Every cistern for supplying water to the bakehouse must be separate and distinct from any cistern for supplying water to a water-closet ;

(c) A drain or pipe for carrying off fæcal or sewage matter must not have an opening within the bakehouse.

(2) If any person lets or suffers to be occupied or occupies any room or place as a bakehouse in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

98.—(1) Where a court of summary jurisdiction is satisfied, on the prosecution of an inspector or a district council, that any room or place used as a bakehouse is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable to a fine not exceeding, for the first offence, forty shillings and, for any subsequent offence, five pounds.

(2) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, on application, enlarge the time so named ; but, if after the expiration of the time as originally named or enlarged by subsequent order the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

99.—(1) All the inside walls of the rooms of a bakehouse, and all the ceilings or tops of those rooms (whether those walls, ceilings or tops are plastered or not) and all the passages and staircases of a bakehouse must either be painted with oil or varnished or be limewashed or be partly painted or varnished and partly limewashed ; and

(a) where the bakehouse is painted with oil or varnished, there must be three coats of paint or varnish and the paint or varnish must be renewed once at least in every seven years and must be washed with hot water and soap once at least in every six months ; and

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(b) where the bakehouse is limewashed, the limewashing must be renewed once at least in every six months.

(2) A bakehouse in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

100.—(1) A place on the same level with a bakehouse and forming part of the same building may not be used as a sleeping place, unless it is constructed as follows; that is to say,

(a) is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

(b) has an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

(2) If any person lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section, he shall be liable to a fine not exceeding, for the first offence, twenty shillings, and, for any subsequent offence, five pounds.

101.—(1) An underground bakehouse shall not be used as a bakehouse unless it was so used at the passing of this Act.

(2) Subject to the foregoing provision, after the first day of January one thousand nine hundred and four an underground bakehouse shall not be used unless certified by the district council to be suitable for that purpose.

(3) For the purpose of this section an underground bakehouse shall mean a bakehouse any baking room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street or of the ground adjoining or nearest to the room. The expression "baking room" means any room used for baking or for any process incidental thereto.

(4) An underground bakehouse shall not be certified as suitable unless the district council is satisfied that it is suitable as regards construction, light, ventilation and in all other respects.

(5) This section shall have effect as if it were included among the provisions relating to bakehouses which are referred to in section twenty-six of the Public Health (London) Act, 1891.

(6) If any place is used in contravention of this section, it shall be deemed to be a workshop not kept in conformity with this Act.

(7) In the event of the refusal of a certificate by the district council, the occupier of the bakehouse may, within twenty-one days from the refusal, by complaint apply to a court of summary jurisdiction and, if it appears to the satisfaction of the court that the bakehouse is suitable for use as regards construction, light, ventilation, and in all other respects, the court shall thereupon grant a certificate of suitability of the bakehouse, which shall have effect as if granted by the district council.

(8) Where any place has been let as a bakehouse, and the certificate required by this section cannot be obtained unless structural alterations are made, and the occupier alleges that the whole or part of the expenses of the alterations ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable, under the circumstances of the case, regard being had to the terms of any contract between the parties; or in the alternative the court may, at the request of the occupier, determine the lease.

102. As respects every retail bakehouse, the provisions of this Part of this Act shall be enforced by the district council of the district in which the retail bakehouse is situate, and not by an inspector; and for the purposes of this section the medical officer of health of the district council shall have and may exercise all the powers of entry, inspection, taking legal proceedings and otherwise of an inspector.

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In this section the expression "retail bakehouse" means any bakehouse or place, not being a factory, the bread, biscuits or confectionery baked in which are sold, not wholesale, but by retail, in some shop or place occupied with the bakehouse.

See note (*g*), *ante*, p. 69, as to the meaning of the term "district council."

Premises which have long been used as an underground bakehouse, although vacant at the passing of the Act, may, if the owner was then seeking a tenant for them as a bakehouse, be considered to be used as a bakehouse within the meaning of s. 101. See *Schwerzerhof* v. *Wilkins*, [1898] 1 Q. B. 640; 62 J. P. 247; 67 L. J. Q. B. 476; 78 L. T. (N.S.) 229; 19 Cox C. C. 22.

Section 101 of the Factory and Workshop Act, 1901, absolutely prohibits the use of underground bakehouses after January 1st, 1904, unless certified as structurally suitable for the purpose by the local authority (*Evans* v. *Gallon* (1904), 68 J. P. 537; 2 L. G. R. 1004).

By a lease made in 1903 premises were let for a term of twenty-one years, at a yearly rent of £50, as an underground bakehouse. The lease contained a covenant, that the lessee would during the term "pay all existing and future taxes, rates, duties, assessments, impositions and outgoings of every description for the time being payable either by landlord or tenant in respect of the premises respectively (except landlord's property tax)." The certificate of suitability, required by s. 101 of the Factory and Workshop Act, 1901, could not be obtained unless structural alterations were made in the premises:—*Held*, that the expenses of the alterations were "impositions and outgoings" within the meaning of the covenant, and therefore that they must be borne by the lessee (*Goldstein* v. *Hollingsworth*, [1904] 2 K. B. 578; 68 J. P. 383; 73 L. J. K. B. 826; 91 L. T. 85; 20 T. L. R. 550; 2 L. G. R. 879).

By a lease granted in 1899 premises were let for a term of twenty-one years, at a yearly rental of £70, as an underground bakehouse. The lease contained a covenant by the tenant to pay "all existing and future taxes, rates, assessments, and outgoings of every description, whether parliamentary, parochial, or otherwise for the time being, payable either by the landlord or tenant in respect of the said premises (except landlord's property tax)." As a certificate of suitability of the bakehouse could not otherwise be obtained, certain structural alterations were made in the premises. The expenses of the alterations having been paid by the tenant, the magistrate made an order under s. 101 (8) of the Factory and Workshop Act, 1901, apportioning part of the expenses upon the landlord:—*Held*, that the expenses were "outgoings" within the meaning of the covenant; that as there was an express covenant applicable to the expenses, the magistrate had no jurisdiction under the sub-section to take into account the other circumstances of the case; and, therefore, that the magistrate was wrong, and the expenses must be borne by the tenant (*Morris* v. *Beal*, [1904] 2 K. B. 585; 68 J. P. 542; 73 L. J. K. B. 830; 91 L. T. 486; 20 T. L. R. 682; 2 L. G. R. 1171).

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These cases were followed in *Stuckey* v. *Hooke* (1905), 69 J. P. 119 ; 3 L. G. R. 633. There it was held that the High Court has jurisdiction to entertain a suit brought under a covenant in a lease by the landlord against the tenant of an underground bakehouse for expenses incurred in making the structural alterations required by the local authority under s. 101 (8), although an order apportioning the expenses between landlord and tenant has been made by a court of summary jurisdiction. The court distinguished *Horner* v. *Franklin*, [1905] 1 K. B. 479 ; 69 J. P. 117 ; 74 L. J. K. B. 291 ; 92 L. T. (N.S.) 178 ; 3 L. G. R. 423, which was decided under another section, as to which see also *Monk* v. *Arnold*, [1902] 1 K. B. 761 ; 71 L. J. K. B. 441 ; 86 L. T. (N.S.) 580 ; 50 W. R. 667.

The above sub-section is taken from 46 & 47 Vict. c. 53, s. 17.

As to the meaning of the word " workshop," see the notes to the preceding section.

(*b*) The provisions of this Act with respect to the admission of officers into premises are contained in s. 10, *ante*, and s. 115, *post*.

See the notes to s. 25, *ante*, as to the powers and duties of local authorities with respect to workshops and workplaces.

Notice to factory inspector respecting child or woman in workshop.

27. If any child, young person, or woman is employed in a workshop, and the medical officer of the sanitary authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector for the district.

This Act does not contain any definition of the expression " child," " young person," or " woman." The Factory and Workshop Act, 1901, s. 156, defines a child to be a person under the age of fourteen years, and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school mentioned in Part III. of that Act ; a young person to be a person over fourteen and under eighteen years, and a woman to be a woman over eighteen years of age.

Dairies.

Orders and regulations for dairies.

28.—(1) The Local Government Board may make such general or special orders as they think fit for the following purposes, or any of them, that is to say,—

(a) For the registration with the county council of all persons carrying on the trade of dairymen ;

(b) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies in the occupation of persons carrying on the trade of dairymen ;

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(c) For securing the cleanliness of milk vessels used for containing milk for sale by such persons ;

(d) For prescribing precautions to be taken for protecting milk against infection or contamination ;

(e) For authorising the county council to make byelaws for the purposes aforesaid, or any of them (*a*).

(2) The county council for the purpose of enforcing the said orders and any byelaws made thereunder shall have the same right to be admitted to any premises as a sanitary authority have under this Act for the purpose of examining as to the existence of a nuisance liable to be dealt with summarily, and the provisions of this Act shall apply accordingly as if they were herein re-enacted and in terms made applicable to this section, and in particular with the substitution of the county council for the sanitary authority (*b*).

(3) The Local Government Board may by any such order impose the like fines for offences against orders made under this section as may be imposed for offences against the byelaws of a sanitary authority under this Act (*c*).

(4) In the application of this section to the City of London the mayor, commonalty, and citizens of the city acting by the council shall be substituted for the county council, and their expenses in the execution of this section shall be paid out of the consolidated rate (*d*).

(*a*) The Local Government Board have not issued any order under this section. Under the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), s. 34, the power to make orders for the above purposes was vested in the Privy Council. The power was transferred to the Local Government Board by 49 & 50 Vict. c. 32, s. 9, which also transferred to local authorities the powers formerly exercised by the quarter sessions. In the city of London the local authority were the corporation, and elsewhere in the metropolis the Metropolitan Board of Works. By the provision in the text the county council take the duties of the Metropolitan Board of Works, the corporation retaining their powers under sub-s. (4). The Orders issued under the above-mentioned Acts and now in force are those of June 15th, 1885, November 1st, 1886, and of February 7th, 1899.

As from the appointed day the powers of the London County Council under this section of registering dairymen were, by s. 5

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and Part I. of the Second Schedule of the London Government Act, 1899 (62 & 63 Vict. c. 14), transferred to each borough council as respects their borough, subject to the power of the London County Council to make byelaws, and in case of default to the provisions of the Public Health (London) Act, 1891, as if the default were a default under that Act.

Section 6 (4) of the London Government Act, 1899 (62 & 63 Vict. c. 14), provides that it shall be the duty of each borough council to enforce within their borough the byelaws and regulations for the time being in force with respect to dairies and milk, and with respect to slaughter-houses, knackers' yards, and offensive businesses, and for the purpose of performing this duty the borough council shall in all cases have the same powers of entry as they have in the case of slaughter-houses and knackers' yards; and if the council make default in performing this duty, the provisions of the Public Health (London) Act, 1891, shall apply as if the default were a default under that Act.

The expressions "dairy" and "dairyman" are defined by s. 141, *post*.

The word "ventilation" in the text includes air-space, so that a regulation made by a local authority under an Order of the Local Government Board that cowkeepers shall not suffer any greater number of cattle to be kept in a building used as a cowhouse than will admit of the provision of 800 cubic feet of air-space for each cow is *ultra vires* (*Baker* v. *Williams*, [1898] 1 Q. B. 23; 62 J. P. 21; 66 L. J. Q. B. 880; 77 L. T. (N.S.) 495; 46 W. R. 64; 14 T. L. R. 12). A regulation of the London County Council provided that every purveyor of milk should on any outbreak of infectious disease within the building or upon the premises in which he kept milk coming to his knowledge, remove all milk for sale from such building until it had been disinfected. The respondent, a purveyor of milk, was tenant of a three storied building, each floor of which was adapted for separate occupation, but with a central staircase common to each. He occupied the ground floor for the purpose of his business, sub-let the first floor, and occupied the second floor as a residence for himself and his family. One of his children had scarlet fever in a room on the second floor. It was held that this was an outbreak of infectious disease within the building in which the respondent kept milk, and therefore that the non-removal from the ground floor of milk for sale there was an infringement by him of the regulation (*London County Council* v. *Edwards*, [1898] 2 Q. B. 75; 62 J. P. 377; 67 L. J. Q. B. 648; 78 L. T. (N.S.) 558).

The byelaws made by the county council are not in force in the city. See s. 142, *post*. As to the making of byelaws, see s. 114, *post*.

Regulations were made by the Metropolitan Board of Works on July 3rd, 1885, relating to dairies, cowsheds, milkshops, etc. and as to precautions against the infection and contamination of milk in the metropolis.

Additional powers with regard to the taking of samples of milk, and the examination of cows, in any dairy whether within the county of London or outside it, were conferred upon the London

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County Council and the several sanitary authorities by the London County Council (General Powers) Acts, 1904 and 1907. See Appendix, *post*.

Additional powers in regard to cowkeepers, dairymen, and purveyors of milk were conferred upon the sanitary authorities in the metropolis by s. 5 of the London County Council (General Powers) Act, 1908. See Appendix, *post*. That section empowers the sanitary authorities to remove from the registers kept by them the names of persons carrying on the businesses of cowkeepers, dairymen, or purveyors of milk, and to refuse to enter upon such registers the names of any persons carrying on, or proposing to carry on, such businesses upon premises which are, in the opinion of such authorities, for any reason unsuitable for the sale of milk therein.

By s. 22 of the Woolwich Borough Council Act, 1905 (5 Edw. 7, c. clxi), the council were authorised to establish, maintain, manage, and carry on, a depôt for the sale of sterilised milk and humanised milk, to appropriate lands, and to borrow for the purposes of such depôt, and to provide laboratories, plant, and machinery, and to buy, sterilise, humanise, and sell milk for infants under two years of age, such depôt to be subject to the medical supervision of the medical officer of health of the borough, and to be carried on in accordance with regulations to be approved by the Local Government Board.

Regulations under the section have been made, and they were approved by the Local Government Board on July 18th, 1907.

(*b*) As to the right of the sanitary authority to be admitted to premises, see s. 10, *ante*, and s. 115, *post*.

(*c*) These fines are not exceeding £5 for each offence, and a further sum not exceeding 40*s*. for each day after written notice of the offence from the sanitary authority. See s. 114, and the provisions of the First Schedule, incorporating s. 183 of the Public Health Act, 1875.

(*d*) See note (*a*), *supra*.

Removal of Refuse.

Duty of sanitary authority to clean streets.

29.—(1) It shall be the duty of every sanitary authority to keep the streets of their district, which are repairable by the inhabitants at large, including the footways, properly swept and cleansed so far as is reasonably practicable, and to collect and remove from the said streets, so far as is reasonably practicable, all street refuse (*a*).

(2) If any such street in the district of any sanitary authority, including the footway, is not properly swept and cleansed, or the street refuse is not collected and removed from any such street, so far as is reasonably practicable, as required by this section, the sanitary authority shall be liable to a fine not exceeding twenty pounds (*b*).

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(3) So much of any Act as requires the occupier or owner of any premises in London to cause the footways and watercourses adjoining the premises to be swept and cleansed is hereby repealed (*c*).

(*a*) The expressions "street" and "street refuse" are defined by s. 141, *post*.

This section applies only to streets which are repairable by the inhabitants at large. It does not apply to new streets before they have been paved and taken over, under the provisions of the Metropolis Management Acts. Under 18 & 19 Vict. c. 120, s. 125, from which the above section is taken, the duty of the sanitary authority was not limited to streets repairable by the inhabitants at large.

Section 3 of the City of London (Public Health) Act, 1902 (see the Appendix, *post*), provides that, notwithstanding anything contained in any Act of Parliament, the inmates and occupiers of any house within the city who do not deposit their house refuse in the ashpit attached to the building of which they are the inmates or occupiers shall deposit such house refuse before eight o'clock in the morning on the kerbstone of the foot-pavement in a street and all house refuse deposited in a street in accordance with the provisions of this Act or of the Metropolitan Streets Act, 1867, shall be contained in a box, barrel or receptacle of a prescribed pattern or patterns. The corporation shall make byelaws for giving effect to this section.

(*b*) This fine will be recoverable summarily (see s. 117, *post*), and will be paid to the county council (see s. 119 (1)). Any person may, apparently, institute proceedings against the sanitary authority.

This section does not give any right of action to a person suffering special damage from a breach by a sanitary authority of the duty of removing street refuse from a street within its district (*Saunders* v. *Holborn District Board of Works*, [1895] 1 Q. B. 64 ; 59 J. P. 453 ; 64 L. J. Q. B. 101 ; 71 L. T. 519 ; 43 W. R. 26 ; 11 T. L. R. 5. And see *Ellis* v. *Strand Board of Works* (1892), 67 L. T. (N.S.) 307 ; 8 T. L. R. 739).

(*c*) Under 57 Geo. 3, c. 29, s. 63, the occupier of premises was required during frost or after a fall of snow once in every day, before 10 a.m., to sweep and cleanse the footway in front of his premises, and for the purposes of that enactment the owner of a house let in tenements was to be deemed the occupier. By 2 & 3 Vict. c. 47, s. 60 (6), every occupier of a house or other tenement, who did not keep sufficiently swept and cleansed all footways and watercourses adjoining to the premises occupied by him was liable to a penalty of 40*s*., and the owner of an empty or unoccupied tenement was to be deemed the occupier. The 18 & 19 Vict. c. 120, s. 117, required the sanitary authority to sweep and cleanse all footways, but it provided that that enactment should not relieve any occupier of his liability. These provisions are now repealed and the duty of sweeping and cleansing the footways and watercourses now devolves on the sanitary authority as well during frost and snow as at other times.

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Removal of house refuse.

30.—(1) It shall be the duty (*a*) of every sanitary authority—

(a) To secure the due removal at proper periods of house refuse (*b*) from premises (*c*), and the due cleansing out and emptying at proper periods of ashpits (*d*), and of earth-closets, privies, and cesspools (if any), in their district, and the giving of sufficient notice of the times appointed for such removal, cleansing out, and emptying, and

(b) Where the house refuse (*b*) is not removed from any premises (*c*) in the district at the ordinary period (*e*), or any ashpit (*d*), earth-closet, privy, or cesspool in or under any building in the district is not cleansed out or emptied at the ordinary period (*e*), and the occupier of the premises serves on the authority a written notice (*f*) requiring the removal of such refuse, or the cleansing out and emptying of the ashpit, earth-closet, privy, or cesspool, as the case may be, to comply with such notice within forty-eight hours after that service, exclusive of Sundays and public holidays (*g*).

(2) If a sanitary authority fail without reasonable cause to comply with this section, they shall be liable to a fine not exceeding twenty pounds (*h*).

(3) If any person in the employ of the sanitary authority, or of any contractor with the sanitary authority, demands from an occupier or his servant any fee or gratuity for removing any house refuse from any premises, he shall be liable to a fine not exceeding twenty shillings (*i*).

(*a*) The sanitary authority may be fined for neglect of this duty. See sub-s. (2). And see, further, as to compelling performance of this duty, ss. 100, 101, *post*.

As to the power of a sanitary authority to enter into an agreement with a contractor for the erection and maintenance of a dust destructor for the disposal of refuse from their district, see *Lambeth (Mayor, etc. of)* v. *South London Electric Supply Corporation, Limited* (1907), 23 T. L. R. 347.

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(*b*) See the definition of "house refuse" in s. 141, *post*.

See s. 16 (2) (b) as to the making of byelaws by the county council as to the removal and disposal of refuse, and as to the duties of the occupier of any premises in connection with house refuse, so as to facilitate the removal of it by the scavengers of the sanitary authority, and the notes to that sub-section.

See also the provision in s. 3 of the City of London (Public Health) Act, 1902, set out in the Appendix, *post*, and referred to in note (*a*), *ante*, p. 77.

(*c*) See the definition of "premises" in s. 141, *post*.

(*d*) See the definition of "ashpit" in s. 141, *post*.

(*e*) It may be inferred from the language of s. 34, *post*, that the ordinary period is seven days. Under 59 Geo. 3, c. xxix, s. 59, the period was once a week, or oftener in certain cases.

(*f*) As to the service of this notice, see s. 128 (2), *post*.

(*g*) Having regard to the liability to a penalty under the next sub-section and the provisions of ss. 100, 101, *post*, in the case of a defaulting sanitary authority, it is doubtful whether an action by any person to recover expenses incurred in removing dirt, ashes, rubbish, and filth from their premises is maintainable against a sanitary authority in consequence of their default. See *Robinson* v. *Workington Corporation*, [1897] 1 Q.B. 619 ; 61 J.P. 164 ; 66 L.J.Q.B. 388 ; 75 L. T. 674 ; 45 W. R. 453 ; 13 T. L. R. 148. As to an action for a *mandamus*, see *Peebles* v. *Oswaldtwistle Urban District Council*, [1897] 1 Q. B. 625 ; 61 J. P. 308 ; 66 L. J. Q. B. 392 ; 76 L. T. 315 ; 45 W. R. 454, and *Passmore* v. *Oswaldtwistle Urban District Council*, [1898] A. C. 387 ; 62 J. P. 628 ; 67 L. J. Q. B. 635 ; 78 L. T. 569 ; 14 T. L. R. 368. And as to the granting of a prerogative writ of *mandamus*, see *R.* v. *St. Giles, Camberwell (Vestry)* (1897), 61 J. P. 217 ; 66 L. J. Q. B. 337 ; 45 W. R. 335 ; 13 T. L. R. 162. See also *Ellis* v. *Strand Board of Works* and *Saunders* v. *Holborn District Board of Works*, cited in note (*b*) to s. 29, *ante*, p. 77.

By a byelaw made by the London County Council under s. 16 it was provided that "Where a sanitary authority arrange for the daily removal of house refuse in their district or any part thereof, the occupier of any premises in such district or part thereof in which any house refuse may from time to time accumulate, shall at such hour of the day as the sanitary authority shall fix and notify by public announcements in their district, deposit on the kerbstone or on the outer edge of the footpath immediately in front of the house, or in a conveniently accessible position on the premises, as the sanitary authority may prescribe by written notice served upon the occupier, a moveable receptacle in which shall be placed, for the purposes of removal by or on behalf of the sanitary authority, the house refuse which has accumulated on such premises since the preceding collection by such authority. The sanitary authority shall collect such refuse or cause the same to be collected between the hours of the day as they have fixed and notified by public announcement in their district." The appellants, in pursuance of such byelaw, issued a public notice requiring the

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occupiers in a specified portion of the borough to deposit on the kerb or edge of the footpath immediately in front of their respective houses a moveable receptacle in which should be placed for the purposes of removal the house refuse. A printed circular was also issued to the occupiers explanatory of the said notice. The respondent, who was an occupier of a detached house standing some forty feet from the highway, refused to put his house refuse on the kerbstone, but was willing to provide a convenient place on his premises where the house refuse might be placed for removal The appellants refused to remove the respondent's house refuse unless it was placed by him on the kerbstone :—*Held*, that a general notice such as that issued by the appellants was not such a prescription of a convenient place as was contemplated by the byelaws ; and that, therefore, the appellants could be convicted of refusing to remove the respondent's house refuse without reasonable cause (*Wandsworth Borough Council* v. *Baines*, [1906] 1 K. B. 470 ; 70 J. P. 124 ; 75 L. J. K. B. 158 ; 94 L. T. 211 ; 54 W. R. 457 ; 22 T. L. R. 220 ; 4 L. G. R. 257).

(*h*) This fine will be recoverable summarily on the information of any person. The fine, when recovered, will be payable to the county council. See s. 119, *post*.

(*i*) As to the recovery of this penalty, see s. 117, *post*.

As to the power of the sanitary authority to contract for the removal of house refuse, see the next section.

Sanitary authority to appoint scavengers.

31. Every sanitary authority shall employ a sufficient number of scavengers, or contract with any scavengers, whether a company or individuals, for the execution of the duties of the sanitary authority under this Act with respect to the sweeping and cleansing of the several streets within their district, and the collection and removal of street refuse and house refuse, and the cleansing out and emptying of ashpits, earth-closets, privies, and cesspools.

This section is taken from 18 & 19 Vict. c. 120, s. 125, but that section enumerated among the duties of scavengers the cleansing out and emptying of "sewers and drains in or under houses and places within the parish or district." These words have been omitted in the present Act, and it would seem, therefore, that the sanitary authority have no longer any such duty as was formerly imposed upon them by the words here quoted.

In *Ellis* v. *Strand District Board of Works* (1892), 67 L. T. 307; 8 T. L. R. 739, it was held that the duty imposed on vestries and district boards by 18 & 19 Vict. c. 120, s. 125, was discharged by their entering into a bonâ fide contract with scavengers to execute the work, and that they could not in such cases be made liable in damages for the scavengers' neglect to properly carry out their contract ; and see *Saunders* v. *Holborn District Board of Works*, cited in note (*b*) to s. 29, *ante*, p. 77.

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In an agreement between a contractor and a metropolitan borough council, whereby the contractor agreed to supply horses, carts, etc. as might be required for the scavenging of a certain district for one year at certain agreed rates, the court, upon consideration of all the terms of the contract, held that no term could be implied imposing on the corporation the duty of giving employment to the contractor so as to enable him to earn payment under the contract (*Moon* v. *Camberwell Borough Council* (1903), 68 J. P. 57 ; 89 L. T. 595 ; 20 T. L. R. 43 ; 2 L. G. R. 309).

The duty of sweeping and cleansing the streets is confined to streets which are repairable by the inhabitants at large. See s. 29, *ante*, p. 76.

The expressions " street," " street refuse," " house refuse," and " ashpit," are defined by s. 141, *post*.

Disposal of refuse.

32. All street refuse and house refuse collected by or on behalf of a sanitary authority shall be the property of that authority, and the authority shall have full power to sell and dispose of the same for the purposes of this Act as they may think proper, and the person purchasing the same shall have full power to take, carry away, and dispose of the same for his own use, and the money arising from the sale thereof shall be applied toward defraying the expenses of the execution of this Act.

This section is taken from 18 & 19 Vict. c. 120, s. 127, and 57 Geo. 3, c. xxix, s. 59 (now repealed).

The expressions " street refuse " and " house refuse " are defined by s. 141, *post*.

The expenses of the execution of the Act are defrayed out of the rates mentioned in s. 103, *post*, and the money arising from the sale of refuse will be applied in relief of these rates *pro tanto*.

See the provision in s. 3 of the Public Health (London) Act, 1891, Amendment Act, 1893, in the Appendix, *post*, conferring a power to borrow money for expenses incurred in connection with the provision of land, wharves, destructors, plant and equipment for the purposes of collection, removal and disposal of house and street refuse.

An occupier who refused to allow his refuse to be removed at the usual weekly period was held to be guilty of an offence against s. 116 (1) (a), though no nuisance was alleged (*Borrow* v. *Howland* (1896), 60 J. P. 391 ; 74 L. T. 787 ; 12 T. L. R. 414 ; 18 Cox C. C. 368).

Owners, etc. to pay for removal of refuse of trades.

33.—(1) If the sanitary authority are required by the owner or occupier of any premises to remove any trade refuse, that authority shall do so, and the owner or

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occupier shall pay to that authority a reasonable sum for such removal, and such sum, in case of dispute, shall be settled by the order of a petty sessional court (*a*).

(2) If any dispute or difference of opinion arises between the owner or occupier and the sanitary authority as to what is to be considered as trade refuse, a petty sessional court, on complaint made by either party, may by order determine whether the subject matter of dispute is or is not trade refuse, and the decision of that court shall be final (*b*).

(*a*) This sub-section is a re-enactment of 18 & 19 Vict. c. 120, s. 128 (now repealed).

The expressions "owner," "trade refuse," and "premises," are defined by s. 141, *post*.

As to the meaning of the expression "petty sessional court," see note (*h*), *ante*, p. 28.

(*b*) The cases decided with reference to what is included under the expression "trade refuse," are mentioned in the notes to s. 141, *post*. For the definition of "sanitary authority," see s. 99, *post*.

This sub-section is a re-enactment of 18 & 19 Vict. c. 120, s. 129, (now repealed). A police magistrate, acting under that section, decided that certain ashes from the furnace of an hotel were not "refuse of trade" within the section, and declined to state a case, on the ground that the decision was "final and conclusive," and no point of law arose:—*Held*, that, in the circumstances, there was a question of law upon the construction of s. 129, and that the magistrate was not entitled to refuse to state a case (*R.* v. *Bridge* (1890), 24 Q. B. D. 609; 54 J. P. 629; 59 L. J. M. C. 49; 62 L. T. 297; 38 W. R. 464). See also *St. Martin's Vestry* v. *Gordon; London and Provincial Laundry Co.* v. *Willesden Local Board;* and *Westminster City Council* v. *Gordon Hotels, Limited*, cited in the note to s. 141, *post*.

An appeal from the last-mentioned decision was dismissed on the ground that the decision of the magistrate was final, and that no appeal would lie from it by way of special case or otherwise. See [1908] A. C. 142; 72 J. P. 201; 77 L. J. K. B. 520; 98 L. T. 681; 24 T. L. R. 402; 6 L. G. R. 520.

Provision on neglect of scavengers to remove dust.

34.—(1) If the sanitary authority, or any persons employed by them, neglect for the space of seven days to remove all such house refuse as they are required by or in pursuance of this Act to remove, then an occupier of premises (after twenty-four hours' notice given by him to the sanitary authority requiring them to remove the same), may without prejudice to any other proceeding under this Act give away or sell his house refuse; and any person who in pursuance of such gift or sale removes the said house refuse shall not be liable to any fine for so doing (*a*).

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(2) Save as aforesaid, if any person other than the sanitary authority or their contractors or servants receives, carries away, or collects any house refuse or street refuse from any premises or street, such person shall be liable to a fine not exceeding five pounds (*b*).

(*a*) This sub-section is taken from 57 Geo. 3, c. xxix, ss. 60, 61 (now repealed).

It should be observed that this sub-section applies only to "house refuse." An occupier may dispose of his "trade refuse" as he may think fit; but he cannot give away or sell "house refuse," except after the failure of the sanitary authority to remove it after notice. The notice must be given in manner provided by s. 128, *post*.

The "other proceeding under this Act," which is open to the occupier, is by way of information to recover the fine, under s. 30, *ante*, p. 78.

The expressions "house refuse," "day" and "premises" are defined by s. 141, *post*.

(*b*) "Street refuse" cannot be carried away or collected under any circumstances, by any person other than a contractor or servant employed by the sanitary authority. "House refuse" can only be carried away, or collected by such person, under the circumstances mentioned in sub-s. (1).

For the procedure for recovery of the fine, see s. 117, *post*.

The expressions "street refuse" and "street" are defined in s. 141, *post*.

Removal of filth on requisition of sanitary inspector.

35.—(1) Where it appears to a sanitary inspector that any accumulation of any obnoxious matter, whether manure, dung, soil, filth, or other matter, ought to be removed, and it is not the duty of the sanitary authority to remove the same, he shall serve notice on the owner thereof, or on the occupier of the premises on which it exists, requiring him to remove the same, and if the notice is not complied with within forty-eight hours from the service thereof, exclusive of Sundays and public holidays, the matter referred to shall be the property of the sanitary authority, and be removed and disposed of by them, and the proceeds (if any) of such disposal shall be applied in payment of the expenses incurred with reference to the matter removed, and the surplus (if any) shall be paid on demand to the former owner of the matter (*a*).

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(2) The expenses of such removal and disposal, so far as not covered by such proceeds, may be recovered by the sanitary authority in a summary manner from the former owner of the matter removed, or from the occupier, or, where there is no occupier, the owner, of the premises (*b*).

(*a*) This section corresponds with ss. 49, 50 of the Public Health Act, 1875, but it is not identical in terms.

The sanitary authority are bound to remove "street refuse" from public streets under s. 29, "house refuse" under s. 30, and "trade refuse" under s. 33. These expressions are defined by s. 141, *post*. Where there is an accumulation, which does not fall within the definition of any of these kinds of refuse, it will be within the provisions of this section.

The notice must be served on the owner of the accumulation, or on the occupier of the premises where it exists, not on the owner of the premises. As to the authentication and service of the notice, see ss. 127, 128, *post*.

It does not appear to be necessary to dispose of the accumulation by sale only, but no doubt that should be done where practicable.

A pier and harbour company, in whom a harbour was vested, were held bound under 18 & 19 Vict. c. 121, s. 12, to remove sea-weed, which, by the action of the sea, was drifted into the harbour, and being left there became a nuisance (*Margate Pier and Harbour Proprietors* v. *Margate Town Council* (1869), 33 J. P. 437; 20 L. T. (N.S.) 564).

(*b*) The words "in a summary manner" mean in manner provided by the Summary Jurisdiction Acts, by proceedings in a court of summary jurisdiction. See 42 & 43 Vict. c. 49, s. 51 (3).

The expression "owner" is defined by s. 141, *post*.

Removal of refuse from stables, cow-houses, etc.

36.—(1) The sanitary authority, if they think fit, may employ a sufficient number of scavengers, or contract with any scavengers, whether a company or individuals, for collecting and removing the manure and other refuse matter from any stables and cowhouses within their district, the occupiers of which signify their consent in writing to such removal; Provided that—

(a) Such consent shall not be withdrawn or revoked without one month's previous notice to the sanitary authority, and

(b) No person shall be hereby relieved from any fine to which he may be subject for placing

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dung or manure upon any footways or carriageways, or for having any accumulation or deposit of manure or other refuse matter so as to be a nuisance or injurious or dangerous to health (*a*).

(2) Notice may be given by a sanitary authority (by public announcement in the district or otherwise) requiring the periodical removal of manure or other refuse matter from stables, cowhouses, or other premises; and, where any such notice has been given, if any person to whom the manure or other refuse matter belongs fails to comply with the notice, he shall be liable without further notice to a fine not exceeding twenty shillings for each day during which such non-compliance continues (*b*).

(*a*) This sub-section is a re-enactment of 25 & 26 Vict. c. 102, s. 95 (now repealed). It is within the discretion of the sanitary authority to undertake the removal of manure, etc. under the provision.

As to the manner in which notice withdrawing consent must be given, see s. 128, *post*.

Under 57 Geo. 3, c. xxix, s. 64, and 2 & 3 Vict. c. 47, s. 60, it was an offence to place dung, etc. in or upon a street. These sections are not re-enacted, but their place will be taken by the byelaws made under s. 16, *ante*, p. 42. Nuisances arising from accumulation or deposit of manure are dealt with under ss. 2, 3, *ante*, pp. 3, 12.

(*b*) This sub-section is taken from 29 & 30 Vict. c. 90, s. 53 (now repealed). It corresponds with s. 50 of the Public Health Act, 1875.

It is not stated how the public announcement is to be made. Probably this may best be done by advertisements and placards posted throughout the district.

As to the recovery of the fine, see s. 117, *post*.

For the meaning of the expressions "premises" and "day," see s. 141, *post*.

Regulations as to Water-closets, etc.

Obligation to provide water-closets, etc.

37.—(1) It shall not be lawful newly to erect any house (*a*) or to rebuild any house pulled down to or below the ground floor without a sufficient ashpit (*a*) furnished with proper doors and coverings (*b*), and one or more proper and sufficient water-closets according as circumstances may require (*c*), furnished with suitable water supply and water supply apparatus (*d*), and with suitable

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trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof.

(2) If any person offends against the foregoing enactment of this section, he shall be liable to a fine not exceeding twenty pounds (*e*).

(3) If at any time it appears to the sanitary authority that any house (*f*), whether built before or after the commencement of this Act, is without such ashpit (*f*) or water-closets as aforesaid (*g*), the sanitary authority shall cause notice (*h*) to be served on the owner (*f*) or occupier of the house, requiring him forthwith, or within such reasonable time as is specified in the notice, to provide the same in accordance with the directions in the notice (*i*); and, if the notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day (*f*) during which the offence continues (*k*); or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises (*f*) and execute such works as the case may require, and may recover the expenses incurred by them in so doing from the owner of the house (*l*).

(4) Provided that—

(a) Where sewerage or water supply sufficient for a water-closet is not reasonably available, this section shall be complied with by the provision of a privy or earth-closet; and

(b) Where a water-closet has before the commencement of this Act been and is used in common by the inmates of two or more houses, and in the opinion of the sanitary authority may continue to be properly so used, they need not require a water-closet to be provided for each house (*m*).

(5) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section may appeal to the county council, whose decision shall be final (*n*).

(*a*) This sub-section is taken from 18 & 19 Vict. c. 120, s. 81 (now repealed), with some modifications which are mentioned below.

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The expressions "house" and "ashpit" are defined by s. 141, *post*.

(*b*) The words "furnished with proper doors and coverings" qualify the word "ashpit" only. In the repealed statute they were held to qualify the words "water-closet or privy," as well as "ashpit" (*St. James, Clerkenwell (Vestry of)* v. *Feary* (1890), 24 Q. B. D. 703; 54 J. P. 676; 59 L. J. M. C. 82; 62 L. T. (N.S.) 697).

(*c*) Under the repealed Act it was unlawful to erect or rebuild a house without "a sufficient water-closet *or privy*." But a privy cannot now be used except in cases within sub-s. (4). The sanitary authority may also require more than one water-closet to be provided for a house, if the circumstances require. Under the repealed Act, it was held that a district board could not lay down any general rule prescribing the use of privies, and requiring water-closets to be erected in the place of privies in compliance with such general rule, and not with reference to the particular circumstances of the case. When, therefore, the board were proceeding to erect water-closets in default of the owner, it was held that this proceeding could not be supported (*Tinkler* v. *Wandsworth District Board of Works* (1858), 22 J. P. 223; 27 L. J. Ch. 342; 20 L. T. (O.S.) 146; 2 De G. & J. 361). This decision is only now applicable in so far as it decides that the requirements of the sanitary authority must be determined with reference to the circumstances of each case.

(*d*) It may be mentioned that the absence of water fittings may render the house a nuisance. See s. 2 (1) (f), *ante*, p. 3.

(*e*) As to the recovery of this penalty, see s. 117, *post*.

(*f*) See the definition of the expressions "house," "premises," "owner," "day," and "ashpit," in s. 141, *post*; and of "sanitary authority," in s. 99, *post*.

(*g*) It is for the sanitary authority to decide whether the ashpit or water-closets are, in fact, sufficient.

(*h*) As to the authentication and service of this notice, see ss. 127, 128, *post*.

(*i*) This notice must be given with reference to the circumstances of each particular case; the sanitary authority cannot lay down general rules applicable to every case (*Tinkler* v. *Wandsworth District Board of Works*, *supra*). On the other hand, when there is not a sufficient ashpit or water-closet, it is entirely in their discretion to prescribe what must be done under the circumstances. Therefore if an existing privy is insufficient the sanitary authority may require a water-closet to be provided (*St. Luke (Vestry of)* v. *Lewis* (1862), 1 B. & S. 865; 26 J. P. 262; 31 L. J. M. C. 73; 5 L. T. (N.S.) 608; *Nicholl* v. *Epping Urban District Council*, [1899] 1 Ch. 844; 63 J. P. 600; 68 L. J. Ch. 393; 80 L. T. (N.S.) 262; 47 W. R. 457; 15 T. L. R. 338; *Agnew* v. *Manchester Corporation* (1902), 67 J. P. 174; 1 L. G. R. 9; *Smith and Another* v. *Greenwood*, [1907] 2 K. B. 385; 71 J. P. 353; 96 L. T. 730; 5 L. G. R. 660).

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But a notice to the owner of a house with defective sanitary accommodation, calling upon him to provide a particular kind of closet, is not within s. 36 of the Public Health Act, 1875, and is, therefore, bad (*Wood* v. *Widnes Corporation*, [1898] 1 Q. B. 463 ; 62 J. P. 117 ; 67 L. J. Q. B. 254 ; 77 L. T. 779 ; 46 W. R. 293 ; 14 T. L. R. 192).

A notice to the owner of a house under s. 36 of the Public Health Act, 1875, requiring him "to provide a sufficient water-closet" to the said house according to the specification given by this notice was held bad on the ground that it did not allow the owner to comply with it by providing any other "sufficient" water-closet than that specified, although it was not given in pursuance of a general resolution without regard to the particular requirements (*Robinson* v. *Sunderland Corporation* (No. 1) (1898), 62 J. P. 216 ; 78 L. T. 194).

(*k*) As to the recovery of this penalty, see s. 117, *post*.

(*l*) As to the recovery of these expenses, see s. 117, *post*.

Under s. 23 of the London County Council (General Powers) Act, 1904, set out in the Appendix, *post*, the sanitary authority may, where a movable ashpit has been provided, require the owner of the building to remove or fill in any fixed ashpit in or about such building, and to restore to a good and sanitary condition the site of such ashpit.

(*m*) The first proviso is an amendment of the previous law. Under 18 & 19 Vict. c. 120, s. 81, a privy could always be provided instead of a water-closet ; and an earth-closet would not have satisfied either description.

The second proviso is also an amendment of the previous law. Under 18 & 19 Vict. c. 120, s. 81, it was not necessary to provide a separate water-closet for each house, if it had previously been used for two or more houses, *or* in the opinion of the sanitary authority it might be so used. Henceforth it is not sufficient that it has been used in common before the Act, unless the sanitary authority are of opinion that it may properly continue to be so used.

(*n*) This is taken from 18 & 19 Vict. c. 120, s. 211, and 25 & 26 Vict. c. 102, s. 29. It was held that the jurisdiction to interfere by injunction was not ousted by these sections (*Tinkler* v. *Wandsworth District Board of Works*, *supra*). As to the procedure on appeal, see s. 126, *post*.

Under the corresponding provisions of the repealed Acts, a vestry gave notice to the respondent, requiring him to furnish proper doors and coverings to a water-closet ; the respondent did not comply with the order, and did not appeal to the county council ; the vestry then summoned the respondent. The magistrate held that the order of the vestry was wrongly made, and dismissed the summons. It was held, on a case stated, that the respondent's proper remedy, if he objected to the order of the vestry, was by appealing to the county council ; and, as he had not done

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so, the only questions for the decision of the magistrate were: whether the order of the vestry had, in fact, been made, and whether it had been disobeyed, and that if he decided those questions in the affirmative, he was bound to convict (*Vestry of St. James and St. John, Clerkenwell* v. *Feary* (1890), 24 Q. B. D. 703; 54 J. P. 676; 59 L. J. M. C. 82; 62 L. T. (N.S.) 697).

Upon the hearing of a summons under this section against the owner of premises for failing to comply with a notice served upon him by the sanitary authority in respect of the water-closet accommodation upon the premises, the magistrate is bound by the decision of the sanitary authority that the accommodation is insufficient and has no jurisdiction to inquire as to its sufficiency or otherwise (*St. John's, Hackney* (*Vestry of*) v. *Hutton*, [1897] 1 Q. B. 210; 61 J. P. 54; 66 L. J. Q. B. 74; 75 L. T. 686; 45 W. R. 92; 13 T. L. R. 16).

Upon an application by a local authority to a court of summary jurisdiction under s. 305 of the Public Health Act, 1875, for an order entitling them to enter a house and substitute a water-closet in lieu of the existing sanitary arrangements, their notice under s. 36 not having been complied with, and permission to enter having been refused by the owner, justices are not entitled, at the hearing, to review such notice, nor to receive evidence on the part of the owner as to the sufficiency of the existing sanitary arrangements (*Robinson* v. *Sunderland Corporation* (No. 2), [1899] 1 Q. B. 751; 63 J. P. 341; 68 L. J. Q. B. 330; 80 L. T. 262; 15 T. L. R. 195).

There is no appeal to the county council from the commissioners of sewers or their successors, the court of common council. See s. 133, *post*.

Sanitary conveniences for manufactories, etc.

38.—(1) Every factory, workshop, and workplace (*a*), whether erected before or after the passing of this Act, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences (*b*), regard being had to the number of persons employed in or in attendance at such building, and also where persons of both sexes are, or are intended to be, employed, or in attendance, with proper separate accommodation for persons of each sex (*c*).

(2) Where it appears to a sanitary authority that this section is not complied with in the case of any factory, workshop, or workplace (*a*), the sanitary authority shall, by notice (*d*) served on the owner (*e*) or occupier of such factory, workshop, or workplace, require him to make the alterations and additions necessary to secure such compliance, and if the person served with such notice fails to

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comply therewith he shall be liable to a fine not exceeding twenty pounds, and to a fine not exceeding forty shillings for every day (*e*) after conviction during which the non-compliance continues (*f*).

This section corresponds to s. 22 of the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59).

(*a*) For the meaning of these words, see the notes to s. 25, *ante*, p. 67. A stable yard and stables at which a large number of cabmen were daily in attendance for the purpose of hiring cabs was held to be a workplace within the meaning of this section, and must therefore be provided with sufficient and suitable sanitary conveniences for the cabmen (*Bennett* v. *Harding*, [1900] 2 Q. B. 397 ; 64 J. P. 676 ; 69 L. J. Q. B. 701 ; 83 L. T. (N.S) 51 ; 48 W. R. 647 ; 16 T. L. R. 445).

(*b*) The expressions "sanitary conveniences" and "building" are defined by s. 141, *post*.

(*c*) The Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 5, contains the following provision as to the powers of an inspector as to sanitary defects in a factory or workshop remediable by a sanitary authority :

(1) Where it appears to an inspector that any act, neglect or default in relation to any drain, water-closet, earth-closet, privy, ashpit, water supply, nuisance or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of the act, neglect or default to the district council in whose district the factory or workshop is situate, and it shall be the duty of the district council to make such inquiry into the subject of the notice, and take such action thereon, as seems to that council proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice.

(2) An inspector may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances or other officer of the district council.

(3) Where notice of an act, neglect or default is given by an inspector under this section to a district council, and proceedings are not taken within one month for punishing or remedying the act, neglect or default, the inspector may take the like proceedings for punishing or remedying the same as the district council might have taken, and shall be entitled to recover from the district council all such expenses in and about the proceedings as the inspector incurs and as are not recovered from any other person and have not been incurred in any unsuccessful proceedings.

Section 153 of that Act provides that, subject to the exceptions therein mentioned, references in that Act to a district council and the district thereof are as regards the city of London to be construed as references to the court of common council and the city, and as regards any other part of the administrative county of London as references to the council of a metropolitan borough and the metropolitan borough.

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In a prosecution by an inspector under s. 5 (3), *supra*, justices have no jurisdiction to hear evidence upon or decide the question of suitability of sanitary accommodation existing in a factory (*Tracey* v. *Pretty*, [1901] 1 K. B. 444 ; 65 J. P. 196 ; 70 L. J. K. B. 234 ; 83 L. T. 767 ; 49 W. R. 282 ; 17 T. L. R. 200 ; 19 Cox C. C. 593).

(*d*) As to the authentication and service of this notice, see ss. 127, 128, *post*.

(*e*) The expressions "owner" and "day" are defined by s. 141, *post*.

(*f*) As to the recovery of these fines, see s. 117, *post*.

Byelaws as to water-closets, etc.

39.—(1) The county council (*a*) shall make byelaws (*b*) with respect to water-closets, earth-closets, privies, ash-pits (*c*), cesspools, and receptacles for dung, and the proper accessories thereof in connection with buildings, whether constructed before or after the passing of this Act.

(2) Every sanitary authority shall make byelaws with respect to the keeping of water-closets supplied with sufficient water for their effective action (*d*).

(3) It shall be the duty of every sanitary authority to observe and enforce the byelaws under this section ; and any directions given by the sanitary authority under this Act shall be in accordance with the said byelaws, and so far as they are not so in accordance shall be void (*e*).

(*a*) The county council here referred to is the London County Council. See s. 141, *post*. The byelaws of the county council do not apply in the city of London. See s. 133, *post*.

The byelaws made by the London County Council under this section are to be found in the published byelaws and regulations of the London County Council.

(*b*) As to the making of byelaws, see s. 114, *post*.

By a byelaw, No. 5, made by the London County Council under s. 39 (1), it is provided that "a person who shall newly fit or fix any apparatus in connection with any existing w.c. shall, as regards such apparatus and its connection with any soil pipe or drain, comply with such of the requirements of the foregoing byelaws as would be applicable to the apparatus so fitted or fixed as if the w.c. were being newly constructed." Byelaw 14 provides that "every person who shall intend to construct any w.c., earth-closet or privy, or to fit or fix in connection with any w.c., earth-closet or privy any apparatus or any trap or soil pipe shall before executing any such works give notice in writing to the clerk of the sanitary authority."

The appellants, a railway company, finding that the traps and pans of two existing water-closets at one of their stations required renewal owing to ordinary wear and tear, removed the same and

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refitted or fixed two new pans or traps in connection with the said water-closets. In carrying out the works the appellants complied with all the requirements of the byelaws as referred to in byelaw 5, but gave no notice to the clerk of the sanitary authority as provided by byelaw 14 :—*Held*, that byelaw 14 did not apply only to new water-closets, but also to the fixing of an apparatus, trap, or soil pipe in connection with any existing water-closet (*London and South Western Rail. Co.* v. *Hills*, [1906] 1 K. B. 512 ; 70 J. P. 212 ; 75 L. J. K. B. 340 ; 94 L. T. 517 ; 4 L. G. R. 399).

(*c*) The expression "ashpit" is defined by s. 138, *post*.

Section 54 of the City of London (Various Powers) Act, 1900, provides that

"The corporation shall make and enforce byelaws with respect to water-closets earth-closets privies ashpits cesspools and receptacles for dung and the proper accessories thereof in connection with buildings Provided that nothing in this part of this Act contained shall authorise the corporation to make or enforce any byelaws with respect to water-closets or the accessories thereof which would be inconsistent with or contrary to anything contained in the Metropolis Water Act 1852 or the Metropolis Water Act 1871 or any regulations or byelaws made thereunder 'Ashpit' in this section means any ashpit dust-bin ash-tub or other receptacle for the deposit of ashes or refuse matter."

Byelaws have been made under this section and they have been formally approved by the Local Government Board.

See also the provisions as to byelaws in ss. 63—67 of this Act, set out in the Appendix, *post*.

(*d*) The Local Government Board have issued a Model Series of Byelaws under this section. Byelaws based upon the model series are in force in each of the metropolitan boroughs and in the city of London.

(*e*) As the sanitary authority must enforce the byelaws, the proviso in s. 114, *post*, relating to the making of byelaws, will apply.

The directions, above referred to, are those which are given by a sanitary authority for the execution of works prescribed by them. See, for example, s. 37 (3), *ante*, p. 86, and s. 40 (2), and s. 41 (1), *post*.

A magistrate has jurisdiction to inquire into the validity of directions purporting to be given by a sanitary authority, and if they relate to a closet in existence at the time of the passing of this Act, cannot be justified by a byelaw made under this sub-section, which is prospective only, and must be held to be void as not being in accordance with the byelaws authorised under the Act (*Fulham* (*Vestry of*) v. *Solomon*, [1896] 1 Q. B. 198 ; 60 J. P. 72 ; 65 L. J. M. C. 33 ; 12 T. L. R. 157).

As to byelaws regulating the construction and ventilation of water-closets and ventilation traps, see *Metropolitan Industrial Dwellings Co.* v. *Long* (1903), 68 J. P. 113 ; 20 T. L. R. 103 ; 2 L. G. R. 233 ; *Kingsland* v. *Haben* (1904), 68 J. P. 159 ; 90 L. T. 449 ; 2 L. G. R. 470 ; *Treasure* v. *Bermondsey Borough Council* (1904), 68 J. P. 206 ; 2 L. G. R. 488 ; *Agar* v. *Nokes* (1905), 69 J. P. 374 ; 93 L. T. (N.S.) 605 ; 3 L. G. R. 1168.

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A byelaw made by the London County Council under this section is unreasonable and void if it does not provide for notice to the person complained against before the commencement of proceedings (*Nokes* v. *Islington Borough Council* (No. 1), [1904] 1 K. B. 610 ; 68 J. P. 95 ; 73 L. J. K. B. 100 ; 90 L. T. 22 ; 52 W. R. 399 ; 20 T. L. R. 95 ; 2 L. G. R. 334).

For the meaning of the expression "sanitary authority," see s. 99, *post*.

Power for sanitary authority to authorise examination of water-closets, etc.

40.—(1) The sanitary authority may examine any of the following works, that is to say, any water-closet, earth-closet, privy, ashpit (*a*), or cesspool, and any water supply, sink, trap, siphon, pipe, or other works or apparatus connected therewith, upon any premises (*a*) within their district, and for that purpose, or for the purpose of ascertaining the course of a drain, may at all reasonable times by day (*a*), after twenty-four hours' notice has been served on the occupier of the premises, or if they are unoccupied on the owner (*a*), or in case of emergency without notice, enter on any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be (*a*).

(2) If any such work as aforesaid is found on examination to be in accordance with this Act and the byelaws of the county council and sanitary authority and directions of the sanitary authority given in any notice under this Act, and in proper order and condition, the sanitary authority shall cause the same to be reinstated and made good as soon as may be, and shall defray the expenses of examination, reinstating, and making good the same, and pay full compensation for all damages or injuries done or occasioned by the examination ; but if on examination any such work is found not to be in proper order or condition, or not to have been made or provided by any person according to the said byelaws and directions, or to be contrary to this Act, the reasonable expenses of the examination shall be repaid to the sanitary authority by the person offending, and may be recovered by that authority in a summary manner (*b*).

(*a*) This sub-section is, in substance, a re-enactment of 18 & 19 Vict. c. 120, s. 82 ; the enactment is, however, extended to an ashpit.

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The expressions "ashpit," "day," "premises" and "owner" are defined by s. 141, *post*. For the meaning of the expression "sanitary authority," see s. 99, *post*.

As to the authentication and service of the notice, see ss. 127, 128, *post*.

The mode of entry is regulated by s. 115, *post*.

It has been held that it is not a condition precedent to the right of a local authority to recover from the owner of premises the expenses of abating a nuisance thereon, that a notice under s. 41 of the Public Health Act, 1875, should have been given, before entry—for the purposes of examination—to the occupier of such premises (*Bromley Borough Council* v. *Cheshire*, [1908] 1 K. B. 680; 72 J. P. 34; 77 L. J. K. B. 332; 6 L. G. R. 156).

(*b*) The byelaws of the county council, above referred to, are evidently those to be made under s. 39. It is not clear what byelaws of the sanitary authority are referred to, unless they are the byelaws made under ss. 16 and 39 (2). The directions of the sanitary authority must be in accordance with the byelaws. See s. 39 (3), *ante*, p. 91.

The reference to a notice appears to imply that the examination may be made for the purpose of ascertaining whether the requirements of the notice have been complied with.

This sub-section is taken from 18 & 19 Vict. c. 120, s. 84. Under that Act, ss. 225, 226, compensation is to be assessed by justices. There is no corresponding provision in this Act; and accordingly it would seem that a claim for compensation must be enforced by action.

The words "in a summary manner" mean in manner provided by the Summary Jurisdiction Acts (42 & 43 Vict. c. 49, s. 51 (3)). And see s. 117, *post*.

Under s. 22 of the London County Council (General Powers) Act of 1904 (set out in the Appendix, *post*), the sanitary authority may call upon the owner of any sanitary convenience, whether erected before or after the passing of that Act, in or accessible from any street in their district which is so placed or constructed as to be a nuisance or offensive to public decency, to remove such convenience or otherwise reconstruct the same in such a manner and with such materials as may be required to abate the nuisance and remove the offence against public decency.

Penalty on persons improperly making or altering water-closets, etc.

41.—(1) In any of the following cases—

(a) If, on such examination as in the preceding section mentioned, any such work as therein mentioned is found not to have been made or provided by any person according to the byelaws of the county council and sanitary authority, and the directions of the sanitary authority given in any notice under this Act, or to be contrary to this Act (*a*), or

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(b) If a person, without the consent of the sanitary authority, constructs or rebuilds any water-closet, earth-closet, privy, ashpit, or cesspool which has been ordered by them either not to be made, or to be demolished (*b*), or

(c) If a person discontinues any water supply without lawful authority (*c*), or

(d) If a person destroys any sink, trap, siphon, pipe, or any connected works or apparatus as aforesaid either without lawful authority or so that the destruction creates a nuisance or is injurious or dangerous to health (*d*),

every person so offending shall be liable to a fine not exceeding ten pounds (*e*) ; and if he does not, within fourteen days after notice (*f*) is served on him by the sanitary authority, or within any further time allowed by that authority or appearing to a petty sessional court (*g*) necessary for the execution of the works, cause such water-closet, earth-closet, privy, ashpit, or cesspool to be altered or reinstated in conformity with the said byelaws and directions (*h*), or, as the case may be, to be demolished, or such water supply to be renewed, or such sink, trap, siphon, pipe or other connected works or apparatus to be restored, such person shall be liable to a fine not exceeding twenty shillings for each day during which the offence continues ; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and cause the work to be done, and the expenses thereof shall be paid by the person who has so offended (*i*).

(2) If, on such examination as aforesaid, any water-closet, earth-closet, privy, ashpit, or cesspool, or any water supply, sink, trap, siphon, pipe, or any of the connected works or apparatus as aforesaid, appears to be in bad order and condition, or to require cleansing, alteration, or amendment, or to be filled up, the sanitary authority shall cause notice to be served on the owner or occupier of the premises, upon or in respect of which the inspection was made, requiring him forthwith, or within a reasonable time specified in the notice, to do what is

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necessary to place the work in proper order and condition; and if such notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute the works, and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises (*k*).

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to any water-closet, earth-closet, privy, ashpit, or cesspool, may appeal to the county council, whose decision shall be final (*l*).

(*a*) This clause is taken from 18 & 19 Vict. c. 120, s. 83. And see the preceding section of this Act.

For the meaning of the expression "sanitary authority," see s. 99, *post*.

(*b*) This clause is also taken from 18 & 19 Vict. c. 120, s. 83, with the omission of the words, "sewer" and "drain." It is the duty of the sanitary authority themselves to repair and cleanse sewers under 18 & 19 Vict. c. 120, s. 69, and nuisances arising from drains may be dealt with under the nuisance clauses of this Act. The word "ashpit," which appears in the above clause, and is defined by s. 141, *post*, was not in 18 & 19 Vict. c. 120, s. 83.

It is not quite clear what is the order referred to in the clause. It may, perhaps, be an order under s. 4, or under the byelaws.

(*c*) This clause is also taken from 18 & 19 Vict. c. 120, s. 83. It may be observed that the want of proper water fittings may itself be a nuisance liable to be dealt with summarily under s. 3.

(*d*) This clause is an expansion of the words used in 18 & 19 Vict. c. 120, s. 83.

(*e*) As to the recovery of this fine, see s. 117, *post*.

(*f*) As to the authentication and service of this notice, see ss. 127, 128, *post*.

(*g*) For the meaning of the expression "petty sessional court," see note (*h*), *ante*, p. 28. The court may apparently grant an extension of time in proceedings to recover the fine.

(*h*) These directions must be in accordance with the byelaws. See s. 39 (2), *ante*, p. 91.

(*i*) These expenses are recoverable in a summary manner under s. 117, *post*. See also s. 121, as to the recovery of expenses from the owner of the premises.

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For the meaning of the expressions "day," "premises," and "owner," see s. 141, *post*.

(*k*) This sub-section is taken from 18 & 19 Vict. c. 120, s. 85.

As to the authentication and service of the notice, see ss. 127, 128, *post*.

As to the recovery of the fines, see s. 117, *post*. The expenses are recoverable in a summary manner under s. 117, *post*, or, if recoverable from an owner of premises, in manner provided by s. 121, *post*.

Directions relating to a closet in existence at the time of the passing of the Act cannot be justified under a byelaw which is prospective only, and must be held to be void as not being in accordance with byelaws authorised under the Act (*Fulham (Vestry of)* v. *Solomon*, [1896] 1 Q. B. 198 ; 60 J. P. 72 ; 65 L. J. M. C. 33 ; 12 T. L. R. 157). In that case KENNEDY, J., said that in his view the words "is found not to be in proper order and condition" in s. 40 (2), and "appears to be in bad order and condition" in s. 41 (2), did not refer to defects in the structure, nor did the words "require alteration or amendment" refer to structural alteration. This opinion was followed in *Hammersmith Vestry* v. *Ainsworth* (1897), 62 J. P. 103. There the vestry had given notice to the respondent to carry out certain alterations by cutting off a rain-pipe from the main drain, such pipe having been put up before 1891, and not being alleged to be in a defective condition nor a matter as to which byelaws could be made under s. 39, *ante*. It was held that no offence had been committed, as there was nothing in the Act enabling the vestry to require alteration of the system of drainage as distinguished from the repair of defects. See, however, the observations of the court upon the judgment of KENNEDY, J., *supra*, in *Southwold Corporation* v. *Crowdy* (1903), 67 J. P. 278 ; 1 L. G. R. 899.

(*l*) This provision is taken from 18 & 19 Vict. c. 120, s. 211. It is in terms similar to s. 37 (5). See the notes to that sub-section. As to the procedure on appeal, see s. 126, *post*. There is no appeal to the county council from the commissioners of sewers or their successors, the court of common council. See s. 133, *post*.

Improper construction or repair of water-closet or drain.

42. If a water-closet or drain is so constructed or repaired as to be a nuisance or injurious or dangerous to health, the person who undertook or executed such construction or repair shall, unless he shows that such construction or repair was not due to any wilful act, neglect, or default, be liable to a fine not exceeding twenty pounds :

Provided that where a person is charged with an offence under this section he shall be entitled, upon information

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duly laid by him, to have any other person, being his agent, servant, or workman, whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge, and if he proves to the satisfaction of the court that he had used due diligence to prevent the commission of the offence, and that the said other person committed the offence without his knowledge, consent, or connivance, he shall be exempt from any fine, and the said other person may be summarily convicted of the offence.

This section is new.

The fine is recoverable summarily under s. 117, *post*.

As to the words "a nuisance or injurious or dangerous to health," see the note to s. 2, *ante*, p. 3.

The proviso resembles that in 41 & 42 Vict. c. 16, s. 87, and some other Acts. It is intended for the protection of an employer against the wrongful acts of his workmen, but if an employer is charged, the burden of proof that he is personally innocent will lie upon him.

In *Young* (*on behalf of the Sanitary Authority of the Parish of Clapham*) v. *Foster* (1893), 58 J. P. 8; 69 L. T. 147; 41 W. R. 589, it was held that the builder who is employed by the owner to repair a drain, and who so repairs it as to be a nuisance and injurious to health, may be proceeded against under this section in the first instance, as he is the person who undertook or executed the repairs within the meaning of the section.

Sanitary authority to cause offensive ditches, drains, etc. to be cleansed or covered.

43.—(1) Every sanitary authority—

(a) Shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their district; and

(b) Shall cause notice to be served on the person causing any such nuisance, or on the owner or occupier of any premises whereon the same exists, requiring him, within the time specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, drain, or place, or to

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construct a proper drain for the discharge of such filth, water, matter, or thing, or to execute such other works as the case may require (*a*).

(2) If the person on whom such notice is served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues ; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as may be necessary for the abatement of the nuisance, and may recover the expenses thereby incurred from the owner of the premises (*b*) : Provided that—

(a) The sanitary authority, where they think it reasonable, may defray all or any portion of the said expenses, as expenses of sewerage are to be defrayed by that authority (*c*) ; and

(b) Where any work which a sanitary authority does or requires to be done in pursuance of this section interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, the sanitary authority shall make full compensation to all persons sustaining damage thereby, in manner provided by the Metropolis Management Act, 1855 (*d*), or if they think fit, may purchase such mill, or any such right connected therewith, or other right to the use of water ; and the provisions of the said Act with respect to purchases by the sanitary authority shall be applicable to every such purchase as aforesaid (*e*).

18 & 19 Vict. c. 120.

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to the construction, covering, filling up, or other alteration of any drain may appeal to the county council, whose decision shall be final (*f*).

(*a*) This section takes the place of 18 & 19 Vict. c. 120, s. 86, and 18 & 19 Vict. c. 121, ss. 21, 22 (now repealed).

It appears to be in the discretion of the sanitary authority whether they will themselves act under clause (a), or serve a

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notice under clause (b). See sub-s. (2). The expressions "owner" and "premises" are defined by s. 141, *post*.

As to the authentication and service of the notice, see ss. 127, 128, *post*.

(*b*) The fine is recoverable summarily under s. 117. The expenses may be recovered in the same way or in manner provided by s. 121, *post*.

(*c*) This proviso will apply even where the works have been done in default of compliance with a notice.

The expenses of sewerage were formerly defrayed out of a sewers rate made under 18 & 19 Vict. c. 120, s. 161, now they will be defrayed out of the general rate. See the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10, which provides that a scheme under the Act is to provide for all the expenses of a borough council being paid out of the general rate, and for the discontinuance of a separate sewers rate and separate lighting rate, but is to make provision for protecting the interests of owners and occupiers of any hereditament which is exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments. The general rate and the poor rate are to be assessed, made, and levied together by the borough council as one rate, which is to be termed the general rate, and is to be assessed, made, collected, and levied as if it were the poor rate, and all enactments applying or referring to the poor rate are, subject to the provisions of the Act as to audit, to be construed as applying or referring also to the general rate. Pursuant to this provision a scheme called "The London Rating Scheme, 1901," was duly confirmed by Order in Council, dated March 9th, 1901 (Stat. R. & O. 1901, p. 226).

(*d*) Compensation is determined by two justices under 18 & 19 Vict. c. 120, ss. 225, 226, unless the amount in dispute exceeds £50, in which case it must be determined by arbitration, in manner provided by the Lands Clauses Acts.

A summons before justices to assess compensation need not be taken out within the six months limited by 11 & 12 Vict. c 43, s. 11 (*R.* v. *Edwards* (1884), 13 Q. B. D. 586; 49 J. P. 117; 53 L. J. M. C. 149; 51 L. T. (N.S.) 856.

(*e*) The provisions of 18 & 19 Vict. c. 120, as to the purchase of lands, are contained in ss. 150—153. Under these sections, land may be purchased in the ordinary way by agreement, or, with the consent of a Secretary of State, compulsorily, in manner provided by the Lands Clauses Acts.

(*f*) This provision is taken from 18 & 19 Vict. c. 120, s. 211. See the similar provision in s. 37 (5), *ante*, and the notes thereto.

As to the procedure on appeal, see s. 126, *post*. There is no appeal to the county council from the commissioners of sewers, or their successors the court of common council. See s. 133, *post*.

Power to sanitary authority to

44.—(1) Every sanitary authority may provide and maintain public lavatories and ashpits and public sanitary

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provide public conveniences.

conveniences other than privies, in situations where they deem the same to be required, and may supply such lavatories and sanitary conveniences with water, and may defray the expense of providing such lavatories, ashpits, and sanitary conveniences, and of any damage occasioned to any person by the erection or construction thereof, and the expense of keeping the same in good order, as if they were expenses of sewerage (*a*).

(2) For the purpose of such provision the subsoil of any road, exclusive of the footway adjoining any building or the curtilage of a building, shall be vested in the sanitary authority (*b*).

(*a*) This section is an amendment of 18 & 19 Vict. c. 120, s. 88, in so far as it extends to lavatories and ashpits, and omits all mention of privies.

For provisions of a similar nature, see ss. 39 and 45 of the Public Health Act, 1875, and s. 47 of the Public Health Acts Amendment Act, 1907.

The expressions "ashpits" and "sanitary conveniences" are defined by s. 141, *post*. There is no definition of a lavatory, but it is submitted that it means a place for washing, and not a urinal, which is included in the definition of a sanitary convenience.

In *Biddulph* v. *Vestry of St. George, Hanover Square* (1863), 33 L. J. Ch. 411 ; 8 L. T. (N.S.) 558 ; 3 De G. J. & S. 493 ; 2 N. R. 212, the defendants, assuming to act under the corresponding section of 18 & 19 Vict. c. 120, passed a resolution to erect a urinal in Grosvenor Place, adjacent to the wall of Buckingham Palace ; STUART, V.-C., being of opinion that the erection of a urinal at that spot would be a serious injury to property in the neighbourhood, upon bill filed by a resident nearly opposite to the site of the proposed urinal, granted an injunction restraining the vestry from erecting it. Upon appeal, the Lords Justices being of opinion that the evidence did not show that the proposed urinal would be in point of law a nuisance, or that the vestry were exceeding their statutory powers in what they proposed to do, or that they were influenced by improper motives, discharged the order for the injunction. In *Mason* v. *Wallasey Local Board* (1876), 58 J. P. 477 ; L. J. Notes of Cases, 1876, p. 212, JESSEL, M.R., held that in the absence of improper motives, an absolute discretion was given to a sanitary authority in choosing the site (and see the decision of POLLOCK, B., in *Spicer* v. *Mayor of Margate* (1880), 24 Sol. J. 821). In *Vernon* v. *Vestry of St. James, Westminster* (1880), 16 Ch. D. 449 ; 50 L. J. Ch. 81 ; 44 L. T. (N.S.) 229, it was held by MALINS, V.-C., that any question, whether one place or another was more fit for the erection of a urinal, must be left to the decision of the vestry ; but that the vestry would be controlled by the court if they acted in an unreasonable manner, and occasioned

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a nuisance to the owners of adjoining property. And it was held by the Court of Appeal, that as the erection of a urinal was not necessarily a nuisance, the provision of the Act authorising the vestry to erect urinals did not empower them to erect one where it would be a nuisance to the owners of adjoining property, there being no words in the Act which, expressly or by necessary implication, authorised them to create a nuisance. Each case will, therefore, depend on its own circumstances. See *Graham* v. *Newcastle-upon-Tyne Corporation* (No. 1) (1892), 67 L. T. (N.S.) 790 ; 2 R. 254 ; *Mogg* v. *Bocken* (1888), 5 T. L. R. 22. In a recent case a local board, assuming to act under this section, erected a public urinal, partly upon a highway and partly upon a strip of land belonging to the plaintiff, and so near to other adjoining land of the plaintiff as to be a nuisance to her and her tenants, and to depreciate the value of her property ; it was held that the plaintiff was entitled to a mandatory injunction to restrain the board from continuing the urinal upon the land, or so near thereto, as to cause injury or annoyance to her and her tenants (*Sellors* v. *Matlock Bath Local Board* (1885), 14 Q. B. D. 928 ; 52 L. T. (N.S.) 762).

In another case plaintiff was the owner of numerous houses of a superior class abutting on a road overlooking a public park, and defendants, the urban authority, resolved to erect a urinal and lavatory in the park, about 230 feet from the plaintiff's nearest house, and in full view of them all. Plaintiff moved for an injunction to restrain defendants from erecting the proposed building so as to cause a nuisance to himself and his tenants, and proved that the letting value of his houses would be diminished, and that there were other sites more convenient, but failed to prove that any nuisance by smell was likely to arise. It was held by CHITTY, J., that an injunction ought not to be granted in the absence of evidence of bad faith, or arbitrary, perverse and vexatious conduct on the part of the defendants in selecting the site (*Pethick* v. *Mayor, etc. of Plymouth* (1894), 58 J. P. 476 ; 70 L. T. (N.S.) 304 ; 42 W. R. 246 ; 10 T. L. R. 205). See also *Chaplin & Co., Limited* v. *Westminster* (*Mayor, etc. of*), [1901] 2 Ch. 329 ; 65 J. P. 661 ; 70 L. J. Ch. 679 ; 85 L. T. (N.S.) 88 ; 49 W. R. 586 ; 17 T. L. R. 576 ; L. G. C. 1229.

Section 39 of the Public Health Act, 1875, does not empower an urban authority to provide a public urinal in such a position as in fact to cause a nuisance to neighbouring property, even though the authority bonâ fide consider that the situation selected is proper and convenient, and even though the result of providing the urinal may be to obviate an existing nuisance (*Leyman* v. *Hessle Urban District Council* (1902), 67 J. P. 56 ; 19 T. L. R. 73 ; 1 L. G. R. 76).

A statutory power to erect urinals in such situations as the sanitary authority think fit, does not entitle such sanitary authority to erect urinals where they constitute a private nuisance to individuals (*Parish* v. *London Corporation* (1901), 67 J. P. 55 ; 18 T. L. R. 63).

The urban authority of a seaside resort decided to erect a public sanitary convenience, and selected a site, freely given by the

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owner, on the slope of the cliffs some thirty feet from good class private houses, and close to public seats used by residents and visitors for the salubrity of the air and the amenity of the view. The plaintiffs, in a *quia timet* action, complained of a private nuisance likely to arise from noise and smell, and of a public nuisance in respect of the erection of the convenience on the selected site :— *Held*, on the facts, that no public or private nuisance was to be apprehended, and that the defendant council had reasonably exercised their powers under s. 39 of the Public Health Act, 1875, in resolving to erect a convenience of this kind, and in selecting the site in question (*Mayo* v. *Seaton Urban District Council* (1903), 68 J. P. 7 ; 2 L. G. R. 127).

In providing sanitary conveniences under the section under consideration, the sanitary authority must use their statutory powers bonâ fide and reasonably, and if they so act their discretion as to the mode of acting cannot be interfered with. Where a convenience with a subway is so provided under a street, it is no objection that the public can use the subway as a means of passing from one side of the street to the other (*Mayor, etc. of Westminster* v. *London and North Western Rail. Co.*, [1905] A. C. 426 ; 69 J. P. 425 ; 74 L. J. Ch. 629 ; 93 L. T. (N.S.) 143 ; 54 W. R. 129 ; 21 T. L. R. 686 ; 3 L. G. R. 1120).

In a case where a metropolitan borough council constructed and maintained public underground lavatories beneath streets it was held by the Court of Appeal (MATHEW, L.J., dissenting), that the council were liable for land tax in respect thereof, as "having or holding a tenement or hereditament" (*Westminster* (*Mayor, etc. of*) v. *Johnson*, and *Westminster* (*Mayor, etc. of*) v. *Fuller*, [1904] 2 K. B. 737 ; 68 J. P. 549 ; 73 L. J. K. B. 774 ; 91 L. T. 334 ; 53 W. R. 4 ; 20 T. L. R. 701 ; 2 L. G. R. 1378).

As to how the expenses of sewerage are to be defrayed, see the notes to s. 43 (2).

See the notes to s. 105, *post*, as to loans for the purposes of this section.

(*b*) This is a new and somewhat singular provision. By 18 & 19 Vict. c. 120, s. 96, all streets, which were highways in the metropolis, were vested in the district boards or vestries as the case might be. This vesting did not give the district boards or vestries all the powers of absolute owners of the soil, but only such powers as were essential for making and maintaining the street, and accordingly they had certain powers below the surface and above it. The district boards and vestries are now superseded by the metropolitan borough councils. The meaning of the word "vest" will more clearly appear from the decided cases which are set out below. Under the text, however, for the limited purposes of this section, the subsoil of any road, exclusive of the footway, vests in the sanitary authority. This provision obviates the difficulty as to the power of a local authority to erect water-closets, etc. partly below the surface of the ground on land open for public use, but not a highway repairable by the inhabitants at large, which arose in *Baird* v. *Mayor, etc. of Tunbridge Wells*, *infra*.

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The following are the cases decided with reference to the meaning of the vesting of a street or road :

In *Hind* v. *Chorlton* (1866), L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *vest in* as used in a local Act, said : "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carring out of the objects of the Act without giving them the freehold. In *Stracey* v. *Nelson* (1844), 13 L. J. Ex. 97 ; 12 M. & W. 535, it was provided by an Act that certain lands should be *vested* in the commissioners of sewers, and the court held, notwithstanding, that only the control over the lane, and not the freehold, passed to them." In *Bagshaw* v. *Buxton Local Board* (1875), 1 Ch. D., at p. 222, JESSEL, M.R., said that by the term *vested* he meant vested *sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *vest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street (*Coverdale* v. *Charlton* (1878), 4 Q. B. D. 104 ; 43 J. P. 268 ; 48 L. J. Q. B. 128 ; 40 L. T. (N.S.) 88 ; 26 W. R. 687). In that case, by an award made under an Inclosure Act passed in 1766, two private roads, E. and H., were set out. About 1818 the road E. became a public highway. Down to 1863 the surveyors of highways for the parish of C., within which E. and H. were situate, had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish of C., who in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle on the roads. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a private way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case, JAMES, L.J., explained this decision as to the meaning of the words *vest in* as follows : "What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now, what was that something more ? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold, in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind,

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passed, but the board had only the surface, and with the surface such right below the surface as was essential to the maintenance and occupation and exclusive possession of the street, and the making and maintaining of the street for the use of the public" (*Rolls* v. *St. George the Martyr, Southwark* (*Vestry of*) (1880), 14 Ch. D. 785 ; 44 J. P. 680 ; 49 L. J. Ch. 691 ; 43 L. T. (N.S.) 140 ; 28 W. R. 867). In that case the plaintiff having, with the sanction of the Metropolitan Board of Works, made a new street over his land, upon which land were two old streets, N. and A., an order was made at quarter sessions for stopping up part of N. street as unnecessary, and an order was also made for diverting a part of A. street, and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped-up part of N., or stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal, reversing the decision of the MASTER OF THE ROLLS, that under 18 & 19 Vict. c. 120, s. 96, all streets being for the time being highways, were vested in the vestry, but only so long as they were highways, and that when they ceased to be highways by being legally stopped up or diverted, the interest of the vestry determined. And it was, therefore, held that the plaintiff was entitled to convert to his own use the stopped-up part of N., and the diverted part of A., subject, as to A., to his first obtaining a certificate under 5 & 6 Vict. c. 50, s. 91, that the substituted street had been completed and put into good condition and repair. Where a street was carried across a railway situate in a deep cutting, the bridge being erected pursuant to the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 46—51, it was held that the vesting of the street in the vestry, under 18 & 19 Vict. c. 120, s. 105, did not give the vestry any property in the bridges or its fences, but merely vested in them the carriageway and footpaths and the materials of which these were made (*Great Eastern Rail. Co.* v. *Hackney Board of Works* (1883), 8 App. Cas. 687 ; 48 J. P. 52 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509). The vesting of the streets in the authority under this section does not confer upon them such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, the telephone wire being erected at a great height, and causing no appreciable danger to the public or to the traffic in the street (*Wandsworth District Board of Works* v. *United Telephone Co.* (1884), 13 Q. B. D. 904 ; 48 J. P. 676 ; 53 L. J. Q. B. 449 ; 51 L. T. (N.S.) 148 ; 32 W. R. 776).

An injunction was granted to restrain the defendant, who claimed as owner of the subsoil of half the road, from interfering with poles and electric wires. It was held that, assuming the defendant was owner of half the soil, yet the road being a street within s. 149 of the Public Health Act, 1875, the local board were entitled to more than the surface ; they had an area of user necessary for the exercise of their statutory powers, *e.g.*, of lighting the district (*Fareham Local Board* v. *Smith*, W. N. (1891) 76 ;

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90 L. T. 467 ; 7 T. L. R. 443). Where by a local Act a municipal corporation were empowered to erect in any street or public place, or on land belonging to them, water-closets, urinals and lavatories for the use of the public, and the word "street" in that Act had the same meaning as is assigned to it by the Public Health Acts, and the corporation made in a public promenade, which was, by another local Act, free and open for public use, but was not a highway repairable by the inhabitants at large, certain water-closets, urinals and lavatories, sunk to a depth of nine feet, and lighted by skylights level with the surface of the ground, it was held by the Court of Appeal that though the promenade was a public place, still, as nothing had been dedicated to the use of the public except the surface, the soil under the surface could not be considered part of a public place or street within the meaning of the local Act, and that the corporation were not entitled to erect the conveniences in question, and it was held also that the corporation could not justify their acts under ss. 39 and 149 of the Public Health Act, 1875, for, assuming that the *locus in quô* was a street, it was not a highway repairable by the inhabitants at large, and the property in the soil did not, therefore, vest in the corporation (*Baird* v. *Tunbridge Wells* (*Mayor, etc. of*), [1896] A. C. 434 ; 60 J. P. 788 ; 65 L. J. Q. B. 451 ; 74 L. T. (N.S.) 385). See also *Salt Union, Limited* v. *Harvey* (1897). 61 J. P. 375 ; 13 T. L. R. 297 ; *St. Mary, Battersea* (*Vestry of*) v. *County of London and Brush Provincial Electric Lighting Co.*, [1899] 1 Ch. 474 ; 68 L. J. Ch. 238 ; 80 L. T. (N.S.) 31 ; *National Telephone Co.* v. *St. Peter Port* (*Constables of*), [1900] A. C. 317 ; 82 L. T. (N.S.) 398 ; *Hyde* (*Mayor, etc. of*) v. *Oldham, etc. Electric Tramway Co., Limited* (1900), 64 J. P. 596 ; *Chaplin & Co., Limited* v. *Westminster Borough Council*, [1901] 2 Ch. 329 ; 65 J. P. 661 ; 70 L. J. Ch. 679 ; 85 L. T. (N.S.) 88 ; 49 W. R. 586 ; *Finchley Electric Light Co.* v. *Finchley Urban District Council*, [1903] 1 Ch. 437 ; 67 J. P. 97 ; 72 L. J. Ch. 297 ; 88 L. T. 215 ; 51 W. R. 375 ; 1 L. G. R. 244. The presumption that a conveyance of land abutting on a highway passes the soil of the road *usque ad medium filum* is rebutted by the surrounding circumstances where a new street is made by commissioners under an Act of Parliament which imposes on them duties and obligations inconsistent with the presumption, and where the parcels and plan show no intention to pass any part of the street (*Mappin Brothers* v. *Liberty & Co.*, [1903] 1 Ch. 118 ; 67 J. P. 91 ; 72 L. J. Ch. 63 ; 87 L. T. 523 ; 51 W. R. 264 ; 1 L. G. R. 167). A road ran over certain land which was vested in a company for the purpose of their undertaking. The road was, by a private Act, vested in the local authority, who gave no consideration therefor :—*Held*, that the local authority had acquired no rights in the subsoil of the road so as to prevent the company from tunnelling through the same in such a way as should not interfere with the use of a road as a road (*Poplar Corporation* v. *Millwall Dock Co.* (1904), 68 J. P. 339). As to what amounts to the taking of land within the meaning of the Lands Clauses Consolidation Act, 1845, see *Escott* v. *Newport Corporation*, [1904] 2 K. B. 369 ;

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68 J. P. 135 ; 73 L. J. K. B. 693 ; 90 L. T. 348 ; 52 W. R. 543 ; 20 T. L. R. 158 ; 2 L. G. R. 779.

In *Westminster Corporation* v. *London and North Western Rail. Co.*, [1905] A. C. 426 ; 69 J. P. 425 ; 72 L. J. Ch. 629 ; 93 L. T. 143 ; 54 W. R. 129 ; 21 T. L. R. 686 ; 3 L. G. R. 1120, it was held that for the purpose of making public conveniences where the sanitary authority may deem them to be suitable, the subsoil of the roadway, exclusive of the footway, is vested in them by s. 44 of the Public Health (London) Act, 1891, and that in the absence of any bad faith, this section empowered the sanitary authority to make underground approaches to such conveniences from either side of the street in the nature of a subway, although such subway might be used by persons not using the convenience.

Section 29 of the London County Council (General Powers) Act, 1900 (set out in the Appendix, *post*), enables lavatories and sanitary conveniences to be erected and maintained upon certain disused burial grounds, and s. 22 of the London County Council (General Powers) Act, 1904 (set out in the Appendix, *post*), enables a sanitary authority to require the removal or alteration of sanitary conveniences.

Regulations as to public sanitary conveniences.

45.—(1) Where a sanitary authority provide and maintain any public lavatories, ashpits, or sanitary conveniences (*a*), such authority may—

(a) make regulations (*b*) with respect to the management thereof, and byelaws (*c*) as to the decent conduct of persons using the same ; and

(b) let the same for any term not exceeding three years at such rent and subject to such conditions as they may think fit (*d*) ; and

(c) charge such fees for the use of any lavatories or water-closets provided by them as they may think proper.

(2) No public lavatory, ashpit, or sanitary convenience shall be erected in or accessible from any street without the consent in writing of the sanitary authority, who may give their consent upon such terms as to the use thereof or the removal thereof at any time, if required by the sanitary authority, as they may think fit (*e*).

(3) If any person erects a lavatory, ashpit, or sanitary convenience in contravention of this section (*f*), and after notice to that effect served by the sanitary authority does not remove the same, he shall be liable to a fine not exceeding five pounds, and to a fine not exceeding twenty

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shillings for every day during which the offence continues after a conviction for the offence (*g*).

(4) Nothing in this section shall extend to any lavatory or sanitary convenience now or hereafter erected by any railway company within their railway station yard or the approaches thereto.

(*a*) A similar provision is contained in s. 20 of the Public Health Acts Amendment Act, 1890. The sanitary authority may provide lavatories and similar conveniences under the preceding section.

(*b*) The regulations do not require confirmation like byelaws.

(*c*) As to the making of byelaws, see s. 114, *post*. Byelaws under this section are in force in the following boroughs: Battersea, Bermondsey, Camberwell, Deptford, Finsbury, Fulham, Greenwich, Holborn, Lewisham, Marylebone, Shoreditch, Westminster, and Woolwich.

(*d*) The sanitary authority may apparently let a lavatory, ashpit, or sanitary convenience to a lessee, who may charge fees for the use thereof; but the sanitary authority cannot themselves charge fees, except for the use of a lavatory or water-closet. And although under s. 44 (1), *ante*, a sanitary authority may erect a urinal in a highway (see *per* LUSH, L.J., in *Vernon* v. *St. James, Westminster (Vestry of)*, *ante*, p. 101), yet it is doubtful whether they can grant to a lessee the use of the highway for the erection of a public convenience (*Mogg* v. *Bocken*, *ante*, p. 102).

(*e*) The expressions "ashpit," "sanitary convenience," and "street," are defined by s. 141, *post*.

This sub-section applies only to public conveniences erected by private persons.

The vestry of Paddington having served notice under s. 73 of 5 Geo. 4, c. cxxvi., upon the appellant, the occupier of a public-house within the parish of Paddington, to effect certain alterations in a urinal forming part of and constructed in the outside flank wall of the house, and accessible only from the side street, preferred a complaint under the said section against him, on his refusing to carry out such order and direction, before one of the metropolitan police magistrates, who inflicted a penalty upon him. On the application of the appellant, the magistrate stated a case for the opinion of the High Court:—*Held*, that the decision of the magistrate was wrong. That the urinal formed part of the house, and was not in front thereof and abutting on the street within the meaning of s. 73 of 5 Geo. 4, c. cxxvi. The section applies to a structure that does not form part of the house, but is an adjunct thereto. The vestry cannot, under s. 73, order the occupier of a publichouse to erect a urinal inside, but only outside, the house (*Wellstead* v. *Vestry of Paddington* (1891), 56 J. P. 295; 66 L. T. 194; 40 W. R. 254).

See s. 22 of the London County Council (General Powers) Act, 1904 (set out in the Appendix, *post*), which enables a sanitary authority to require the removal or alteration of sanitary conveniences.

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(*f*) That is to say, without the consent or contrary to the terms imposed by the sanitary authority under the preceding sub-section.

(*g*) As to the recovery of the fines see s. 117, *post*. It should be observed that the daily penalty is only incurred after conviction, not from the date of notice as in other cases under this Act.

Sanitary conveniences used in common.

46. The following provisions shall have effect with respect to any sanitary convenience used in common by the occupiers of two or more separate dwelling-houses, or by other persons :—

(1) If any person injures or improperly fouls any such sanitary convenience, or anything used in connexion therewith, he shall for each offence be liable to a fine not exceeding ten shillings (*a*) ;

(2) If any such sanitary convenience or the approaches thereto, or the walls, floors, seats, or fittings thereof, is or are in the opinion of the sanitary authority or of their sanitary inspector or medical officer of health in such a state as to be a nuisance or annoyance to any inhabitant of the district for want of the proper cleansing thereof, such of the persons having the use thereof in common as may be in default, or, in the absence of proof satisfactory to the court as to which of the persons having the use thereof in common is in default, each of those persons shall be liable to a fine not exceeding ten shillings, and to a fine not exceeding five shillings for every day during which the offence continues after a conviction for the offence (*b*).

(*a*) This provision is taken from 53 & 54 Vict. c. 59, s. 21.

The expressions "sanitary convenience" and "day" are defined by s. 141, *post*.

A water-closet can only be used in common by the owners of two or more houses where it has been so used before the commencement of this Act, and in the opinion of the sanitary authority it may properly continue to be so used. See s. 37 (4), *ante*, p. 86.

As to the recovery of the fine, see s. 117, *post*.

(*b*) As to the recovery of the fine, see s. 117, *post*. The daily penalty is not incurred until after the conviction. See a similar provision in s. 45 (3).

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Unsound Food.

Inspection and destruction of unsound meat, etc.

47.—(1) Any medical officer of health or sanitary inspector may at all reasonable times (*a*) enter any premises (*b*) and inspect and examine

(a) Any animal (*c*) intended for the food of man which is exposed for sale, or deposited in any place (*d*) for the purpose of sale, or of preparation for sale, and

(b) Any article, whether solid or liquid, intended for the food of man (*e*), and sold or exposed for sale or deposited in any place (*d*) for the purpose of sale or of preparation for sale,

the proof that the same was not exposed or deposited for any such purpose or was not intended for the food of man, resting with the person charged (*f*); and if any such animal or article appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man (*g*), he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice (*h*).

(2) If it appears to a justice that any animal or article which has been seized or is liable to be seized under this section is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man (*i*); and the person to whom the same belongs or did belong at the time of sale or exposure for sale, or deposit for the purpose of sale or of preparation for sale, or in whose possession or on whose premises the same was found (*k*), shall be liable on summary conviction to a fine not exceeding fifty pounds for every animal, or article, or if the article consists of fruit, vegetables, corn, bread, or flour, for every parcel thereof so condemned, or, at the discretion of the court, without the infliction of a fine, to imprisonment for a term of not more than six months with or without hard labour (*l*).

(3) Where it is shown that any article liable to be seized under this section, and found in the possession of any person was purchased by him from another person for the food of man, and when so purchased was in such a condition as to be liable to be seized and condemned under this section, the person who so sold the same shall be liable to the fine and imprisonment above mentioned, unless he proves that at the time he sold the said article he did not know, and had no reason to believe, that it was in such condition (*m*).

(4) Where a person convicted of an offence under this section has been within twelve months previously convicted of an offence under this section, the court may, if it thinks fit, and finds that he knowingly and wilfully committed both such offences, order that a notice of the facts be affixed, in such form and manner, and for such period not exceeding twenty-one days, as the court may order, to any premises occupied by that person, and that the person do pay the costs of such affixing ; and if any person obstructs the affixing of such notice, or removes, defaces, or conceals the notice while affixed during the said period, he shall for each offence be liable to a fine not exceeding five pounds (*n*).

(5) If the occupier of a licensed slaughter-house is convicted of an offence under this section, the court convicting him may cancel the licence for such slaughter-house (*o*).

(6) If any person obstructs an officer in the performance of his duty under any warrant for entry into any premises granted by a justice in pursuance of this Act for the purposes of this section (*p*), he shall, if the court is satisfied that he obstructed with intent to prevent the discovery of an offence against this section, or has within twelve months previously been convicted of such obstruction (*q*), be liable to imprisonment for any term not exceeding one month in lieu of any fine authorised by this Act for such obstruction (*r*).

(7) A justice may act in adjudicating on an offender under this section, whether he has or has not acted in

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ordering the animal or article to be destroyed or disposed of (*s*).

(8) Where a person has in his possession any article which is unsound or unwholesome or unfit for the food of man, he may, by written notice to the sanitary authority, specifying such article, and containing a sufficient identification of it, request its removal, and the sanitary authority shall cause it to be removed as if it were trade refuse (*t*).

This section replaces 26 & 27 Vict. c. 117, s. 2, and 37 & 38 Vict. c. 89, s. 54, with some amendments. A similar provision is contained in the Public Health Act, 1875, ss. 116, 117, as amended by the Public Health Acts Amendment Act, 1890, s. 28.

(*a*) The question whether any given time is reasonable or not must depend upon the circumstances of each case. In *Small* v. *Bickley* (1875), 39 J. P. 442 ; 32 L. T. (N.S.) 726, the appellant, a butcher, while at his residence, half a mile from his shop, on a Sunday afternoon, was requested to go himself or send some one with the key to admit the inspector of nuisances to his shop in order that some meat there might be examined. He refused, and was convicted under 26 & 27 Vict. c. 117, s. 3, of preventing, obstructing, or impeding the inspector when duly engaged in carrying into execution the provisions of this Act. It was held that, although Sunday afternoon might, under some circumstances, be a reasonable time for examining meat, the appellant, at most, had refused to assist the inspector, and had not prevented, obstructed, or impeded him.

(*b*) As to how the power of entry may be exercised and enforced, see s. 115, *post*. The expression "premises" is defined by s. 141, *post*.

(*c*) This will apparently apply to a live animal. See a decision of the Recorder of Southampton in *Moody* v. *Leech* (1880), 44 J. P. 459.

(*d*) The word "place" is used in a general sense, and is not qualified here. Two carcases of cows unfit for food were found in a yard at the back of a butcher's house, there being a slaughter-house on one side of the yard. It was held that the yard was a "place" within the corresponding words in 26 & 27 Vict. c. 117, s. 2 (*Young* v. *Grattridge* (1868), L. R. 4 Q. B. 166 ; 33 J. P. 260 ; 38 L. J. M. C. 67). Under the same Act it was held that diseased meat placed upon a cart, when passing along the streets of the city of Dublin from a slaughter-house to a place for the manufacture of preserved meats, was properly seized (*Daly* v. *Webb* (1869), 4 Ir. Rep. C. L. 309).

(*e*) This is an important amendment of the law. The 26 & 27 Vict. c. 117, s. 2, applied only to any "animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour," and did not apply to such things as cheese, butter, eggs, etc.

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(*f*) This must mean when the person is charged under sub-s. (2).

(*g*) According to the opinions of Drs. Letheby and Tidy, given in evidence in a case reported in 37 J. P. 267, an animal killed immediately before, or during, or immediately after, parturition is unfit for human food.

(*h*) It was held under the corresponding sections of the Public Health Act, 1875, that meat might be taken before a justice and condemned, without any summons or notice to the person to whom it belonged, and that such person having been, subsequently to the destruction of the meat, summoned and convicted, such conviction was good (*White* v. *Redfern* (1879), 5 Q. B. D. 15 ; 44 J. P. 87 ; 49 L. J. M. C. 19 ; 41 L. T. (N.S.) 524 ; 28 W. R. 168).

The seizure and subsequent destruction of unsound meat by an inspector of nuisances without an order having been obtained in that behalf from a justice of the peace is illegal (*Ormerod* v. *Rochdale Corporation* (1879), 62 J. P. 153).

It has been held that a local authority are not liable for the negligence of an officer appointed by them whilst such officer is acting in the discharge of duties imposed by order of a Government Department (*Stanbury* v. *Exeter Corporation*, [1905] 2 K. B. 38 ; 70 J. P. 11 ; 75 L. J. K. B. 28 ; 93 L. T. (N.S.) 795 ; 54 W. R. 247 ; 22 T. L. R. 3 ; 4 L. G. R. 57). See also *Winterbottom* v. *London Police Commissioners* (1901), 1 Ontario L. R. 549, and *Forsyth* v. *Canniff and City of Toronto* (1890), 20 Ontario R. 478).

(*i*) The justice need not give notice to the owner. See *White* v. *Redfern*, *supra*. But the justice may, if he thinks fit, hear evidence tendered by the owner (*Re Bater and Birkenhead* (*Mayor, etc. of*), [1893] 2 Q. B. 77 ; 58 J. P. 7 ; 62 L. J. M. C. 107 ; 69 L. T. (N.S.) 220 ; 41 W. R. 513 ; 4 R. 438).

And it has been held that before condemning an article, the magistrate is not entitled to consider whether it was intended for the food of man, or was sold or exposed for sale or deposited in any place for the purpose of sale, but only whether it is unsound or unwholesome, or unfit for the food of man (*Thomas* v. *Van Os*, [1900] 2 Q. B. 448 ; 64 J. P. 582 ; 69 L. J. Q. B. 665 ; 82 L. T. (N.S.) 845 ; 49 W. R. 57 ; 16 T. L. R. 388).

In *Williams* v. *Narberth Sanitary Authority*, Times, December 7th, 1882, the court expressed an opinion that a condemnation on the day after seizure during hot weather, in the month of July, was bad. But in *Burton* v. *Bradley* (1886), 51 J. P. 118, the court held that the text did not require condemnation to be on the same day as the seizure ; but that it was enough if reasonable diligence was used.

(*k*) Questions of difficulty may arise after the condemnation of the articles seized. It may transpire that the goods were not properly seized, as in *Vinter* v. *Hind*, *infra*, or that they were not intended for the food of man, or the like. In such a case what is the remedy of the owner? According to the judgments in *White* v. *Redfern*, *supra*, an owner who is proceeded against under

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the Public Health Act, 1875, may claim compensation under s. 308 of that Act, but there is no compensation clause in this Act, and it seems doubtful, therefore, whether the owner has any remedy at all.

The under-mentioned cases as to compensation were decided under the Public Health Act, 1875.

In *Re Bater and Birkenhead* (*Mayor, etc. of*), *supra*, it was held that the owner was not entitled to refuse to take back the meat, and under s. 308 of the Public Health Act, 1875, could only recover the damage sustained by it in consequence of its seizure, but that he was entitled to be repaid the costs reasonably incurred by him in attending before the justices and resisting the condemnation of the meat.

In one case it was held that on an arbitration under s. 308 of the Public Health Act, 1875, all that is to be considered by the arbitrator is whether the person claiming compensation has suffered damage, and the amount of such damage, and that the costs of successfully defending a prosecution for exposing for sale unsound meat, which meat is the subject of the claim for compensation, cannot be awarded (*In re Davies and Rhondda Urban District Council* (1899), 80 L. T. (N.S.) 696). But in a later case decided by the Court of Appeal it was held that where meat has been condemned and destroyed, and the owner claims compensation, the arbitrator has jurisdiction to decide the question whether the meat was in fact sound, and may award as part of the compensation the expenses incurred by the claimant in proceedings before the magistrate (*Walshaw* v. *Brighouse* (*Mayor, etc. of*), [1899] 2 Q. B. 286 ; 68 L. J. Q. B. 828 ; 81 L. T. (N.S.) 2 ; 47 W. R. 600).

The plaintiff bought of the defendants certain tins of fish warranted to be sound, but in fact unsound. He had no knowledge of their unsoundness. The fish was seized, condemned and destroyed under this section, and the plaintiff was convicted under s. 47 of this Act as the person on whose premises the fish was found, and fined £20 and ten guineas costs, and he paid seven guineas costs in his defence at the police court :—*Held*, that he was entitled to recover from the defendants as damages, in addition to the full value of the fish, the ten guineas costs imposed by the magistrate and the seven guineas paid in his defence, as these two payments flowed from the defendants' breach of warranty ; but that the fine of £20 could not be recovered in the absence of anything to show what considerations influenced the magistrate when he imposed it (*Cage* v. *Fry* (1903), 67 J. P. 240 ; 1 L. G. R. 253).

In *R.* v. *Blount* (1879), 43 J. P. 383, the defendant was charged with having unlawfully exposed or deposited for sale or preparation for sale certain meat intended for human food. The magistrate dismissed the charge on the ground that the defendant was himself unaware of the fact that the meat was upon his premises, as it had arrived there and had been seized in his absence. Subsequently, a summons was issued against the defendant in respect of the same seizure for having on his premises meat for the purpose of sale, etc., and the same evidence was given as that adduced on the first charge. The defendant was

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convicted on the second summons, but the court quashed the conviction on the ground that the defendant might have been convicted of the offence charged on the second summons when he appeared upon the first, and that the second summons was for the same matters. The court seem to have considered, therefore, that the section created only one offence. But in *White* v. *Redfern* (1879), 49 L. J. M. C., at p. 22, FIELD, J., said that the section created two offences. It will be prudent, therefore, in issuing a summons to confine it to one offence, otherwise a conviction founded upon it may be bad for duplicity.

The respondent, a butcher, exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food, and some days afterwards at the request of the appellant, an inspector of nuisances, handed it over to him, and it was condemned by a justice as unfit for the food of man. It was held that the meat was not so seized and condemned as is prescribed by s. 116, and the defendant could not for that reason be convicted under s. 117 of the Public Health Act, 1875 (*Vinter* v. *Hind* (1882), 10 Q. B. D. 63 ; 47 J. P. 373 ; 48 L. T. (N.S.) 359 ; 31 W. R. 198). See, however, sub-s. (3). In the same case, STEPHEN, J., expressed an opinion that the defendant cannot, upon a prosecution under the corresponding section of the Public Health Act, 1875, call evidence for the purpose of showing that the meat which had been condemned was not, in fact, unsound. But this dictum was expressly overruled in *Waye* v. *Thompson* (1885), 15 Q. B. D. 342 ; 49 J. P. 693 ; 54 L. J. M. C. 140 ; 53 L. T. (N.S.) 358 ; 33 W. R. 733).

By s. 116 of the Public Health Act, 1875, power is given to any medical officer of health or inspector of nuisances to inspect meat "exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man" ; and if such meat appears to be unsound, or unfit for the food of man, he may seize and carry away the same in order to have it dealt with by a justice. By s. 117 the justice may condemn the meat if unsound, or unfit for the food of man, and order it to be destroyed ; "and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found," shall be liable to a penalty. It was held that a person having in his possession unsound meat intended for the food of man was liable to be convicted under s. 117, notwithstanding that he did not expose the meat for sale (*Mallinson* v. *Carr*, [1891] 1 Q. B. 48 ; 55 J. P. 102 ; 60 L. J. M. C. 34 ; 39 W. R. 270).

The appellant, a farmer in the country, sent to a salesman in London meat which, to his knowledge, was unsound, for the purpose of its being sold and used as human food. The salesman did not expose the meat for sale, but put it aside, and called the attention of the respondent, an inspector of nuisances, to it ; the respondent seized the meat, and obtained a justice's order for its destruction. The appellant having been convicted of being the owner of unsound meat, unlawfully deposited for the purpose of

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sale and intended for the food of man, it was held that, in order to convict the owner of an offence under the corresponding provision in the Nuisances Removal Act, there must be either a sale or an exposure of meat for sale, and that the conviction was, therefore, bad (*Barlow* v. *Terrett*, [1891] 2 Q. B. 107 ; 55 J. P. 632 ; 60 L. J. M. C. 104 ; 65 L. T. (N.S.) 148 ; 39 W. R. 148). The distinction between this case and the preceding one consists in this, that the person in whose possession the meat is found may be convicted without proof of exposure for sale, but the owner of the meat can only be convicted as such if there has been exposure for sale. It seems, however, that there must be either exposure for sale or deposit for the purposes of sale or of preparation for sale. Where an inspector seized meat which he found on private premises intended to be used as food by the occupier, his servants and workpeople, and the meat was never intended for sale, it was held that the occupier could not be convicted (*Rendell* v. *Hemingway* (1898), 14 T. L. R. 456).

The Glasgow Police Amendment Act, 1890 (53 & 54 Vict. c. ccxxi), gives power to seize diseased or unsound meat intended for human consumption and exposed for sale, and by s. 20 it renders liable in a penalty the person to whom the same belongs, or in whose possession, or on whose premises the same was found. A complaint charging a person with having been found in possession of diseased meat intended for sale for human consumption, set forth that the meat was seized in a barrow belonging to the accused, driven by his servant, and under his orders :—*Held*, that there was a relevant averment of possession by the accused (*Neilson* v. *Parkhill* (1892), 20 Ct. of Sess. Cas. (4th ser.) (J.C.) 24 ; 30 Sc. L. R. 247 ; 3 White's Just. Rep. 379).

Where a farmer sent meat to a consignee in a meat market, and the meat was seized and condemned in the market, it was held that the meat could not be said to be in the farmer's "possession as and for human food" (*Cairns* v. *Linton* (1889), 16 Ct. of Sess. Cas. (4th ser.) (J.C.) 81 ; 26 Sc. L. R. 417 ; 2 White's Just. Rep. 228).

A person in whose possession unsound meat is found is not liable to be convicted under ss. 116, 117 of the Public Health Act, 1875, of the offence of having in his possession unsound meat intended for the food of man, if he shows that at the time the meat was unsound it was not intended for the food of man (*Wieland* v. *Butler-Hogan* (1904), 68 J. P. 310 ; 73 L. J. K. B. 513 ; 90 L. T. 588 ; 53 W. R. 63 ; 20 T. L. R. 419 ; 2 L. G. R. 1074).

A person who has deposited, on premises other than his own, diseased meat belonging to him and intended for the food of man, does not thereby commit any of the offences in respect of dealing with diseased meat which are specified in the Public Health Acts (*Firth* v. *McPhail*, [1905] 2 K. B. 300 ; 69 J. P. 203 ; 74 L. J. K. B. 458 ; 92 L. T. (N.S.) 567 ; 21 T. L. R. 403 ; 3 L. G. R. 478). In this case the court followed *Barlow* v. *Terrett*, *supra*.

H., an inspector of nuisances for the borough of S., was convicted of perjury on an indictment that alleged that, upon the hearing of an information against G., for exposing for sale a number of rabbits which were unfit for the food of man, contrary

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to the Public Health Act, 1875, it was a material question whether H. had duly inspected and examined the carcases of the rabbits, and whether they had appeared to him to be unfit for the food of man before, and at the time, when he seized the same under the provisions of the Public Health Act. The indictment then alleged that H. falsely swore (among other things) that he had examined critically every rabbit, and set out the evidence giving the details of such examination ; and further alleged that H. did not examine the rabbits in the manner sworn. It appeared, that upon two occasions subsequently to the time of seizure, when he had merely made a cursory examination, sufficient, however, to entitle him to seize the rabbits, he had examined them as he had sworn he had. It also appeared that, at the time of the seizure, the rabbits were, in fact, unfit for the food of man :—*Held*, that as the indictment did not allege that the evidence was given with reference to the time of seizure, and since the evidence, if taken with reference to the other occasions upon which examinations were made was perfectly true, all the allegations might be true without H. having sworn falsely, and that, therefore, no offence was disclosed upon the indictment (*R.* v. *Hadfield* (1886), 51 J. P. 344 ; 55 L. T. 783 ; 16 Cox C. C. 148 (C. C. R.)).

The appellant was an under-bailiff on the estate of N., a large landowner, and it was his duty to receive his instructions from, and obey the orders of, the head bailiff. Two cows belonging to N. were slaughtered, as they were affected by disease ; the appellant was not present when the cows were slaughtered, but on the same day he was told by the head bailiff to send the meat to Portsmouth, and to go there himself to meet it. The appellant went to Portsmouth the following day, and saw a butcher named B., and on the next day the head bailiff, having been told that the meat had not been sent off, directed the appellant to take the meat to P. railway station and consign it to the butcher. The transit of the meat to the P. station was superintended by the appellant who took charge of it. It was then sent by train in the appellant's own name to the butcher at Portsmouth, the appellant sending a telegram to the butcher : "Two carcases of meat sent to you ; make best of it." The butcher replied that the meat, which was then lying at Portsmouth railway station, was of no use to him. The appellant then sent a telegram to the station-master : "Ask consignee to do the best he can. If he can't dispose of it, bury it, and charge sender expenses." The meat was seized while lying at the station and condemned as unsound. Upon these facts the appellant was convicted under s. 117 of the Public Health Act, 1875, of exposing unsound meat for sale, being the person "to whom the same belonged" :—*Held*, quashing the conviction that there was no evidence whatever upon the facts to show that the appellant was the person "to whom the meat belonged" within the meaning of s. 117 of the Act (*Newton* v. *Monkcom* (1888), 52 J. P. 692 ; 58 L. T. 231 ; 16 Cox C. C. 382).

It has been held in a Scotch case that, in order to obtain a conviction against the occupier of premises for being in possession of unsound meat as or for human food, it is not essential to prove

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that the accused knew either of the meat being on his premises or of its unsound condition (*Dickson* v. *Linton* (1888), 15 Ct. of Sess. Cas. (4th ser.) (J.C.) 76).

Upon the hearing of a summons under s. 117 of the Public Health Act, 1875, charging a person with having had in his possession, and deposited on his premises, for the purpose of preparation for sale, and intended for the food of man, meat which was unsound and unfit for the food of man, it is not necessary to show that the defendant had personal knowledge of the condition of the meat (*Blaker* v. *Tillstone*, [1894] 1 Q. B. 345 ; 58 J. P. 184 ; 63 L. J. M. C. 72 ; 70 L. T. (N.S.) 31 ; 42 W. R. 253 ; 10 T. L. R. 178).

(*l*) Each separate exposure of a piece of bad meat is a separate offence in respect of which a penalty and costs can be imposed (*In re Hartley* (1862), 26 J. P. 438 ; 31 L. J. M. C. 332).

As to the recovery of the penalty and the enforcing of the conviction, see s. 117, *post*.

In a case where the information and the summons stated that the respondent (a sanitary inspector) was acting on behalf of the borough council, but he had not been expressly authorised by the council to take proceedings against the appellant, it was held that a private person may prosecute for the offence, that the absence of authority on the part of the respondent did not invalidate the proceedings, and that the words "on behalf of" the borough council in the information and summons were mere surplusage (*Giebler* v. *Manning*, [1906] 1 K. B. 709 ; 70 J. P. 181 ; 75 L. J. K. B. 463 ; 94 L. T. (N.S.) 580 ; 54 W. R. 527 ; 22 T. L. R. 416 ; 4 L. G. R. 561).

As the defendant is liable to be imprisoned for six months, without the option of a fine, he may demand to be tried by a jury under s. 17 of the Summary Jurisdiction Act, 1879.

Persons aiding and abetting the exposure of unsound meat are liable to punishment under s. 5 of the Summary Jurisdiction Act, 1848. As to what amounts to aiding and abetting the exposure of unsound meat for sale, see *Callow* v. *Tillstone* (1900), 83 L. T. (N.S.) 411.

(*m*) This is a new provision. It was obviously drafted to meet the case of *Vinter* v. *Hind*, *supra*. It does not quite provide for the facts in *Barlow* v. *Terrett*, *supra*. It follows from the text that when an article of food has been sold, and is at the time of sale unfit for food, the vendor may be convicted without any previous seizure and condemnation, unless he proves that he did not know, and had no reason to believe that it might have been seized and condemned.

A person cannot be convicted of the offence created by this sub-section, unless at the time the articles are found in the possession of his purchaser they are intended for the food of man, and are sold or exposed for sale or deposited in some place for the purpose of sale or of preparation for sale, and are "liable to be seized" under sub-s. (1) (*R.* v. *Dennis*, [1894] 2 Q. B. 458 ; 58 J. P. 622 ; 63 L. J. M. C. 153 ; 71 L. T. 436; 42 W. R. 586).

The selling of unsound meat by a commission agent to a retail dealer is an offence under this sub-section, and a prosecution

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should be instituted under this sub-section and not under sub-s. (2) (*Billing* v. *Prebble* (1896), 61 J. P. 86 ; 66 L. J. Q. B. 180 ; 45 W. R. 187 ; and see *Wieland* v. *Butler-Hogan*, *supra*).

These decisions have been the subject of discussion in a recent case. There the appellant, an inspector, found hanging in the doorway of a retail butcher some diseased meat which was taken away by him and subsequently destroyed by order of a magistrate. It was found as a fact by the magistrate that the meat was not exposed for sale and would not have been sold until it had been passed by the inspector. It had very shortly before the visit of the inspector been brought by the respondent, who was a wholesale dealer. On a summons against the respondent for an offence under sub-section (3), it was held that the words "liable to be seized" mean "primâ facie liable to be seized at the time of the sale by the wholesale dealer by reason of its condition," and that it is not necessary that it should have been sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, by the person who had bought it from the original vendor (*Grivell* v. *Malpas*, [1906] 2 K. B. 32 ; 70 J. P. 334 ; 75 L. J. K. B. 647 ; 95 L. T. (N.S.) 123 ; 22 T. L. R. 515 ; 4 L. G. R. 668).

(*n*) This is a new and unusual provision.

As to the recovery of the fine, see s. 117, *post*.

(*o*) A slaughter-house licence is granted by the London County Council under s. 20, *ante*, p. 53.

(*p*) The warrant above referred to is apparently a warrant under s. 115, *post*. The sub-section provides only for obstructing an officer who has a warrant, and is much less general than the repealed 27 & 28 Vict. c. 117, s. 2, or the corresponding provision of the Public Health Act, 1875 (s. 118). Under s. 116 of this Act, however, it is an offence to prevent an officer from entering premises to discover a contravention of the Act, so that the result is much the same.

As to what amounts to obstruction, see *Small* v. *Bickley*, *supra*.

(*q*) The offence will be complete if the defendant has been convicted within twelve months, though his intent may not have been to prevent the discovery of an offence against the section.

(*r*) The fine authorised by this Act is £20. See s. 115 (4), *post*.

(*s*) This sub-section is taken from 37 & 38 Vict. c. 89, s. 54, now repealed. It may be doubted whether it is necessary, as there is nothing in sub-s. (2), from which it could fairly be inferred that the justice who convicts must have been the justice who condemned.

Where under s. 131 of the Towns Improvement Clauses Act, 1847, a magistrate condemns meat brought before him as unfit for human food, a summons in respect thereof may be issued by another magistrate, though the magistrate who adjudicates upon the summons must be the magistrate who condemned the meat (*Rex* v. *Thomas* (1901), 18 T. L. R. 71).

(*t*) This is a new clause. It will take away the ground of a common defence in prosecutions for having unsound food in one's possession. It has very often been suggested that the food had

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been set aside with the intention of destroying it before it was seized. The power to give notice under this sub-section will now afford a test of bonâ fides when this line of defence is adopted.

As to the giving of this notice, see s. 128 (2), *post*.

As to the removal of trade refuse, see s. 33, *ante*, p. 81.

See the provisions of the Public Health (Regulations as to Food) Act, 1907, set out in the Appendix, *post*, and the regulations made thereunder; also the provisions in s. 8 of the London County Council (General Powers) Act, 1908, set out in the Appendix, *post*, under which measures may be taken for the prevention of danger arising to public health from the importation, preparation, storage and distribution of articles of food and drink.

Provisions as to Water.

Provisions as to house without proper water supply.

48.—(1) An occupied house without a proper and sufficient supply of water shall be a nuisance liable to be dealt with summarily under this Act, and, if it is a dwelling-house, shall be deemed unfit for human habitation (*a*).

(2) A house which after the commencement of this Act is newly erected, or is pulled down to or below the ground floor and rebuilt, shall not be occupied as a dwelling-house until the sanitary authority have certified that it has a proper and sufficient supply of water, either from a water company or by some other means (*b*).

(3) If the sanitary authority refuse such certificate, or fail to give it within one month after written request for the same from the owner of the house, the owner of the house may apply to a petty sessional court, and that court, after hearing or giving the sanitary authority an opportunity to be heard, may, if they think the certificate ought to have been granted, make an order authorising the occupation of the house; but, unless such order is made, an owner who occupies or permits to be occupied the house as a dwelling-house without such certificate shall be liable to a fine not exceeding ten pounds, and to a fine not exceeding twenty shillings for every day during which it is so occupied until a proper and sufficient supply of water is provided; but the imposition of such fine shall be without prejudice to any proceedings for obtaining a closing order (*c*).

(*a*) This is a new provision, and there is nothing exactly like it in the Public Health Acts. See 41 & 42 Vict. c. 25, s. 6.

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The word "house" is defined by s. 141, *post*, and see the provisions in s. 78 of the London County Council (General Powers) Act, 1907 (7 Edw. 7, c. clxxv), *post*, as to the application of this section to a tenement house.

An occupied house will include premises occupied for business only; and see *Field & Sons* v. *Southwark Borough Council* (1907), 71 J. P. 240, as to the meaning of these words.

The summary procedure for dealing with nuisances is contained in ss. 4, 5.

A dwelling-house unfit for human habitation may be ordered to be closed under s. 5 (6), (7).

(*b*) This sub-section is also new. It corresponds to s. 6 of the Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25).

It should be observed that the above provision applies only to the occupation of the house as a dwelling-house. No certificate will be required for houses used as business premises or the like, though they may be liable to be dealt with under sub-s. (1).

(*c*) For the meaning of the expression "petty sessional court," see note (*h*), *ante*, p. 28.

The court will probably give the sanitary authority an opportunity of being heard by means of a notice or summons.

As to the recovery of the fine, see s. 117, *post*. A closing order is made under s. 5 (6), (7), *ante*, p. 25.

The words "house," "owner" and "day," are defined by s. 141, *post*.

Notice to sanitary authority of water supply being cut off.

49.—(1) Where a water company may lawfully cut off the water supply to any inhabited dwelling-house and cease to supply such dwelling-house with water for non-payment of water rate or other cause (*a*), the company shall in every case, within twenty-four hours after exercising the said right, give notice thereof in writing (*b*) to the sanitary authority of the district (*c*) in which the house is situated.

(2) Any company which neglects to comply with the foregoing provision shall be liable to a fine not exceeding ten pounds, and it shall be the duty of the sanitary authority to take proceedings against any company in default (*d*).

(3) This section shall apply to every water company which is a trading company supplying water for profit.

(*a*) A water supply may be cut off in the following cases:

(1) If the consumer, when required by the company, neglects to provide a proper cistern with a ball and stop-cock in the pipe bringing the water from the works of the company to such cistern, or to keep the same in good repair (10 & 11 Vict. c. 17, s. 54).

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(2) If the consumer refuses admittance to his dwelling-house or premises of the surveyor or any other person acting under the authority of the undertakers to examine if there be any waste or misuse of water (10 & 11 Vict. c. 17, s. 57).

(3) If the consumer neglects to pay the water rate on any of the quarterly days of payment (10 & 11 Vict. c. 17, s. 74).

(4) If the consumer wrongfully does, or causes, or permits to be done, anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water (26 & 27 Vict. c. 93, s. 16).

(5) If the consumer shall wilfully do or cause to be done any act, matter, or thing in contravention of the provisions of the Metropolis Water Acts, or of the special Act relating to the company, or of any Act incorporated therewith, or shall wilfully omit or neglect to do any matter or thing which under such provisions ought to be done for the prevention of the waste, misuse, or undue consumption, or the contamination of the water of the company (15 & 16 Vict. c. 84, s. 25 ; 34 & 35 Vict. c. 113, s. 32).

By s. 4 of the Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21), it is enacted as follows : " Where the owner and not the occupier is liable by law or by agreement with the water company to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement, no water company shall cut off the water supply for non-payment of the water rate, but such water rate, without prejudice to the other remedies of the company for enforcing payment thereof from such owner, shall, together with interest thereon at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the company until receipt thereof by the company, be a charge on such dwelling-house in priority to all other charges affecting the premises ; and (without prejudice to such charge) the amount may be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered : Provided always, that proceedings shall not be taken against the occupier until notice shall have been given to him or left at his dwelling-house to pay the amount due for water rate out of the rent then due or that may thereafter become due from him, and he shall have omitted so to pay such water rate ; and provided also, that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him or which he shall have paid on demand."

Section 5 provides that " In the event of any such supply being cut off in contravention of this Act, the company cutting off the

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same shall be liable to a penalty not exceeding five pounds for each day during which the water shall remain cut off, which penalty shall be recoverable summarily from the company by, and shall be paid to, the person aggrieved."

Where a supply was cut off for non-payment of water rates, the company were held not warranted in refusing to supply a subsequent tenant until the arrears were paid (*Sheffield Waterworks Co.* v. *Wilkinson* (1879), 4 C. P. D. 410 ; 48 L. J. M. C. 45).

Water was supplied to a dwelling-house by a water company by means of a service pipe connected with the company's mains. In this service pipe, at a point between the house and the main, was a stop-cock provided by the landlord of the house, to whom belonged the service pipe and stop-cock. There being a leak in the service pipe between the stop-cock and the house, the company, after notice to the tenant of the existence of the leak, turned down the stop-cock to prevent waste, and thereby turned off the water supply from the house, and the water remained turned off until the leak was repaired by the landlord, when it was turned on again by the landlord's workman opening the stop-cock. There was no intention on the part of the company to withdraw the supply except for the immediate purpose of stopping the leak. A magistrate having found on the above facts that there was no "cutting off of the water supply," or "ceasing to supply the house with water," within the meaning of this section so as to render it necessary that notice should be given to the sanitary authority :— *Held*, that the question whether or not the water company had cut off the water supply was a question of fact rather than a question of law, and that the magistrate having found that there was no cutting off within the meaning of the section, there was no ground for overruling his finding as being wrong in point of law (*Young, on behalf of the Vestry of St Mary, Battersea* v. *Southwark and Vauxhall Water Co.* (1893), 57 J. P. 806 ; 69 L. T. 144 ; 41 W. R. 622 ; and see *Chelsea Waterworks Co.* v. *Paulet* (1888), 52 J. P. 724).

(*b*) As to the giving of this notice, see s. 128 (2), *post*.

(*c*) As to the districts of the several sanitary authorities in London, see s. 99 (2), *post*.

(*d*) As to the recovery of the fine, see s. 117, *post*.

If the sanitary authority make default in prosecuting the county council may do so under s. 100, *post*, or complaint may be made to the Local Government Board under s. 101, *post*.

The undertakings of the metropolitan water companies were, by the Metropolis Water Act, 1902 (2 Edw. 7, c. 41), transferred to the Metropolitan Water Board, an authority established by that Act to manage the water supply within London and certain adjoining districts.

Cleansing of cisterns.

50. Every sanitary authority shall make byelaws for securing the cleanliness and freedom from pollution of tanks, cisterns, and other receptacles used for storing of

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water used or likely to be used by man for drinking or domestic purposes, or for manufacturing drink for the use of man.

This is a new provision.

As to the making of byelaws, see s. 114, *post*.

The Local Government Board have issued a Model Series of Byelaws under this section. Byelaws based upon the model series are in force in each of the metropolitan boroughs, and in the city of London.

The expression "domestic purposes" is not defined in this Act. There have, however, been some decisions upon the expression as used in 10 & 11 Vict. c. 17, s. 53. The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling-house, and used for the sole accommodation of the occupier, was held to be for domestic use in *Bushby* v. *Chesterfield Waterworks Co.* (1858), El. B. & E. 176 ; 22 J. P. 689 ; 27 L. J. M. C. 174 ; 22 Jur. 757. The supply of water to a workhouse is a supply for domestic purposes (*Liskeard Union* v. *Liskeard Waterworks Co.* (1881), 7 Q. B. D. 505 ; 45 J. P. 780). A supply for domestic purposes includes a supply for a fixed bath (*Weaver* v. *Cardiff* (*Mayor, etc. of*) (1883), 47 J. P. 599 ; 48 L. T. (N.S.) 906), unless baths are excluded by express words (*Walker* v. *Lambeth Waterworks Co.* (1894), 58 J. P. 736 ; 63 L. J. Ch. 874 ; 71 L. T. 75) ; and a supply for watering a pleasure garden attached to and occupied with the house (*Bristol Waterworks Co.* v. *Uren* (1885), 15 Q. B. D. 637 ; 49 J. P. 564 ; 54 L. J. M. C. 97 ; 52 L. T. (N.S.) 655). And see *Low* v. *Lambeth Waterworks Co.* (not reported) ; *Grand Junction Waterworks Co.* v. *Neal* (1895), 30 L. J. Newsp. 85 ; *Smith* v. *Muller*, [1894] 1 Q. B. 192 ; 58 J. P. 167 ; 70 L. T. (N.S.) 170 ; *Pidgeon* v. *Great Yarmouth Waterworks Co.*, [1902] 1 K. B. 310 ; 66 J. P. 309 ; 71 L. J. K. B. 61 ; 85 L. T. 632. A supply of water for a swimming bath, erected and used for the purposes of the business of a school, is not a supply of water for "domestic purposes" within the Waterworks Clauses Acts, 1847 and 1863 (*Barnard Castle Urban Council* v. *Wilson* [1902] 2 Ch. 746 ; 71 L. J. Ch. 825 ; 87 L. T. 279 ; 51 W. R. 102).

See also *West Suburban Water Co.* v. *St. Marylebone Guardians*, [1904] 2 K. B. 174 ; 68 J. P. 257 ; 73 L. J. K. B. 347 ; 52 W. R. 378 ; 20 T. L. R. 299 ; 2 L. G. R. 567 ; *Chester Waterworks Co.* v. *Chester Union* (*Guardians of*) (1907), 72 J. P. 121 ; 98 L. T. 701 ; 24 T. L. R. 301 ; 6 L. G. R. 446 ; *Harrogate Corporation* v. *McKay*, [1907] 2 K. B. 611 ; 71 J. P. 458 ; 76 L. J. K. B. 977 ; 97 L. T. 689 ; 23 T. L. R. 632 ; 5 L. G. R. 876 ; *Frederick* v. *Bognor Water Co.*, [1909] 1 Ch. 149 ; 72 J. P. 501 ; 78 L. J. Ch. 40 ; 99 L. T. 728 ; 25 T. L. R. 31 ; 7 L. G. R. 45.

For the purposes of the Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi), the expression "domestic purposes" is deemed to include water-closets and baths constructed or fitted

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so as not to be capable of containing when filled or filled up to the overflow or waste pipe (if any) more than eighty gallons, but shall not include a supply of water for any of the following purposes (namely): steam, gas, motor or other like engines; railway purposes; ventilating purposes; working any machine or apparatus; consumption by or washing of horses or cattle; washing carriages or other vehicles; watering gardens by means of any outside tap or any hose, tube, pipe, sprinkler or other like apparatus, fountains or any ornamental purposes; cleansing sewers and drains; cleansing and watering streets or roads; fire extinction; flushing drains by means of any apparatus discharging automatically; public pumps, baths or washhouses; any trade, manufacture or business; any bath constructed or fitted so as to be capable of containing when filled or filled up to the overflow or waste pipe (if any) more than eighty gallons [s. 25].

Power of sanitary authority as to public fountains.

51.—(1) All existing public cisterns, reservoirs, wells, fountains, pumps, and works used for the gratuitous supply of water to the inhabitants of the district of any sanitary authority, and not vested in any person or authority other than the sanitary authority, shall vest in and be under the control of the sanitary authority; and that authority may maintain the same and plentifully supply them with pure and wholesome water, or may substitute, maintain, and plentifully supply with pure and wholesome water other such works equally convenient, and may maintain and supply with water as aforesaid other public cisterns, reservoirs, wells, fountains, pumps, and other such works within their district (*a*).

(2) The sanitary authority may provide and maintain public wells, pumps, and drinking fountains in such convenient and suitable situations as they may deem proper (*b*).

(3) If any person wilfully damages any of the said wells, pumps, or fountains, or any part thereof, he shall, in addition to any punishment to which he is liable, pay to the sanitary authority the expenses of repairing or reinstating such well, fountain, pump, or part thereof (*c*).

(*a*) This section is taken from 23 & 24 Vict. c. 77, s. 7; 18 & 19 Vict. c. 120, s. 116; and 25 & 26 Vict. c. 102, s. 70 (now repealed).

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It corresponds to s. 64 of the Public Health Act, 1875, but differs from that section in some particulars.

The word "cistern" is defined by s. 141, *post*.

Where a well had been provided at the expense of a private individual upon land enclosed and allotted to him to be kept as a recreation ground for the parish, and the well had been formally declared to be for the use of the public, it was held to be a well which a sanitary authority might incur expense in repairing and maintaining (*Witney* v. *Wycombe* (1876), 40 J. P. 149).

A well situated on private ground, the water of which had been used for domestic purposes gratuitously by the inhabitants in the vicinity for the prescriptive period, was held to be a public well within the meaning of the corresponding provisions of the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101), s. 89 (4), and it was also held that the local authority might enter upon the land and do all acts to the well for continuing and maintaining it, which the inhabitants might have done before, and that although there might be a company with a vested right to supply the inhabitants with water (*Smith* v. *Archibald* (1880), 5 App. Cas. 489). The facts in that case were shortly as follows: Situated in one corner of a field in the parish of D. was a well. From the well to the entrance of the field there was a footpath, and from that entrance to the public road going through the village of D. there was a cart road. The inhabitants of D. had for the prescriptive period used the water of the well for domestic purposes, and had, among other acts done to the well, cradled it with stones at their own expense. The local authority, acting under the section already mentioned, caused the well to be covered in with an iron plate, and placed therein a hand pump with the avowed object of keeping the well free from pollution. The proprietor of the field, alleging the well to be his private property, instituted proceedings to compel the authority to remove the cover and pump. But it was held by the House of Lords, affirming the decision of the Court of Session, that the well was a public well within the meaning of the statute, and that the local authority, as representing the inhabitants, had not done anything in excess of their powers.

In *Holmfirth Local Board* v. *Shore* (1895), Q. B. D. (DAY and WRIGHT, JJ.), April 26th; 59 J. P. 344, a stone trough receiving water from a spring at some distance from it, was held to be either a well or a reservoir. It was pointed out by WRIGHT, J., in that case, that the Scotch Act does not vest the wells, etc. in the local authority, so that the powers of the local authority are wider under the English Act; and see *Att.-Gen.* v. *Tonkin* (1901), 18 T. L. R. 29. On the subject of "vesting" in the sanitary authority, reference may be made to *Knuckey* v. *Redruth Rural District Council*, [1904] 1 K. B. 382; 68 J. P. 172; 73 L. J. Q. B. 265; 90 L. T. (N.S.) 226; 52 W. R. 558; 20 T. L. R. 164; 2 L. G. R. 456. There it was held that a local authority in whom was vested a public well formed by an

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accumulation of water in the disused shaft of a mine, were not liable under s. 13 of the Metalliferous Mines Act, 1872, as owners of the mine or interested in the minerals to keep the shaft fenced for the prevention of accidents.

In the *Leadgate Local Board* v. *Bland* (1881), 45 J. P. 526, which was a case tried at Durham Assizes, KAY, J., held that a natural pond was a reservoir within the section, having been used by the public for a number of years for the purpose of watering horses.

"What the Act says is, notwithstanding that there may be a company with a vested right to supply the inhabitants, the local authority may, where there is a public well, and where there is a public right to be gratuitously supplied (from it), continue and maintain that well" (*per* Lord BLACKBURN, in *Smith* v. *Archibald*, *supra*).

In *Edwards* v. *Joliffe*, W. N. (1877), p. 120, an injunction was granted at the suit of the plaintiff, a landowner, through whose estate a lane passed, to restrain the defendants, the servants of the surveyor of highways, from digging holes in the roadway of the lane under these circumstances: On a piece of land not actually part of the lane, but entirely open to it, were five public wells which suddenly failed. The highway board, with the sanction of the rural sanitary authority, in whom the wells were vested under the above section, ordered the defendant to dig the holes either to recover the water or to discover the cause of its having ceased to flow. The plaintiff's land on either side of the lane was on a slope, and on the southern side, where the land was below the level of the wells, the plaintiff had been drifting for water, and the defendant said he had no doubt the supply of water to the wells had been tapped by the plaintiff's operations:—*Held*, that the above section did not authorise the local authority to enter another man's land and help themselves to water. There was no suggestion that the plaintiff had done anything more than he was clearly entitled to do, or that the defendants were not entering his land.

A local board of health Act empowered the board to supply the town with water at certain rates for domestic purposes, and for other than domestic purposes for such remuneration and upon such terms and conditions as should be agreed upon between them and the persons desirous of having such supply. An inhabitant of the town having presented to the town an ornamental fountain with a trough or basin, which was set up in one of the public streets, the board supplied it with water on market days for the use of the cattle in the market, and for horses if yoked, passing to and fro. The respondent, who kept horses, with a view to evade the payment of the rate for the supply of water to his stable, took his horses to the fountain to drink. Upon an information laid against him under the Waterworks Clauses Act, 1847, s. 59, the magistrates being of opinion that the board had no right to erect a fountain on the public highway otherwise than for the

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gratuitous use of the public under the corresponding section of the Public Health Act, 1848, declined to convict. On appeal it was held that they were wrong, for notwithstanding the fountain might be a public nuisance, yet the water was the private property of the board, and the respondent had no right to take it against their will (*Hildreth* v. *Adamson* (1860), 8 C. B. (N.S.) 587 ; 25 J. P. 645 ; 30 L. J. M. C. 204 ; 2 L. T. (N.S.) 359). The effect of this case is that the board may, if they think fit, limit the purposes for which the gratuitous supply is provided. The court refrained from expressing any opinion on the point whether a fountain for gratuitous supply might, by virtue of this section, be erected on a public highway. See, however, sub-s. (2).

A local authority, in whom a public well is vested by s. 64 of the Public Health Act, 1875, has no power to grant a licence to abstract water from the well for the purpose of bottling and selling, so as to sensibly diminish the supply of water to riparian proprietors along a stream which is fed by the well (*Mostyn* v. *Atherton*, [1899] 2 Ch. 360 ; 68 L. J. Ch. 629 ; 81 L. T. (N.S.) 356 ; 48 W. R. 168). The corporation of H., in exercise of their powers as a local authority, erected a drinking trough in the main street in front of the premises of the plaintiffs. It was held that although some annoyance was caused to the plaintiffs by the placing of the trough in front of their premises, there was no sufficient evidence of the existence of a legal nuisance to justify the interference of the court (*Baker* v. *Hertford Corporation* (1900), Ch. D., BUCKLEY, J., May 17th). On this point reference may be made to the cases cited in the notes to s. 44, *ante*, p. 101.

(*b*) This sub-section is taken from 25 & 26 Vict. c. 102, s. 70 (now repealed). It does not in terms enable the sanitary authority to erect a public fountain in a highway, but this may, perhaps, be inferred.

(*c*) The offender will be liable to a fine under s. 53 or s. 116, *post*, and the expenses may be recovered at the same time under s. 117, *post*.

Penalty for causing water to be corrupted by gas washings.

52.—(1) If any person (*a*) engaged in the manufacture of gas—

(a) Causes or suffers (*b*) to be brought or to flow into any source of water supply (*c*), or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas ; or

(b) Wilfully or negligently does any act connected with the making or supplying of gas whereby the water in any source of water supply (*c*) is fouled,

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he shall for every such offence be liable to a fine of two hundred pounds, and, after the expiration of twenty-four hours' notice from the sanitary authority or the person to whom the water belongs in that behalf, to a further fine of twenty pounds for every day during which the offence continues (*d*).

(2) Every such fine may be recovered, with full costs of action, in the High Court, in the case of water belonging to or under the control of the sanitary authority by that authority, and in any other case by the person into whose water such washing or other substance is brought or flows, or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person after notice to him from the sanitary authority of their intention to proceed for such fine, by the sanitary authority; but such fine shall not be recoverable unless it is sued for during the continuance of the offence, or within six months after it has ceased (*e*).

(*a*) There is no definition in this Act of the expression "person." The words of 18 & 19 Vict. c. 121, s. 23 (now repealed), were "any person or company." The Interpretation Act, 1889 (52 & 53 Vict. c. 63), provides that in every Act passed after the commencement of that Act the word "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

(*b*) A private Act of Parliament which incorporated a gas company, and empowered them to make the necessary works, contained an enactment (s. 160), that if the company should at any time "cause or suffer to be conveyed or to flow" into any stream, etc., or place for water within the limits of the Act, any washing produced in making gas, or do any act to the water contained in any such stream, etc., or place for water, whereby the water therein should be fouled or corrupted, then the company should forfeit for every such offence £200. Section 161 imposed an additional penalty of £20 per day for the continuance of such pollution more than twenty-four hours after notice. Section 165 made the company liable to a penalty if any water was polluted by the escape of gas. The site for the gas tank was selected by an experienced engineer, and the company built it in a proper manner, and with all ordinary care and prudence. They knew that mines had been worked in the neighbourhood, but did not know that any mines had been worked under their own lands. After some years the gas tank cracked at the bottom, and the washings produced in the making of gas escaped and percolated underground through the earth and polluted the water in the

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plaintiff's well. The company then found on inquiry that mines had been worked by strangers to them under part of their land and close up to the tank. The crack in the tank was caused by the subsidence of the soil, owing, in all probability, to the mining operations:—*Held*, by the Exchequer Chamber, that the company were liable, under s. 160, to the penalty of £200 for polluting the plaintiff's water by the gas washing (*Hipkins* v. *Birmingham and Staffordshire Gas Co.* (1860), 24 J. P. 438; 30 L. J. Ex. 60; 7 Jur. (N.S.) 213; 6 H. & N. 250).

By s. 92 of the Thames Conservancy Act, 1894, "if any person without lawful excuse . . . wilfully causes or suffers any washing or other substance produced in making or supplying gas or any other offensive matter, whether solid or fluid, to flow or pass into the Thames or into any tributary . . ." he shall for every such offence be liable to a penalty not exceeding £20, and to a daily penalty not exceeding £10.

A large quantity of offensive liquid substance was discharged by the High Wycombe Gas Company from their works into the sewers which passed on to the sewage farm of the appellants, and a large quantity of the liquid found its way from thence into the Wye stream. The gas company had been convicted and fined in respect of the offence. The appellants were also convicted and fined by the magistrates. It was held that the appellants were not guilty of wilfully suffering offensive matter to pass into the Thames by an omission to do something which might have mitigated the evil (*High Wycombe* (*Mayor, etc. of*) (appellants) v. *Conservators of the River Thames* (respondents) (1898), 78 L. T. 463; 14 T. L. R. 358).

(*c*) The expression "source of water supply" is defined by s. 141, *post*. When noxious matter percolated through the soil from gasworks so as to foul a well, such percolation was held to render a company liable under the similar provisions of 3 & 4 Will. 4, c. 90. A well which, on account of its having become contaminated, had been disused by the owner for several years, and had been covered over, was held not to cease to be a well within the meaning of the Act. Non-user, and the closing of his own well in consequence of its being polluted, even coupled with the acceptance by the plaintiff of the use of wells substituted by the defendants, was held not to be such an abandonment of the former as to alter its character, and make it no longer a well, nor could any licence to pollute it be inferred from such a state of facts. *Quære*, *per* KEATING, J., whether a man could by deed give an irrevocable licence to pollute a well. A prescription to foul a well will be defeated by variation and excess in the degree of fouling during the prescribed period (*Millington* v. *Griffiths and Others* (1874), 30 L. T. (N.S.) 65). In the above cases it is assumed that a well is a "place for water."

Apart from statutory provision it appears that a pollution of a river by gas washings is a nuisance at common law for which an indictment will lie. See *R.* v. *Medley and Others* (1834), 6 C. & P. 292.

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It is to be observed that the Public Health Act, 1875, s. 68, the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 21, and the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 62, contain provisions almost identical with this section. See also the provisions of ss. 51 and 52 of the Metropolis Gas Act, 1860.

The same provisions in the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121, ss. 23—25) (now repealed), were held to supersede a clause in a local Act containing similar penalties (*Parry* v. *Croydon Gas and Coke Co.* (1864), 11 C. B. (N.S.) 579 ; 15 C. B. (N.S.) 568 ; 28 J. P. 86).

(*d*) As to the recovery of the penalty, see sub-s. (2).

(*e*) The only water which appears to belong to, or to be under the control of, the sanitary authority, is that in public wells or fountains. See s. 51, *ante*, p. 125.

As to the authentication and service of the notice, see ss. 127, 128, *post*.

Penalty for fouling water.

53. If any person does any act whereby any fountain or pump is wilfully or maliciously damaged (*a*), or is guilty of any act or neglect whereby the water of any well, fountain, or pump used or likely to be used by man for drinking or domestic purposes (*b*), or for manufacturing drink for the use of man, is polluted or fouled, he shall be liable to a fine not exceeding five pounds for each offence, and a further fine not exceeding twenty shillings for every day during which the offence continues after notice is served on him by the sanitary authority in relation thereto (*c*), but this section shall not extend to offences against the last preceding section by persons engaged in the manufacture of gas.

(*a*) A person who damages a fountain, or pump, is liable to pay the cost of making good the damage, as well as to a fine, under this section. See s. 51 (3), *ante*, p. 125.

(*b*) See the note to s. 50, *ante*, p. 124.

(*c*) As to the recovery of this fine, see s. 117, *post*.

Power to close polluted wells, etc.

54.—(1) On the representation of any person to a sanitary authority that within their district the water in any well, tank, or cistern, public or private, or supplied from any public pump, is used or likely to be used by

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man for drinking or domestic purposes, or for manufacturing drink for the use of man (*a*), and is so polluted, or is likely to be so polluted (*b*), as to be injurious or dangerous (*c*) to health, a petty sessional court (*d*), on complaint by such authority and after hearing the person who is the owner or occupier of the premises to which the well, tank, or cistern belongs, if it be private, or in the case of a public well, tank, cistern, or pump, is alleged in the complaint to be interested in the same (*e*), or after giving him an opportunity of being heard, may by summary order (*f*) direct the well, tank, cistern, or pump to be permanently or temporarily closed, or make such other order as appears to the court requisite to prevent injury or danger to the health of persons drinking the water (*g*).

(2) The court may, if they see fit, cause the water complained of to be analysed at the cost of the sanitary authority complaining (*h*).

(3) If the person on whom the order is made fails to comply therewith, he shall be liable to a fine not exceeding twenty pounds, and a petty sessional court on complaint by the sanitary authority may authorise that authority to execute the order, and any expenses incurred by them in so doing may be recovered in a summary manner from the said person (*i*).

The word "cistern" is defined by s. 141, *post*.

This section is taken from 37 & 38 Vict. c. 89, s. 50, now repealed. It corresponds to s. 70 of the Public Health Act, 1875.

(*a*) The words "or for manufacturing drink for the use of man" did not appear in 37 & 38 Vict. c. 89, s. 50, but they do occur in s. 70 of the Public Health Act, 1875.

(*b*) The words "or is likely to be so polluted" are new.

(*c*) The words "or dangerous" are new. The necessity for introducing them is not obvious.

(*d*) See note (*h*) to s. 5, *ante*, p. 28.

(*e*) The meaning of the word "interested" is not clear. In the case of a public well, from which any person may take water, every person has a kind of interest. Possibly the interest referred to may be restricted to persons who habitually use the water.

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(*f*) A summary order is an order made by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts (42 & 43 Vict. c. 49, s. 51 (3)).

(*g*) Very wide powers are granted to the court by these words. It may be prudent to allow the person to be affected to show cause against the granting of this authority. See *Gill* v. *Bright* (1871), 36 J. P. 198; 41 L. J. M. C. 22; 25 L. T. (N.S.) 591; *R.* v. *Cheshire Lines Committee* (1873), L. R. 8 Q. B. 344; 37 J. P. 373; 42 L. J. M. C. 100; 28 L. T. (N.S.) 808; *Hopkins* v. *Smethwick Local Board* (1890), 24 Q. B. D. 712; 54 J. P. 693; 59 L. J. Q. B. 250; 62 L. T. (N.S.) 783; 38 W. R. 409; 6 T. L. R. 286.

(*h*) This clause applies only when the complaint is preferred by the sanitary authority.

It should be observed that a public analyst is not bound, as part of his official duty, to analyse water.

(*i*) As to the meaning of the expression "petty sessional court," see note (*h*) to s. 5, *ante*, p. 28.

As to the recovery of the fine and expenses, see s. 117, *post*.

Infectious Diseases.—Notification (*a*).

Notification of infectious disease.

55.—(1) Where an inmate of any house (*b*) within the district of a sanitary authority is suffering from an infectious disease to which this section applies (*c*), the following provisions shall have effect, that is to say:

(a) The head of the family to which such inmate (in this section referred to as the patient) belongs, and in his default the nearest relatives of the patient present in the house or being in attendance on the patient, and in default of such relatives, every person in charge of or in attendance on the patient, and in default of any such person the master of the house (*d*), shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this section applies, send notice thereof to the medical officer of health of the district (*e*):

(b) Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering

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from an infectious disease to which this section applies, send to the medical officer of health of the district a certificate (*f*) stating the full name and the age and sex of the patient, the full postal address of the house, and the infectious disease from which in the opinion of such medical practitioner the patient is suffering, and stating also whether the case occurs in the private practice of such practitioner or in his practice as a medical officer of any public body or institution, and where the certificate refers to the inmate of a hospital it shall specify the place from which and the date at which the inmate was brought to the hospital, and shall be sent to the medical officer of health of the district in which the said place is situate (*g*) :

Provided that, in the case of a hospital of the Metropolitan Asylum Managers, a notice or certificate need not be sent respecting any inmate with respect to whom a copy of the certificate has been previously forwarded by the medical officer of health of the district to the said managers (*h*).

(2) Every person required by this section to send a notice or certificate, who fails forthwith to send the same, shall be liable to a fine not exceeding forty shillings : Provided that if a person is not required to send notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly sent (*i*).

(3) The Local Government Board may prescribe forms for the purpose of certificates to be sent in pursuance of this section, and if such forms are so prescribed, they shall be used in all cases to which they apply. The sanitary authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly

sent by him in accordance with this section a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution (*j*).

(4) Where a medical officer of health receives a certificate under this section relating to a patient within the metropolitan asylum district, he shall, within twelve hours after such receipt, send a copy thereof to the Metropolitan Asylum Managers, and to the head teacher of the school attended by the patient (if a child), or by any child who is an inmate of the same house as the patient. The Metropolitan Asylum Managers shall repay to the sanitary authority the fees paid by that authority in respect of the certificates whereof copies have been so sent to the managers. The managers shall send weekly to the county council, and to every medical officer of health, such return of the infectious diseases of which they receive certificates in pursuance of this section as the county council require (*k*).

(5) Where in any district of a sanitary authority there are two or more medical officers of health of that authority, a certificate under this section shall be sent to such one of those officers as has charge of the area in which is the patient referred to in the certificate, or to such other of those officers as the sanitary authority may direct (*l*).

(6) A notice or certificate to be sent to a medical officer in pursuance of this section may be sent to such officer at his office or residence (*m*).

(7) This section shall apply to every building, vessel, tent, van, shed, or similar structure used for human habitation, in like manner as nearly as may be as if it were a house ; but nothing in this section shall extend to any house, building, vessel, tent, van, shed, or similar structure belonging to her Majesty the Queen, or to any inmate thereof, nor to any vessel belonging to any foreign government (*n*).

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(8) In this section the expression "infectious disease to which this section applies" means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any particular district any infectious disease to which this section has been applied by the sanitary authority of the district in manner provided by this Act (*o*).

(*a*) This section and the two following are merely a reproduction of 52 & 53 Vict. c. 72 (The Infectious Disease (Notification) Act, 1889), which is now repealed as far as the metropolis is concerned.

(*b*) The expression "house," is defined by s. 141, *post*, and see sub-s. (7), which extends the application of the section to buildings, vessels, tents, vans, sheds, etc. used for human habitation.

(*c*) These infectious diseases are enumerated in sub-s. (8).

The Order of the Local Government Board, dated September 19th, 1900, made under the applied enactment, viz., s. 130 of the Public Health Act, 1875 (see the First Schedule hereto), makes regulations as to the notification of plague as an infectious disease, and contains the following provision: "In the district of every sanitary authority in the administrative county of London, and in the district of the port sanitary authority of the port of London, the persons mentioned in section 55 of the Public Health (London) Act, 1891 (including the managers of the metropolitan asylum district), and the sanitary authority shall, under this Order, have the same powers and duties in relation to the notification of cases of plague as they would have under that section if plague were an infectious disease to which that section applied. The sanitary authority shall forthwith cause circular letters to be sent to all legally qualified medical practitioners in the district informing them of their duties under this regulation." Under the Order it is the duty of every medical officer of health to report forthwith to the Local Government Board any case of plague which may be notified to him, or which may otherwise come or be brought to his knowledge, and which may occur in the district or area assigned to his charge (Stat. R. & O., 1900, p. 774).

See also the Public Health (Tuberculosis) Regulations, 1908, of the Local Government Board, dated December 18th, 1908, as to the notification of cases of pulmonary tuberculosis (Stat. R. & O., 1908, p. 779).

(*d*) The persons upon whom the obligation imposed by the section is laid, are: (1) the head of the family; (2) the nearest relatives in the building or in attendance on the patient; (3) the person in charge of the patient; and (4) the master of the house,

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as defined by s. 141, *post*. A notice by one of these persons avails for all enumerated later in the foregoing list, but apparently not for any enumerated earlier. See sub-s. (2). Thus, a notice by the head of the family renders it unnecessary for the relatives to give a notice. But a notice given by the relatives does not free the head of the family from the consequences of himself failing to give the notice.

(*e*) As to the manner in which notices may be sent, see sub-s. (6). And as to the sending of the notice when there are two or more medical officers of health, see sub-s. (5).

(*f*) As to the form of the certificate, see sub-s. (3).

(*g*) The certificate above described is much more full than that required under 52 & 53 Vict. c. 72. Thus it is new to require the full postal address, whether the case occurs in private practice, etc., and the particulars as to patients in a hospital.

The expression "hospital" is defined by s. 141, *post*.

(*h*) This proviso is new. The managers here referred to are the governing body of the metropolitan asylum district, formed by Order of the Poor Law Board, under 30 Vict. c. 6. See Macmorran and Lushington's Poor Law General Orders, 2nd ed., p. 1069.

As to the copy of the certificate referred to in the proviso, see sub-s. (4).

(*i*) The fine will be recoverable summarily under s. 117, *post*.

As to the person liable to send a notice in the first instance, or in default of some other person, see sub-s. (1) and note (*d*), *supra*.

A medical practitioner in giving, in respect of a private patient, the statutory notification to the local medical officer of health that such patient is suffering from an infectious disease is acting in the execution of a statutory or public duty, and is, therefore, entitled to the benefit of the provisions of s. 1 (a) of the Public Authorities Protection Act, 1893 (*Salisbury* v. *Gould* (1904), 68 J. P. 158).

(*j*) The certificates above referred to are those which must be sent by medical practitioners. The forms prescribed by the Local Government Board will be found in an Order, dated December 3rd, 1891. See Stat. R. & O., 1891, p. 463.

The expression "public body or institution" will, no doubt, include public hospitals and infirmaries, workhouses, and the like. But it is submitted that it will not include private hospitals to which patients are admitted for payment, nor medical clubs or provident dispensaries.

In a case which arose under the Coroners Act, 1887, s. 22, it was held that a children's and general hospital, supported by voluntary contributions, and founded for the free admission and relief of patients within a certain area upon production of a governor's letter, and of patients outside that area, upon payment of a small weekly sum, was a public hospital within the meaning

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of that section, and that a medical man, practising in the neighbourhood, who held the appointment of honorary medical officer to such hospital, for which he received no remuneration by way of fees or honorarium, was the medical officer of a public hospital (*Horner* v. *Lewis* (1898), 62 J. P. 345; 67 L. J. Q. B. 524; 78 L. T. (N.S.) 792).

(*k*) The duty of forwarding these copies will devolve on the medical officer of health, and it will apparently be his duty to make inquiry in every case whether there is in the house where the patient is any child attending school, and at what school such child attends. This is an important duty, and it will impose a considerable burden upon the medical officer, especially as he must act within twelve hours after receipt of the certificate. The provision as to sending a copy to the teacher of the school is new.

The county council is the London County Council. See s. 141, *post*.

The returns are to be sent to every medical officer of health, *i.e.*, every medical officer of health in the metropolis. This is a new provision and its object is not apparent.

(*l*) This sub-section applies only to the certificate of the medical practitioner. There is no similar provision as to notices under sub-s. (1) (a). It may be inferred that a notice may be sent to any one of the medical officers.

(*m*) This sub-section does not provide for the posting of notices. Section 8 of the Act of 1889 enabled a notice to be sent by post, but this provision has not been re-enacted. It may be doubted, therefore, whether the mere posting of a notice or certificate is sufficient compliance under the Act if the letter does not reach the medical officer.

(*n*) This sub-section re-enacts ss. 13 and 15 of the Act of 1889.

(*o*) As to the application of this section to other infectious diseases, see the next section.

The above list of infectious diseases to which the Act applies is the same as that contained in s. 6 of the Act of 1889.

By an Order of the Local Government Board, dated September 19th, 1900, the provisions of this section were made to apply to cases of plague. See note (*c*), *ante*, p. 136.

Power of sanitary authority to add to number of infectious diseases of which notification is required.

56.—(1) The sanitary authority of any district may, by resolution passed at a meeting of that authority of which such notice has been given as in this section mentioned (*a*), order that the foregoing section with respect to the notification of infectious disease shall apply in their district to any infectious disease other

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than a disease specifically mentioned in that section (*b*); any such order may be permanent or temporary, and, if temporary, the period during which it is to continue in force shall be specified therein, and any such order may be revoked or varied by the sanitary authority which made the same.

(2) Fourteen clear days (*c*) at least before the meeting at which such resolution is proposed special notice of the meeting, and of the intention to propose the making of such order, shall be given to every member of the sanitary authority, and the notice shall be deemed to have been duly given to a member if it is given in the mode in which notices to attend meetings of the sanitary authority are usually given (*d*).

(3) An order under this section and the revocation and variation of any such order shall not be of any validity until it has been approved by the Local Government Board, and when it is so approved the sanitary authority shall give public notice thereof by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the sanitary authority think sufficient for giving information to all persons interested; they shall also send a copy thereof to each legally qualified medical practitioner whom, after due inquiry, they ascertain to be residing or practising in their district (*e*).

(4) The said order shall come into operation at such date not earlier than one week after the publication of the first advertisement of the approved order as the sanitary authority may fix, and upon the order coming into operation, and during the continuance thereof, an infectious disease mentioned in the order shall, within the district of the authority, be an infectious disease to which the foregoing section with respect to the notification of infectious disease applies (*f*).

(5) In the case of emergency three clear days (*g*) notice of the meeting and of the intention to propose the making of the order shall be sufficient, and the resolution shall declare the cause of the emergency and shall be for a

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temporary order, and a copy thereof shall be forthwith sent to the Local Government Board and advertised (*h*), and the order shall come into operation at the expiration of one week from the date of the advertisement; but unless approved by the Local Government Board shall cease to be in force at the expiration of one month after it is passed, or any earlier date fixed by the Local Government Board; if it is approved by the Local Government Board that approval shall be conclusive evidence that the case was one of emergency.

(6) The county council shall, as respects London, have the same power of extending the foregoing section by order to any infectious disease, and the same power of revoking and varying the order, as a sanitary authority have under this section as respects their district; and the foregoing section when so extended by the county council shall be construed as if it had been applied under this section as respects every district in London by the sanitary authority thereof (*i*).

(*a*) See sub-s. (2); and see also sub-s. (5) as to cases of emergency.

(*b*) Thus the Act has in some districts been extended to measles. See sub-s. (6), and note (*i*), *post*.

(*c*) This means exclusive of the day on which the notice is given and the day of the meeting. See *Zouch* v. *Empsey* (1821), 4 B. & A. 522; *R.* v. *Salop JJ.* (1838), 8 A. & E. 173.

The word "day" is defined by s. 141, *post*.

(*d*) See as to meetings of metropolitan borough councils, 18 & 19 Vict. c. 120, s. 57; 19 & 20 Vict. c. 112, s. 9; 25 & 26 Vict. c. 102, s. 37; 56 & 57 Vict. c. 73, s. 31 (3); 62 & 63 Vict. c. 14, s. 2 (5).

(*e*) The local authority have a duty cast upon them by this sub-section to inquire and ascertain the names of the medical practitioners who practice as well as of those who reside in the district.

This sub-section will not apply when an order has been made in case of emergency, as to which see sub-s. (5).

(*f*) After the order comes into operation the disease or diseases to which it relates will be diseases which must be notified and certified in manner provided by the preceding section.

(*g*) As to the meaning of "clear days," see sub-s. (2), and note (*c*), *supra*.

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(*h*) The approval of the Local Government Board is not required, but if such approval is not given, the order will cease to be in force after a month or such earlier date as the Board may fix.

The order is to be advertised; it is not provided that notice must be given as in sub-s. (3).

(*i*) "London" means the administrative county of London. See s. 141, *post*; see also ss. 99, 132.

On February 2nd, 1902, the London County Council issued, under s. 58, an order declaring epidemic influenza to be a dangerous infectious disease. The order was duly approved by the Local Government Board, and it was in force for three months of the year. In 1903 the council, by order which was approved by the Local Government Board on March 5th, applied to measles, ss. 60—65, 68—70, and 72—74 of this Act. An order applying s. 55 to chicken-pox came into force on February 7th, 1902, and was continued in force until January 6th, 1903. In 1907 the same section was applied to cerebro-spinal meningitis, the approval of the Local Government Board being dated March 2nd, and on July 16th the Board extended the order for eighteen months from September 13th, 1907.

Non-disqualification of medical officer by receipt of fees.

57.—(1) A payment made to any medical practitioner in pursuance of the provisions of this Act with respect to the notification of infectious disease shall not disqualify that practitioner for serving as member of the county council, or of a sanitary authority, or as guardian of a poor law union, or in any other public office (*a*).

(2) Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he shall be entitled to the same fee as if he were not such medical officer (*b*).

(*a*) This provision is taken from 52 & 53 Vict. c. 72, s. 11. But for it a medical practitioner, who was a member of one of the authorities above mentioned, might have been brought within the provisions of the enactments which forbid a member of an authority to accept or hold any office or place of profit under such authority, or to be concerned in any contract with such authority. See, for example, the Public Health Act, 1875, Sched. 2, r. 64; the Municipal Corporations Act, 1882, s. 12; the Metropolis Management Act, 1855, s. 64; and the Local Government Act, 1894, s. 46.

(*b*) The medical officer of health must apparently make out certificates in his own cases, and transmit copies as required by s. 55 (4), *ante*.

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Infectious Diseases.—Prevention.

Application of special provisions to certain infectious diseases.

58. The following provisions of this Act relating to dangerous infectious diseases shall apply to the infectious diseases specifically mentioned in the foregoing enactment of this Act relating to the notification of infectious disease, and all or any of such provisions may be applied by order to any other infectious disease in the same manner as that enactment may be applied to such disease, subject to the same power of revoking and varying the order, and every such infectious disease is in this Act referred to as a dangerous infectious disease.

This part of the Act is taken from 53 & 54 Vict. c. 34, which is now repealed so far as it relates to London.

"Dangerous infectious diseases" will include all the infectious diseases mentioned in s. 55 (8), and any other infectious disease to which the sanitary authority may order this part of the Act to be applied. Such an order must be made in manner provided by s. 56, *ante*. See note (*i*) to s. 56, *ante*, p. 141.

By Part IV. of the London County Council (General Powers) Act, 1904, further powers were conferred on the several sanitary authorities in London in regard to the purification of articles in such a filthy, dangerous or unwholesome condition that health is affected or endangered thereby, and the cleansing or purifying or destroying of such articles in order to prevent risk of or to check infectious disease. Sanitary authorities were also empowered, on the certificate of their medical officer of health, to require owners to cleanse houses or parts of houses infested with vermin, and in case of default to do the work themselves and recover the cost from the person making default.

Section 59 of the Act of 1891 is extended and made applicable for the purposes of the above provision, and the provision of means for cleansing, purifying and destroying filthy, dangerous or unwholesome articles and for the removal thereof, and for the cleansing of houses infested with vermin.

These provisions of the London County Council (General Powers) Act, 1904, are set out in the Appendix, *post*.

Provision of means for disinfecting of bedding, etc.

59.—(1) Every sanitary authority shall provide, either within or without their district, proper premises with all necessary apparatus and attendance for the destruction and for the disinfection, and carriages or vessels for the removal, of articles (whether bedding, clothing, or other) which have become infected by any dangerous infectious disease, and may provide the same for the destruction, disinfection, and removal of such articles when infected

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by any other disease; and shall cause any such articles brought for destruction or disinfection, whether alleged to be infected by any dangerous infectious disease or by any other disease, to be destroyed or to be disinfected and returned, and may remove, and may destroy, or disinfect and return, such articles free of charge (*a*).

(2) Any sanitary authorities may execute their duty under this section by combining for the purposes thereof, or by contracting for the use by one of the contracting authorities of any premises provided for the purpose of this section by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon (*b*).

(*a*) Under 29 & 30 Vict. c. 90, s. 23, a sanitary authority *might* provide a proper place, with all necessary apparatus and attendance, for the disinfection of woollen articles, clothing, or bedding. They must now provide proper premises and apparatus and carriages or vessels for removing the infected articles.

For the meaning of the expression "dangerous infectious disease," see s. 58.

A sanitary authority may borrow money for the purposes of this section. See s. 105, *post*.

(*b*) Two sanitary authorities may jointly provide the necessary premises and apparatus, or one may provide the premises, etc., and agree with another for their use by the latter upon such terms as they may arrange between themselves.

See the notes under ss. 58 and 105.

Under the Cleansing of Persons Act, 1897 (60 & 61 Vict. c. 31), any metropolitan sanitary authority, as defined in the Public Health (London) Act, 1891, may provide, free of charge, appliances for the cleansing of any person and his clothing from vermin. They may expend any reasonable sum on buildings, appliances and attendants for the purpose and defray their expenses out of the rate or fund applicable for sanitary purposes.

See also Part IV. of the London County Council (General Powers) Act, 1904, with reference to the cleansing of filthy articles and houses.

Further powers in relation to the examination and cleansing of the persons and clothing of children attending the public elementary schools and of the inmates of common lodging-houses within the city and county of London were conferred upon the London County Council, the corporation of the city, and the several sanitary authorities, by the London County Council (General Powers) Act, 1907. See Part V.

The London County Council (General Powers) Act, 1908, s. 6, provides for the appointment of female health visitors for the

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purpose of giving advice as to the proper nurture, care and management of young children and the promotion of cleanliness, etc.

NOTE.

The provisions of the Acts above referred to are set out in the Appendix, *post*.

See also the note to s. 58, *ante*, p. 142; the Health Visitors (London) Order, 1909, issued by the Local Government Board on September 4th, 1909.

Cleansing and disinfecting of premises, etc

60.—(1) Where the medical officer of health of any sanitary authority, or any other legally qualified medical practitioner (*a*), certifies that the cleansing and disinfecting of any house (*b*), or part thereof, and of any articles therein likely to retain infection, or the destruction of such articles, would tend to prevent or check any dangerous infectious disease (*c*), the sanitary authority shall serve notice (*d*) on the master (*e*), or where the house or part is unoccupied on the owner (*e*), of such house or part that the same and any such articles therein will be cleansed and disinfected or (as regards the articles) destroyed, by the sanitary authority, unless he informs the sanitary authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part and any such articles or destroy such articles to the satisfaction of the medical officer of health, or of any other legally qualified medical practitioner (*f*), within a time fixed in the notice.

(2) If either—

(a) within twenty-four hours from the receipt of the notice, the person on whom the notice is served does not inform the sanitary authority as aforesaid, or

(b) having so informed the sanitary authority he fails to have the house or part thereof and any such articles disinfected or such articles destroyed as aforesaid within the time fixed in the notice, or

(c) the master or owner without such notice gives his consent,

the house or part and articles shall be cleansed and disinfected or such articles destroyed by the officers and at the cost of the sanitary authority under the superintendence of the medical officer of health (*g*).

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(3) For the purpose of carrying into effect this section the sanitary authority may enter by day on any premises (*h*).

(4) The sanitary authority shall provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any dangerous infectious disease has appeared, who have been compelled to leave their dwellings, for the purpose of enabling such dwellings to be disinfected by the sanitary authority (*i*).

(5) When the sanitary authority have disinfected any house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of such house, or part of a house, or the owner of such article, for any unnecessary damage thereby caused to such house, part of a house, or article ; and when the authority destroy any article under this section they shall compensate the owner thereof ; and the amount of any such compensation shall be recoverable in a summary manner (*j*).

This section is taken, with some amendments, from 53 & 54 Vict. c. 34, s. 5.

See the provisions in s. 8 of the London County Council (General Powers) Act, 1908, as to sanitary regulations in respect of premises used for the sale, etc. of food for human consumption, set out in the Appendix, *post*.

(*a*) A legally qualified medical practitioner is one who is registered under the Medical Acts (21 & 22 Vict. c. 90, and 49 & 50 Vict. c. 48).

(*b*) The expression "house" is defined by s. 141, *post*. It does not include tents, vans, sheds, etc., as to which see s. 99, *post*.

(*c*) As to what is a dangerous infectious disease, see s. 58, *ante*.

(*d*) As to the authentication and service of this notice, see ss. 127, 128, *post*. The notice may be served by order of a committee under s. 99 (4).

(*e*) The expressions "master" and "owner" are defined by s. 141, *post*. It is only when the house is unoccupied that the notice may be served on the owner. In this respect this sub-section differs from 53 & 54 Vict. c. 34, s. 5.

(*f*) This alternative is not provided in 53 & 54 Vict. c. 34, s. 5. The person upon whom the notice is served may select the medical practitioner to whose satisfaction the disinfection is to be done.

The Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), provides as follows :

109. If the occupier of a factory or workshop or of any place from which any work is given out or any contractor employed by any such

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occupier causes or allows wearing apparel to be made, cleaned or repaired in any dwelling-house or building occupied therewith whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds.

110.—(1) If any inmate of a house is suffering from an infectious disease to which this section applies, the district council of the district in which the house is situate may make an order forbidding any work to which this section applies to be given out to any person living or working in that house or such part thereof as may be specified in the order, and any order so made may be served on the occupier of any factory or workshop or any other place from which work is given out or on the contractor employed by any such occupier.

(2) The order may be made notwithstanding that the person suffering from an infectious disease may have been removed from the house, and the order shall be made either for a specified time or subject to the condition that the house or part thereof liable to be infected shall be disinfected to the satisfaction of the medical officer of health or that other reasonable precautions shall be adopted.

(3) In any case of urgency the powers conferred on the district council by this section may be exercised by any two or more members of the council acting on the advice of the medical officer of health.

(4) If any occupier or contractor on whom an order under this section has been served contravenes the provisions of the order, he shall be liable to a fine not exceeding ten pounds.

(5) The infectious diseases to which this section applies are the infectious diseases required to be notified under the law for the time being in force in relation to the notification of infectious diseases, and the work to which this section applies is the making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel and any work incidental thereto and such other classes of work as may be specified by Special Order of the Secretary of State.

References in these sections of the Factory and Workshop Act, 1901, to a district council and the district thereof are, as regards the city of London, to be construed as references to the court of common council and the city, and, as regards any other part of the administrative county of London, as references to the council of a metropolitan borough (s. 153).

(*g*) As to the power of the officers to enter premises for the purposes of the above provision, see sub-s. (3).

Under 53 & 54 Vict c. 34, s. 5, the expenses of the cleansing, etc. are payable by the owner or occupier in default. Under this Act the expenses are payable by the sanitary authority in every case.

(*h*) "Day" signifies between 6 a.m. and 9 p.m. See s. 141, *post*, which also defines the expression "premises." The general provisions of this Act relating to the right of entry upon premises are contained in s. 115, *post*.

(*i*) This sub-section is taken from 53 & 54 Vict. c. 34, s. 15.

The Local Government Board have sanctioned loans for the provisions of temporary shelters under this section in Battersea, Bermondsey, Deptford, Hackney, Poplar, Shoreditch, Southwark, Stepney, Westminster, and Woolwich.

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In connection with this matter it may be pointed out that s. 32 of the London County Council (General Powers) Act, 1896, provides that "the purposes for which under s. 105 (2) of the Public Health (London) Act, 1891, vestries of parishes and boards of works for districts under the Metropolis Management Act, 1855, and the Acts amending the same, and also the Woolwich Local Board [now the metropolitan borough councils] are empowered to borrow shall extend to and include the purposes of providing shelter or house accommodation for persons removed from their homes in case of infectious disease."

(*j*) The corresponding provision in 53 & 54 Vict. c. 34, s. 6, did not extend to a house or part of a house. It should be observed that the sanitary authority are only liable to make good unnecessary damage, *i.e.*, damage which might have been avoided with reasonable care. There is no liability in respect of unavoidable damage, though that may be substantial.

The expenses will be recoverable in a court of summary jurisdiction under s. 117, *post*. The expression "in a summary manner" means in manner provided by the Summary Jurisdiction Acts. See 42 & 43 Vict. c. 49, s. 51.

Disinfection of bedding, etc.

61.—(1) Any sanitary authority may serve a notice (*a*) on the owner of any bedding, clothing, or other articles which have been exposed to the infection of any dangerous infectious disease, requiring the delivery thereof to an officer of the sanitary authority for removal for the purpose of destruction or disinfection ; and if any person fails to comply with such notice he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

(2) The bedding, clothing, and articles if so disinfected by the sanitary authority shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage the authority shall compensate the owner for the same, and the authority shall also compensate the owner for any articles destroyed ; and the amount of compensation shall be recoverable in a summary manner (*b*).

(*a*) The meaning of the term "owner" is given in s. 141, *post*. As to the authentication and service of this notice, see ss. 127, 128, *post*.

It should be observed that the notice must be given by the sanitary authority, or by a committee under s. 99 (4), *post*. It cannot be given by the medical officer, as provided in 53 & 54 Vict.

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c. 34, s. 6, nor can it be given by any other officer except by direction of the sanitary authority or such committee. See *St. Leonard, Shoreditch* (*Vestry of*) v. *Holmes* (1885), 50 J. P. 132.

The ground of the decision was that the local authority had to exercise a discretion in each case, and it was not enough for an inspector to act as he pleased and rely upon the subsequent approval of the vestry. Compare this case with *London County Council* v. *Hobbis* (1896), 61 J. P. 85 ; 75 L. T. (N.S.) 687 ; 45 W. R. 270.

The previous approval of a metropolitan vestry to a resolution of its public health committee (duly appointed under the provisions of s. 58 of the Metropolis Management Act, 1855), whereby notice is served on the owner or occupier of premises to put a drain into proper condition, under s. 85 of that Act, is not necessary for the authorisation of such notice, provided that the action taken by the committee be one which can properly be ratified by the vestry (*Firth* v. *Staines*, [1897] 2 Q. B. 70 ; 61 J. P. 452 ; 66 L. J. Q. B. 510 ; 76 L. T. 496 ; 45 W. R. 575).

As to what is a dangerous infectious disease, see s. 58, *ante*.

As to the recovery of the fine, see s. 117, *post*.

(*b*) As to the meaning of the words "unnecessary damage," see note (*j*) to the preceding section.

As to the meaning of the expression "petty sessional court," see note (*h*) to s. 5, *ante*, p. 28.

The defendant council's medical officer of health ordered the destruction of certain clothes of the plaintiff (which had been exposed to infection) by the hands of the defendant's inspector of nuisances. The plaintiff was a private patient of the medical officer of health. The inspector of nuisances gave in to the defendants a list of the things he had destroyed in obedience to the instructions he had received from the medical officer. It was not proved that the medical officer reported the destruction of the things to the defendants. A claim was made by the plaintiff against the defendants for the value of the things destroyed :— *Held*, that the medical officer was not acting within the general scope of his authority in ordering the destruction of the things, and there being no ratification by the defendants of what had been done by their inspector of nuisances they were not liable (*Garlick* v. *Knottingley Urban Council* (1904), 68 J. P. 494 ; 2 L. G. R. 1345). See also *Foster* v. *East Westmoreland Rural District Council* (1903), 68 J. P. 103 (a county court case).

Infectious rubbish thrown into ashpits, etc. to be disinfected.

62.—(1) If a person knowingly casts, or causes or permits to be cast, into any ashpit (*a*) any rubbish infected by a dangerous infectious disease (*b*) without previous disinfection, he shall be liable to a fine not exceeding five pounds, and, if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence so continues after the notice hereafter in this section mentioned (*c*).

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(2) The sanitary authority shall cause their officers to serve notice of the provisions of this section on the master of any house (*d*) or part of a house in which they are aware that there is a person suffering from a dangerous infectious disease, and on the request of such master shall provide for the removal and disinfection or destruction of the aforesaid rubbish (*e*).

This section is taken from 53 & 54 Vict. c. 34, ss. 13, 14.

(*a*) The expression "ashpit" includes any ashpit, dustbin, ashtub, or other receptacle for the deposit of ashes or refuse matter. See s. 141, *post*.

(*b*) The corresponding words in 53 & 54 Vict. c. 34, s. 13, are "any infectious rubbish." The words in the text are more explicit; they evidently refer to poultices, rags, etc.

For the meaning of the expression "dangerous infectious disease," see s. 58, *ante*, p. 142.

(*c*) As to the recovery of these penalties, see s. 117, *post*. As to the notice, see sub-s. (2).

(*d*) For the definition of the expression "master of a house," see s. 141, *post*.

(*e*) The concluding words of the sub-section, imposing on the sanitary authority the duty of removing and destroying or disinfection of the rubbish, do not occur in 53 & 54 Vict. c. 34, s. 14.

Penalty on letting houses in which infected persons have been lodging.

63.—(1) Any person who knowingly lets for hire any house, or part of a house, in which any person has been suffering from any dangerous infectious disease, without having such house or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, or (as regards the articles) destroyed, shall be liable to a fine not exceeding twenty pounds (*a*).

(2) For the purposes of this section, the keeper of an inn shall be deemed to let for hire part of a house to any person admitted as a guest into such inn (*b*).

(*a*) This section is taken, with a slight variation, from 29 & 30 Vict. c. 90, s. 39 (now repealed). It corresponds to s. 128 of the Public Health Act, 1875. See s. 141, *post*, as to the meaning of "house."

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Where an inmate of a Salvation Army shelter was found to be suffering from small-pox, the subsequent admission of other persons to the shelter was held not to be a letting of part of a house within the meaning of this section (*Colclough* v. *Edwards* (1893), 10 T. L. R. 113).

The lessor will be entitled to notice from his outgoing tenant if there has been infectious disease in the house within six weeks of his leaving. See s. 65, *post*. But the text appears to require an owner to disinfect the house upon reletting it without regard to the period which may have elapsed since the existence of the disease.

The provision as to the destruction of the infected articles is new.

As to the recovery of the fine, see s. 117, *post*.

(*b*) An inn is defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests are accommodated with lodging and whatsoever they reasonably desire for themselves and their horses while on their way (1 Burn's Justice, p. 64 ; *R.* v. *Luellin* (1700), 12 Mod. 445 ; *Thompson* v. *Lacy* (1820), 3 B. & A. 283 ; *R.* v. *Rymer* (1877), 5 Q. B. D. 136 ; 41 J. P. 199 ; 46 L. J. M. C. 108 ; 35 L. T. (N.S.) 774 ; 25 W. R. 415).

As to who is a guest at an inn, see *Strauss* v. *County Hotel and Wine Co.* (1883), 12 Q. B. D. 27 ; 48 J. P. 69 ; 53 L. J. Q. B. 25 ; 49 L. T. (N.S.) 601 ; 32 W. R. 170 ; *Medawar* v. *Grand Hotel Co.*, [1891] 2 Q. B. 11 ; 55 J. P. 814 ; 60 L. J. Q. B. 209 ; 64 L. T. (N.S.) 851.

As to the extent of the obligation of an innkeeper to lodge travellers, see *Brown* v. *Brandt*, [1902] 1 K. B. 696 ; 71 L. J. K. B. 367 ; 86 L. T. (N.S.) 625 ; 50 W. R. 654 ; 18 T. L. R. 399.

Penalty on persons letting houses making false statements as to infectious disease.

64. Any person letting for hire, or showing for the purpose of letting for hire, any house or part of a house, who, on being questioned by any person negotiating for the hire, as to the fact of there being, or within six weeks previously having been, therein any person suffering from any dangerous infectious disease, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a fine not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.

This section is taken from 37 & 38 Vict. c. 89, s. 56 (now repealed), with a restriction as to "dangerous infectious disease," as to which see s. 58, *ante*, p. 142. It corresponds to s. 129 of the Public Health Act, 1875. See s. 141, *post*, as to the meaning of "house."

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Reference may be made to the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 75, as to an implied warranty on the letting of certain houses for the working classes.

As to the recovery of the fine, see s. 117, *post*.

Penalty on ceasing to occupy house without disinfection or notice to owner, or making false answer.

65.—(1) Where a person ceases to occupy any house, or part of a house, in which any person has within six weeks previously been suffering from any dangerous infectious disease, and either (*a*)—

(a) Fails to have such house, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, or such articles destroyed (*b*), or

(b) Fails to give to the owner or master of (*c*) such house, or part of a house, notice of the previous existence of such disease, or

(c) On being questioned by the owner or master of, or by any person negotiating for the hire of, such house or part of a house, as to the fact of there having within six weeks previously been therein any person suffering from any dangerous infectious disease, knowingly makes a false answer to such question,

he shall be liable to a fine not exceeding ten pounds (*d*).

(2) The sanitary authority shall cause their officers to serve notice of the provisions of this section on the master of any house or part of a house in which they are aware that there is a person suffering from a dangerous infectious disease (*e*).

Sub-section (1) is taken from 53 & 54 Vict. c. 34, s. 7.

(*a*) As to what is a dangerous infectious disease, see s. 58, *ante*, p. 142. See s. 141 as to the meaning of "house."

(*b*) The words "or such articles destroyed" do not occur in 53 & 54 Vict. c. 34, s. 7.

(*c*) There is no reference to the "master of the house" in 53 & 54 Vict. c. 34, s. 7. As to the meaning of the expression, see s. 141, *post*.

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(*d*) As to the recovery of this penalty, see s. 117, *post*.

(*e*) This sub-section is taken from 53 & 54 Vict. c. 34, s. 14. The expression "master of a house" is defined by s. 141, *post*.

Removal to hospital of infected persons without proper lodging.

66.—(1) A person suffering from any dangerous infectious disease, who is without proper lodging or accommodation, or is lodged in a tent or van, or is on board a vessel, may, on a certificate signed by a legally qualified medical practitioner, and with the consent of the superintending body of the hospital to which he is to be removed, be removed by order of a justice, and at the cost of the sanitary authority of the district where such person is found, to any hospital in or within a convenient distance of London (*a*).

(2) The order may be addressed to such constable or officer of the sanitary authority as the justice making the same thinks expedient; and if any person wilfully disobeys or obstructs the execution of such order he shall be liable to a fine not exceeding ten pounds (*b*).

(3) Any sanitary authority may make byelaws for removing to any hospital to which that authority are entitled to remove patients, and for keeping in that hospital so long as may be necessary, any persons brought within their district by any vessel who are infected with a dangerous infectious disease (*c*).

(*a*) This sub-section replaces 29 & 30 Vict. c. 90, s. 26 (now repealed), and 37 & 38 Vict. c. 89, s. 51 (now repealed), except that under these sections the hospital had to be within the district of the sanitary authority, or declared by Order of the Local Government Board to be within a convenient distance of the district of the sanitary authority. The corresponding provisions of the Public Health Act, 1875, are ss. 124, 125.

For the meaning of the expression "dangerous infectious disease," see s. 58, *ante*, p. 142.

The expression "hospital" is defined by s. 141, *post*.

"London" means the administrative county of London. See s. 141, *post*.

The circumstance that a person suffering from scarlet fever is lodged in the parlour of a four-roomed house, the other three rooms of which are occupied by the rest of the family, is in itself sufficient evidence that he is "without proper lodging or accommodation" within the meaning of s. 124 of the Public Health Act,

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1875, to warrant justices ordering his removal to a hospital, for that section, though primarily for the protection of the patient, is equally directed to the protection of other persons from infection (*Warwick* v. *Graham*, [1899] 2 Q. B. 191; 63 J. P. 599; 68 L. J. Q. B. 1001; 80 L. T. 773).

(*b*) This sub-section is identical with the provision in s. 124 of the Public Health Act, 1875.

As to the recovery of the penalty, see s. 117, *post*.

In *Booker* v. *Taylor* (reported in the Times of November 21st, 1882) there had been an order for the removal of a child under the corresponding s. 124 of the Public Health Act, 1875. The mother of the child resisted the removal, and was summoned for so doing. At the hearing the magistrates entered into the validity of the order and declined to convict, but the court held that they were wrong in so doing; that they had no right to go behind the order and enter into its validity; and that they were bound upon the evidence to convict if there had been an obstruction. This decision was followed in *R.* v. *Davey*, *Ex parte Bishop*, [1899] 2 Q. B. 301; 63 J. P. 515; 68 L. J. Q. B. 675; 80 L. T. (N.S.) 798).

(*c*) Under 29 & 30 Vict. c. 90, s. 29 (now repealed), the sanitary authority were to make *rules*. Under s. 125 of the Public Health Act, 1875, the local authority make regulations. Under the provision in the text byelaws are to be made.

As to the making of byelaws, see s. 114, *post*. See the Orders of the Local Government Board dated March 25th, 1892, and December 29th, 1894, assigning powers to the mayor, commonalty and citizens of the city of London as the Port Sanitary Authority of London. Byelaws made by the said Port Sanitary Authority under this section were allowed by the Local Government Board on May 6th, 1908.

A sanitary authority are entitled to remove patients to any hospital which they have provided, or for the use of which they have contracted under s. 75, *post*.

The expression "vessel" includes a boat and every description of vessel used in navigation. See s. 141, *post*.

Detention of infected person without proper lodging in hospital.

67.—(1) A justice, on being satisfied that a person suffering from any dangerous infectious disease is in a hospital, and would not on leaving the hospital be provided with lodging or accommodation in which proper precautions could be taken to prevent the spreading of the disease by such person, may direct such person to be detained in the hospital at the cost of the Metropolitan Asylum Managers during the time limited by the justice. Any justice may enlarge the time as often as appears to him necessary for preventing the spread of the disease (*a*).

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(2) The direction may be carried into execution by any officer of any sanitary authority, or of the Metropolitan Asylum Managers, or by any inspector of police, or any officer of the hospital (*b*).

(*a*) This sub-section is taken, with some variations, from 53 & 54 Vict. c. 34, s. 12.

The maintenance of the patient by the Metropolitan Asylum Managers is not to be deemed parochial relief. See s. 80 (4), *post*. As to the expenses of the managers under this Act, see s. 104, *post*.

The expression "hospital" is defined by s. 141, *post*. It includes a workhouse hospital, though guardians have power to detain in a workhouse persons suffering from infectious or contagious disease under 30 & 31 Vict. c. 106, s. 22.

(*b*) The direction of the justice will justify the forcible detention of the patient in the hospital.

Penalty on exposure of infected persons and things.

68.—(1) If any person—

(a) While suffering from any dangerous infectious disease wilfully exposes himself without proper precautions against spreading the said disease in any street, public place, shop, or inn; or

(b) being in charge of any person so suffering, so exposes such sufferer; or

(c) gives, lends, sells, transmits, removes, or exposes, without previous disinfection, any bedding, clothing, or other articles which have been exposed to infection from any such disease;

he shall be liable to a fine not exceeding five pounds (*a*).

(2) Provided that proceedings under this section shall not be taken against persons transmitting with proper precautions any bedding, clothing, or other articles for the purpose of having the same disinfected (*b*).

(*a*) As to what is a dangerous infectious disease, see s. 58, *ante*, p. 142. The expression "street" is defined by s. 141, *post*.

The 29 & 30 Vict. c. 90, ss. 25, 38 (now repealed), from which this section is taken, did not extend to exposure in a shop or inn. The provisions of the above section correspond to s. 126 of the Public Health Act, 1875.

It has been held to be an indictable offence to expose unnecessarily persons infected with small-pox, whether produced by

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inoculation or otherwise, in the public streets (*R.* v. *Vantandillo* (1815), 4 M. & S. 73; *R.* v. *Burnett* (1815), 4 M. & S. 272). These decisions were cases of exposing children while suffering from disease. The text applies not only to such cases, but to adults exposing themselves.

In *Best* v. *Stapp* or *Staff* (1877), 2 C. P. D. 191 n, a person knowingly took a child recovering from small-pox to a lodging at the seaside, without communicating this fact, and the children of the lodging-house keeper caught the infection, and two of them died. It was held that an action for damages at the suit of the lodging-house keeper was maintainable. Whether if there had been no knowledge on the part of the lodger the action could have been maintained, *query*.

It should be noticed that the person mentioned in clause (b) as suffering from an infectious disease may be a child or an adult. But the clause does not extend to a dead body, as to which see s. 74, *post*.

A medical man in practice in Tunbridge sent a patient who was suffering from scarlet fever to the fever hospital there with a certificate, directing him to walk in the middle of the road and not to talk to anyone, but in consequence of an alleged informality in the certificate, the patient was refused admission, whereupon the medical man walked with him through the streets of the town to the residence of the chairman of the local board, from whom after some delay he obtained an order for the man's admission to the hospital. He then returned with the patient to the police station to procure the ambulance to convey him thither. On an information against the medical man under this sub-section, the justices were of opinion that it was not proved before them that the medical man "had charge of" the patient, that he had not wilfully exposed the patient in any street or public place "without proper precaution," and that he had made the best use of the means at his disposal to prevent the spread of the fever, and they refused to convict him. It was held that the justices were right (*Tunbridge Wells Local Board* v. *Bisshopp* (1877), 2 C. P. D. 187).

As to the recovery of the fine, see s. 117, *post*.

In *Malloch* v. *Hunter* (1894), 21 Ct. of Sess. Cas. (4th ser.), (J. C.) 22; 31 Sc. L. R. 332; Adam's Just. Rep. 335, a medical practitioner was charged with contravening the corresponding section (s. 149) of the Public Health (Scotland) Act, 1867, in so far as he, being the person in charge of A. B., a person suffering from enteric fever, being an infectious disorder, did wilfully expose him while so suffering by placing him in a cab and conveying him from his lodgings to a hospital without taking proper precautions against spreading the disorder. The cab being a public conveyance was furnished with leather fittings, but there was no evidence as to what other precautions were necessary. The magistrate convicted the accused:—*Held*, on appeal, (1) that there was no offence committed unless the patient was conveyed without proper precautions; (2) that the onus lay on the prosecutor to

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prove that precautions were necessary and that they had not been used; (3) that as the prosecutor had failed to discharge this onus, the conviction must be quashed.

Where a child was discharged from a hospital belonging to a sanitary authority before it had completely recovered from scarlet fever whereby other children of the same family became infected, the child's father recovered damages in the county court from the sanitary authority (*Keegan* v. *Birmingham* (*Mayor, etc. of*) (1896), 18 M. C. C. 170; Times, March 14th, 1896).

An infant who was treated for scarlet fever in a hospital carried on by a city corporation was discharged while still in an infectious state, and communicated the disease to his brothers. In accordance with the rules of the hospital, the boy was discharged by the matron, under the instructions of the visiting physician, who was a competent medical man. In an action for damages by the father the jury found that there was a want of due skill and care in the discharge of the boy, and that there was an undertaking by the corporation to the father that their visiting physician should act with reasonable skill and care in treating the boy:—*Held*, that there was no evidence upon which the jury could find that such an undertaking existed. The obligation taken by a local authority carrying on the business of a hospital is only that they will carry it on with all reasonable skill and care, and that patients while in their hospital shall receive competent medical advice and assistance (*Evans* v. *Liverpool Corporation*, [1906] 1 K. B. 160; 69 J. P. 263; 74 L. J. K. B. 742; 21 T. L. R. 558; 3 L. G. R. 868).

(*b*) The sanitary authority are bound to provide means of removing infected articles for the purpose of disinfection. See s. 59, *ante*, p. 142. There is, therefore, no excuse for failing to take proper precautions.

Prohibition on infected person carrying on business.

69. A person who knows himself to be suffering from a dangerous infectious disease shall not milk any animal or pick fruit, and shall not engage in any occupation connected with food or carry on any trade or business in such a manner as to be likely to spread the infectious disease, and if he does so he shall be liable to a fine not exceeding ten pounds.

This is a new and most useful provision.

As to the recovery of the fine, see s. 117, *post*.

Prohibition on conveyance of infected person in public conveyance.

70. It shall not be lawful for any owner or driver of a public conveyance knowingly to convey, or for any other person knowingly to place, in any public conveyance, a person suffering from any dangerous infectious disease, or

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for a person suffering from any such disease to enter any public conveyance, and if he does so he shall be liable to a fine not exceeding ten pounds ; and, if any person so suffering is conveyed in any public conveyance, the owner or driver thereof, as soon as it comes to his knowledge, shall give notice to the sanitary authority, and shall cause such conveyance to be disinfected, and if he fails so to do, he shall be liable to a fine not exceeding five pounds, and the owner or driver of such conveyance shall be entitled to recover in a summary manner from the person so conveyed by him, or from the person causing that person to be so conveyed, a sum sufficient to cover any loss and expense incurred by him in connection with such disinfection. It shall be the duty of the sanitary authority, when so requested by the owner or driver of such public conveyance, to provide for the disinfection of the same, and they may do so free of charge.

This section is taken from 29 & 30 Vict. c. 90, ss. 25, 38 (now repealed).

The expression "public conveyance" will include a stage or hackney carriage. It seems doubtful whether it would apply to a carriage hired from a jobmaster, and it seems not to extend to a railway carriage. See, however, *Hawkins* v. *Edwards*, [1901] 2 K. B. 169 ; 65 J. P. 423 ; 70 L. J. K. B. 597 ; 49 W. R. 487.

The fines are recoverable under s. 117.

The sum which the driver may recover is recoverable in manner provided by the Summary Jurisdiction Acts (42 & 43 Vict. c. 49, s. 51 (3)).

The provision as to disinfection by the sanitary authority is new.

If a conveyance other than one which is within the meaning of this clause was used without notification by a person suffering from an infectious disease, the owner would probably be entitled to recover as damages the expenses of its disinfection on the principle of the decision in *Best* v. *Stapp* or *Staff*, *ante*, p. 155.

Inspection of dairies, and power to prohibit supply of milk.

71.—(1) If the medical officer of health of any district has evidence that any person in the district is suffering from a dangerous infectious disease (*a*) attributable to milk supplied within the district from any dairy (*b*) situate within or without the district, or that the consumption of milk from such dairy is likely to cause any such infectious

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disease to any person residing in the district, such medical officer shall, if authorised by an order of a justice having jurisdiction in the place where the dairy is situate (*c*), have power to inspect the dairy, and if accompanied by a veterinary inspector (*d*) or some other properly qualified veterinary surgeon (*e*) to inspect the animals therein ; and, if on such inspection the medical officer of health is of opinion that any such infectious disease is caused from consumption of the milk supplied therefrom, he shall report thereon to the sanitary authority, and his report shall be accompanied by any report furnished to him by the said veterinary inspector or veterinary surgeon, and the sanitary authority may thereupon serve on the dairyman (*b*) notice to appear before them within such time, not less than twenty-four hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk therefrom within the district until the order has been withdrawn by the sanitary authority.

(2) The sanitary authority, if in their opinion he fails to show such cause, may make the said order, and shall forthwith serve notice of the facts on the county council of the county in which the dairy is situate, and on the Local Government Board, and, if the dairy is situate within the district of another sanitary authority, on such authority (*f*).

(3) The said order shall be forthwith withdrawn on the sanitary authority or their medical officer of health on their behalf being satisfied that the milk supply has been changed, or that the cause of the infection has been removed (*g*).

(4) If any person refuses to permit the medical officer of health, on the production of a justice's order under this section, to inspect any dairy, or if so accompanied as aforesaid to inspect the animals kept there, or, after any such order has been made, supplies any milk within the district in contravention of the order, or sells it for consumption therein, he shall, on the information of the sanitary authority, be liable to a fine not exceeding five

pounds, and, if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence continues (*h*).

(5) Provided that—

(a) Proceedings in respect of the offence shall be taken before a court having jurisdiction in the place where the dairy is situate (*i*), and

(b) A dairyman shall not be liable to an action for breach of contract if the breach be due to an order under this section (*j*).

(6) Proceedings may be taken under this section in respect of a dairy situate in the district of a local authority under the Public Health Acts, and the notice of the facts shall be served on the local authority as if they were a sanitary authority within the meaning of this Act (*k*).

(7) Nothing in or done under this section shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, or this Act, or of any Order, licence, or act of the Board of Agriculture or the Local Government Board thereunder, or of any order, byelaw, regulation, licence, or act of a local authority made, granted, or done under any such Order of the Board of Agriculture or the Local Government Board, or exempt any dairy, building, or thing or any person from the provisions of any general Act relating to dairies, milk, or animals (*l*).

This section is taken from 53 & 54 Vict. c. 34, ss. 4, 16, 18, 24.

(*a*) For the meaning of the expression "dangerous infectious disease," see s. 58, *ante*, p. 142.

(*b*) Section 141, *post*, defines the expression "dairy" as including any farm, farmhouse, cowshed, milkstore, milkshop, or other place from which milk is supplied, or in which milk is kept for purposes of sale; and the expression "dairyman" as including any cowkeeper, purveyor of milk, or occupier of a dairy.

As to the liability of the proprietor of a dairy in respect of an outbreak of disease consequent on the contamination of milk sold by him, see *Frost* v. *Aylesbury Dairy Co., Limited*, [1905] 1 K. B. 608; 74 L. J. K. B. 386; 92 L. T. 527; 53 W. R. 354; 21 T. L. R. 300.

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(*c*) The dairy may be in another county, and the order must in that case be made by a justice of that county.

(*d*) The Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 59, provides that the expression "inspector of the Board of Agriculture," or "inspector of a local authority," means a person appointed to be an inspector for purposes of the Act, by the Privy Council or the Board of Agriculture, or by a local authority as the case may be; and "inspector" used alone, means such a person, by whichever authority appointed; "veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Board of Agriculture. This enactment seems to explain the term used in the text.

It may be mentioned that the local authorities for the purposes of the Diseases of Animals Acts are now, for each borough, not being a borough to which s. 39 of the Local Government Act, 1888, applies, that is a borough according to the census of 1881 having a population of less than 10,000, the borough council, for the residue of each administrative county, the county council, and in the city of London the corporation (57 & 58 Vict. c. 57, s. 3).

The London Government Act, 1899 (62 & 63 Vict. c. 14), s. 6 (4), provides that it shall be the duty of each borough council to enforce within their borough the byelaws and regulations for the time being in force with respect to dairies and milk, and with respect to slaughter-houses, knackers' yards, and offensive businesses, and for the purpose of performing this duty the borough council are to have the same powers of entry as they have in the case of slaughter-houses and knackers' yards, and if the council make default in performing this duty the provisions of the Public Health (London) Act, 1891, are to apply as if the default were a default under that Act. The borough council has also the power of registering dairymen under s. 5 (1) and Part I. of the Second Schedule of the London Government Act, 1899.

(*e*) This means a person whose name is on the register of members of the Royal College of Veterinary Surgeons (44 & 45 Vict. c. 62). See *Veterinary College* v. *Robinson*, [1892] 1 Q. B. 557; 56 J. P. 313; 61 L. J. M. C. 446; 66 L. T. (N.S.) 263; 40 W. R. 413; *Veterinary College* v. *Groves* (1893), 57 J. P. 505.

(*f*) The order will be one forbidding the dairyman to supply milk from the dairy in question within the district of the sanitary authority until such order shall be withdrawn. See sub-s. (1).

If the dairy is situated outside the district, the notice must be given not only to the county council of the county, but to the local authority of the district in which it is situated. In any case, notice must be given to the Local Government Board.

(*g*) The change in the milk supply will only be practicable in the case of a milk seller who buys the milk he sells.

If a medical officer is satisfied as above stated, the sanitary authority have no discretion, but must withdraw the order.

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(*h*) As to the recovery of these penalties, see s. 117, *post*.

(*i*) Thus, if the dairy were in Sussex, the proceedings in respect of the offence would have to be taken in that county, before justices of that county.

(*j*) The meaning of this proviso appears to be that if the dairyman is under a contract to supply milk within the district, and he is prevented from fulfilling his contract by an order under this section, he is not to be liable to pay damages for breach of contract.

(*k*) This sub-section is new. It may be doubted whether it was necessary, having regard to sub-ss. (1) and (2). It was probably introduced to avoid the doubt caused by the definition of a sanitary authority in s. 99, *post*.

(*l*) This sub-section is a reproduction of s. 24 of 53 & 54 Vict. c. 34, except that the Board of Agriculture and Fisheries is now substituted for the Privy Council, pursuant to 52 & 53 Vict. c. 30, and 3 Edw. 7, c. 31.

The Contagious Diseases (Animals) Act, 1886 (49 & 50 Vict. c. 32), s. 9, transferred from the Privy Council and the local authorities for the administration of the Contagious Diseases (Animals) Acts to the Local Government Board and the sanitary authorities throughout the country, to the corporation in the city, and to the county council in the county of London, the powers given to the former by 41 & 42 Vict. c. 74, s. 34, with reference to dairies, cowsheds and milkshops. All the other provisions of the Contagious Diseases (Animals) Acts, 1878 to 1886, are now repealed and replaced by the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), which has been amended by the Diseases of Animals Acts, 1896 (59 & 60 Vict. c. 15) and 1903 (3 Edw. 7, c. 43).

As to the Orders of the Local Government Board relating to dairies, and the powers of the local authority under this Act, see s. 28, *ante*, p. 74, and the notes thereto.

Additional powers with regard to the taking of samples of milk, and the examination of cows, in any dairy, whether within the county of London or outside it, were conferred upon the London County Council and the several sanitary authorities by the London County Council (General Powers) Acts, 1904, 1907 and 1908. See Appendix, *post*.

Prohibition of retention of dead body in certain cases.

72.—(1) A person shall not without the sanction in writing of the medical officer of health, or of a legally qualified medical practitioner, retain unburied for more than forty-eight hours elsewhere than in a room not used

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at the time as a dwelling-place, sleeping-place, or work-room, the body of any person who has died of any dangerous infectious disease (*a*).

(2) If a person acts in contravention of this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds (*b*).

(*a*) This sub-section is taken from 53 & 54 Vict. c. 34, s. 8, but it omits the words "elsewhere than in a public mortuary," after the word "unburied." It is obvious that the words now omitted were unnecessary.

The necessary written sanction may be given by the medical man who was in attendance on the deceased, and he may give it even if he thinks it may be dangerous to retain the body, as the sub-section does not require him to be satisfied that there is no danger. When the sanction is not given, the body may be removed to a mortuary under s. 89, *post*.

As to what is a dangerous infectious disease, see s. 58, *ante*, p. 142.

(*b*) As to the recovery of this penalty, see s. 117, *post*.

Body of person dying of infectious disease in hospital, etc. to be removed only for burial.

73.—(1) If a person dies in a hospital from any dangerous infectious disease, and the medical officer of health, or any legally qualified medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating such infectious disease, that the body be not removed from such hospital except for the purpose of being forthwith buried, it shall not be lawful for any person to remove the body except for that purpose; and the body when taken out of such hospital shall be forthwith taken direct to the place of burial, and there buried (*a*).

(2) If any person wilfully offends against this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds (*b*).

(3) Nothing in this section shall prevent the removal of a dead body from a hospital to a mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital (*c*).

(*a*) This provision is taken from 53 & 54 Vict. c. 34, s. 9.

The expression "hospital" is defined by s. 141, *post*. As to what is a dangerous infectious disease, see s. 55 (8), *ante*, p. 136, and s. 58, *ante*, p. 142.

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(*b*) As to the recovery of this penalty, see s. 117, *post*.

(*c*) See, as to mortuaries, ss. 88—93, *post*.

The mortuary is to be deemed part of the hospital for the purpose of preventing its removal, except for burial, as if it were a hospital within the meaning of sub-s. (1).

74. If—

Disinfection of public conveyances if used for carrying corpses.

(a) A person hires or uses a public conveyance (*a*) other than a hearse for conveying the body of a person who has died from any dangerous infectious disease, without previously notifying to the owner or driver of the conveyance that such person died from infectious disease, or

(b) The owner or driver does not, immediately after the conveyance has to his knowledge been used for conveying such body, provide for the disinfection of the conveyance,

he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds, and if the offence continues to a further fine not exceeding forty shillings for every day during which the offence continues.

(*a*) As to what is a public conveyance, see the note to s. 70, *ante*, p. 157.

This section is taken from 53 & 54 Vict. c. 34, s. 11. It supplies an omission in s. 126 of the Public Health Act, 1875.

As to the recovery of the penalty, see s. 117, *post*.

Hospitals and Ambulances.

Power of sanitary authority to provide hospitals.

75.—(1) Any sanitary authority may provide for the use of the inhabitants of their district hospitals, temporary or permanent, and for that purpose may—

(a) Themselves build such hospitals, or

(b) Contract for the use of any hospital or part of a hospital, or

(c) Enter into any agreement with any person having the management of any hospital for the reception

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of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on (*a*).

(2) Two or more sanitary authorities may combine in providing a common hospital (*b*).

(*a*) As to what is included in the expression "hospital," see s. 141, *post*.

This section is taken from 29 & 30 Vict. c. 90, s. 37 (now repealed), and corresponds to s. 131 of the Public Health Act, 1875.

It was held that under the corresponding section of the Public Health Act, 1875, a local authority might establish a hospital in another district without the consent of the local authority of that district (*Withington Local Board* v. *Manchester* (*Mayor, etc. of*), [1893] 2 Ch. 19 ; 57 J. P. 340 ; 62 L. J. Ch. 393 ; 68 L. T. (N.S.) 330 ; 41 W. R. 306). Compare the Scotch case of *Magistrates of Edinburgh* v. *Magistrates of Leith* (1896), 22 Ct. of Sess. Cas. (4th ser.) 383 ; 33 Sc. L. R. 285.

This section is permissive in terms. It does not create any duty or obligation on the part of the sanitary authority to provide hospitals. The statute will not, therefore, be any defence to an action against the sanitary authority, nor will it prevent the issuing of an injunction against them if they erect a hospital for infectious disease so as to be a nuisance to any person. This was so held with reference to a similar permissive provision in the Metropolitan Poor Act (30 Vict. c. 6), in *Managers of the Metropolitan Asylum District* v. *Hill and Others* (1881), 6 App. Cas. 193 ; 45 J. P. 664 ; 50 L. J. Q. B. 353 ; 44 L. T. (N.S.) 653 ; 27 W. R. 617. The principle of that case has since been approved in *Canadian Pacific Rail. Co.* v. *Parke*, [1899] A. C. 535 ; 68 L. J. P. C. 89 ; 81 L. T. (N.S.) 127 ; 48 W. R. 118. See also *Chapman* v. *Gillingham Urban District Council*, Times, March 28th, 1903 ; 35 M. C. C. 235.

With regard to hospitals for small-pox or fever patients, it has been questioned how far they could be erected in a town. In *Baines* v. *Baker* (1752), Amb. 159 ; 3 Atk. 750, the LORD CHANCELLOR refused an injunction to stay the erection of a small-pox hospital in Coldbath Fields, in London, and referred to a case of *R.* v. *Frewen*, where on indictment for a nuisance in erecting such a hospital in Sussex, the defendant was acquitted, and see *R.* v. *Sutton* (1767), 4 Burr. 1116. In *Managers of the Kensington Sick Asylum District* v. *Gunter* (not reported), WICKENS, V.-C., intimated an opinion in conformity with the previous decision. The rule in such cases seems to be that laid down by Lord BLACKBURN in *Managers of the Metropolitan Asylum District* v. *Hill*, *supra* : "To gather together in one spot patients suffering from infectious disease is lawful, but it must be under such guards as not to endanger the public health by communicating this infectious disease ; and, as it

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seems to me, so as not to produce injury to the rights of the owners of adjoining property by producing a nuisance to it." In a Scotch case, *Mutter* v. *Fyfe* (1848), 11 Ct. of Sess. Cas. (2nd ser.) 303, the Court of Session held that a cholera hospital was not necessarily a nuisance, and refused to restrain its erection.

In *Chambers* v. *Managers of the Metropolitan Asylum District* (1881), 25 Sol. J. 834, CAVE and KAY, JJ., granted an interlocutory injunction restraining the defendants until the trial of the action from sending any more small-pox patients into their Fulham hospital. The court appear to have acted upon evidence given to the effect that the hospital was a centre of contagion. An interim injunction was granted in a subsequent case restraining a sanitary authority from continuing a small-pox hospital, on the ground that there was an appreciable injury to the plaintiff's property (*Bendelow* v. *Wortley Union* (*Guardians of*) (1887), 57 L. J. Ch. 762 ; 57 L. T. (N.S.) 849 ; 36 W. R. 168). In *Fleet* v. *Managers of the Metropolitan Asylum District* (1884), 1 T. L. R. 80 ; 2 T. L. R. 361, the defendants had established within 685 yards of the plaintiff's house a small-pox camp. The plaintiff alleged that the health of the neighbourhood had been endangered by the camp, and that the camp was a nuisance, and claimed an injunction to restrain the defendants from maintaining it. PEARSON, J., held that the plaintiff had failed to prove that there was any danger to him or those residing upon his property, and that the action must be dismissed, and this decision was affirmed by the Court of Appeal. In the course of his judgment, COTTON, L.J., pointed out that it was for the plaintiffs to prove an appreciable injury to their property. And see *Saunders* v. *New Windsor* (*Mayor, etc. of*), Law Times, September 18th, 1886 ; *Matthews* v. *Sheffield* (*Mayor, etc. of*), Law Times, October 7th, 1887 ; *Garton* v. *Guildford, etc. Joint Hospital Board* (1895), 12 T. L. R. 54 ; *Harrop* v. *Ossett* (*Mayor, etc. of*), Times, March 23rd, 1898. The defendants proposed to establish a small-pox hospital on land of their own in an adjoining district within 240 yards of two public roads, within ninety yards of a much used part of a cemetery, and within 256 yards of the nearest residence. The plaintiff contended that what the defendants proposed to do amounted to a public nuisance as being dangerous to the health of the neighbourhood, and applied for an injunction. It was held that in the present state of science the plaintiff had failed to show that there was a probability that the apprehended danger would in fact ensue (*Att.-Gen.* v. *Manchester* (*Mayor, etc. of*), [1893] 2 Ch. 87 ; 57 J. P. 343 ; 62 L. J. Ch. 459 ; 61 L. T. (N.S.) 608 ; 41 W. R. 459 ; 9 T. L. R. 315 ; *Att.-Gen.* v. *Rathmines and Pembroke Joint Hospital Board*, [1904] 1 I. R. 161).

In a *quia timet* action to restrain the use of a building as a small-pox hospital, the plaintiffs, relying on evidence in support of the theory of aerial convection, and on the empirical opinions of experts founded upon other cases of small-pox hospitals, attempted to establish the proposition that all small-pox hospitals necessarily constituted a serious danger to the health of persons

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resident, working, or passing by within a certain radius of the hospital. The defendants called evidence to rebut both the contentions of the plaintiffs :—*Held*, that in the absence of a consensus of expert opinion upon the questions in dispute, the theory of aerial convection was not proven, and that the inference which the court was asked to draw from what had happened in other cases was destroyed by the negative instances adduced by the defendants, and that consequently the plaintiff's claim failed (*Att.-Gen.* v. *Nottingham Corporation*, [1904] 1 Ch. 673 ; 68 J. P. 125 ; 73 L. J. Ch. 512 ; 90 L. T. 308 ; 52 W. R. 281 ; 20 T. L. R. 257 ; 2 L. G. R. 698).

A reservation to the landlord, in an agreement under which land is let for farming purposes, of a right to sell portions of the land for " building sites " is confined to the sale of the land for the erection of dwelling-houses and the like, and does not extend to the sale to a local authority of a site for a small-pox hospital (*English* v. *Tynemouth Corporation* (1903), 67 J. P. 239 ; 1 L. G. R. 177).

Before contracting for the use of any building other than a hospital or part of a hospital, it may be well to inquire whether there is any covenant which prevents the use of the premises as a hospital. Such a covenant is of the essence of the contract as between lessor and lessee, and relief cannot be granted against a breach of it (*Macher* v. *Foundling Hospital* (1813), 1 Ves. & B. 188).

The use of premises for this purpose has been held to be a *business* where the patients made small payments according to their means (*Bramwell* v. *Lacy* (1879), 10 Ch. D. 691 ; 43 J. P. 446 ; 48 L. J. Ch. 339 ; 40 L. T. (N.S.) 361 ; 27 W. R. 463 ; *Portman* v. *Home Hospitals Association*, W. N. (1879), p. 196 ; *Harrison* v. *Good* (1871), L. R. 11 Eq. 338 ; *Tod Heatley* v. *Benham* (1888), 40 Ch. D. 80 ; 58 L. J. Ch. 83 ; 60 L. T. (N.S.) 241 ; 37 W. R. 38 ; 5 T. L. R. 9).

In *Pembroke* (*Earl of*) v. *Warren*, [1895] 1 I. R. 76, it was held (FITZGIBBON, L.J., diss.), that the establishment of a private hospital for medical and surgical cases, but not for infectious cases, in a house in Fitzwilliam Square, Dublin, was a breach of covenant against using the house for certain specified businesses, or any other offensive or noisy trade, business, or profession whatsoever. *Cf. Wanton* v. *Coppard*, [1899] 1 Ch. 92 ; 68 L. J. Ch. 8 ; 79 L. T. (N.S.) 467 ; 47 W. R. 72.

(*b*) The combination must be effected by agreement. With regard to the terms as to expenses, a convenient plan is for each authority to contribute a fixed proportion of establishment charges, and to share the other expenses in proportion to the number of patients sent from each district.

Recovery of costs of maintenance of non-infectious patient in hospital

76. Any expenses incurred by a sanitary authority in maintaining in a hospital (whether or not belonging to that authority) a patient who is not a pauper, and is

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not suffering from an infectious disease, shall be a simple contract debt due to the sanitary authority from that patient, or from any person liable by law to maintain him, but proceedings for its recovery shall not be commenced after the expiration of six months from the discharge of the patient, or if he dies in such hospital from the date of his death.

In order that the sanitary authority may be able to recover two conditions are imposed: (1) The patient must not be a pauper, *i.e.*, in receipt of relief; (2) he must not be suffering from an infectious disease. If he is suffering from such a disease the cost of his maintenance will fall upon the sanitary authority, even if he is not a pauper, except where he is ordered to be detained at the cost of the Metropolitan Asylum Managers under s. 67, *ante*, p. 153.

The debt will be recoverable in the county court. It seems doubtful whether it can be recovered summarily under s. 117, *post*.

Under 42 & 43 Vict. c. 54, s. 15, the debt was to be recovered from the patient or his representatives. Under the provision in the text it is to be recovered from any person liable by law to maintain him. It is not quite clear whether this refers to the common law liability or the liability under the poor law to maintain relatives unable to work. The distinction is important, for a son is not at common law liable to maintain his father, yet he is liable under 43 Eliz. c. 2, s. 7, if his father is unable to work.

Charitable guardians of children, such as the authorities of the Victoria Hospital for Children, are not "patients" within the meaning of the corresponding section of the Public Health Act, 1875, so as to be liable as such for the maintenance in a hospital of children sent there by them (*Farquhar* v. *Isle of Thanet Hospital Board* (1904), 68 J. P. 319; 2 L. G. R. 1310). As to the liability of guardians for the expenses of maintenance of pauper children sent from school, in a hospital, see *Barry and District Joint Hospital Board* v. *Chorlton Union* (1905), 70 J. P. 31; 4 L. G. R. 489.

Power to provide temporary supply of medicine.

77. Any sanitary authority may, with the sanction of the Local Government Board, themselves provide, or contract with any person to provide, a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

This section is taken from 31 & 32 Vict. c. 115, s. 10 (now repealed). It corresponds to s. 133 of the Public Health Act, 1875.

Diarrhœa mixture has occasionally been supplied in the borough of Bermondsey under this section.

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Provision of conveyance for infected persons.

78. A sanitary authority may provide and maintain carriages suitable for the conveyance of persons suffering from any infectious disease, and pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

This section replaces 23 & 24 Vict. c. 77, s. 12 (now repealed), and 29 & 30 Vict. c. 90, s. 24 (now repealed). It is in terms identical with s. 123 of the Public Health Act, 1875.

The Metropolitan Asylums Board had power to provide ambulances under 42 & 43 Vict. c. 54, s. 16. And by 52 & 53 Vict. c. 56, s. 6, the Board might allow their carriages to be used for the conveyance of persons suffering from any dangerous infectious disorder to and from hospitals and places other than asylums provided by them, and might make reasonable charges for that use. These provisions are re-enacted in the next section.

Power for Metropolitan Asylum Board to provide landing-places, vessels, ambulances, etc.

79.—(1) The Metropolitan Asylum Managers shall continue to maintain the wharves, landing-places, and approaches thereto heretofore provided by them, whether within or without London, and may use the same for the embarkation and landing of persons removed to or from any hospital belonging to the managers, and for any other purpose in relation thereto (*a*).

(2) The managers may also provide and maintain vessels for use in connection with the said wharves or landing-places, and with the hospitals of the managers, and also carriages suitable for the conveyance of persons suffering from any dangerous infectious disease, and shall cause the vessels and carriages to be from time to time properly cleansed and disinfected, and may provide and maintain such buildings and horses, and employ such persons, and do such other things as are necessary or proper for the purposes of such conveyance (*b*).

(3) The Metropolitan Asylum Managers may allow any of the said carriages with the necessary attendants to be also used for the conveyance of persons suffering from any dangerous infectious disease to and from hospitals and places other than hospitals provided by the managers, and may make a reasonable charge for that use (*c*).

(*a*) The Metropolitan Asylum Managers were required by 46 & 47 Vict. c. 35, s. 6, to provide on the banks of the river

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Thames, wharves or landing-places, not exceeding three in number, within the metropolis, and one wharf or landing-place beyond the metropolis, with convenient approaches thereto respectively, for the embarkation and landing of persons removed to or from any hospital ship, or hospital belonging to the managers, and for any other purpose in relation thereto. The 46 & 47 Vict. c. 35, is repealed by this Act, but the above section requires them to keep up the wharves, etc. already provided under the repealed statute.

(*b*) This sub-section re-enacts 42 & 43 Vict. c. 54, s. 16 (now repealed), and 52 & 53 Vict. c. 56, s. 6 (now repealed). As to the expenses of the managers for purposes of this section, see s. 104, *post*.

As to the meaning of the terms "vessel" and "hospital," see s. 141, *post*.

(*c*) This sub-section is taken from 52 & 53 Vict. c. 56, s. 6 (now repealed). See s. 78, and the note thereto, *ante*, p. 168.

Reception of non-pauper fever and small-pox patients into hospital in metropolitan district.

80.—(1) The Metropolitan Asylum Managers, subject to such regulations and restrictions as the Local Government Board prescribe, may admit any person, who is not a pauper, and is reasonably believed to be suffering from fever or small-pox or diphtheria, into a hospital provided by the managers (*a*).

(2) The expenses incurred by the managers for the maintenance of any such person shall be paid by the board of guardians of the poor law union from which he is received.

(3) The said expenses shall be repaid to the board of guardians out of the Metropolitan Common Poor Fund (*b*).

(4) The admission of a person suffering from an infectious disease into any hospital provided by the Metropolitan Asylum Managers, or the maintenance of any such person therein, shall not be considered to be parochial relief, alms, or charitable allowance to any person, or to the parent or husband of any person; nor shall any person or his or her parent or husband be by reason thereof deprived of any right or privilege, or be subjected to any disability or disqualification (*c*).

(*a*) This sub-section is a re-enactment of 52 & 53 Vict. c. 56, s. 3 (now repealed). The hospitals provided by the managers were intended for the reception of the sick, insane, infirm, or other class or classes of the poor chargeable in unions and parishes in the metropolis. See 30 Vict. c. 6, s. 5. Under the provision in the text, a patient who is not a pauper may be admitted, if he is suffering from fever or small-pox or diphtheria.

As to the meaning of the term "hospital," see s. 141, *post*.

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As to the obligation upon a local authority under ss. 131 and 132 of the Public Health Act, 1875, to receive into their hospital all sick inhabitants of their district whether paupers or not, and as to the liability of guardians to pay for the maintenance of patients sent by them to such hospital, see *R.* v. *Rawtenstall (Mayor, etc. of)* (1894), 10 T. L. R. 643 ; 16 M. C. C. 421 ; *Banbury (Mayor, etc. of)* v. *Banbury Union* (1900), 22 M. C. C. 484 ; *Farquhar* v. *Isle of Thanet Hospital Board* (1904), 68 J. P. 319 ; 2 L.G.R. 1310 ; and see the cases cited in the note to s. 76, *ante*, p. 167.

(*b*) Under 52 & 53 Vict. c. 56, s. 3 (now repealed), the expenses were recoverable as a debt from the patient, or from any person liable by law to maintain him, but in so far as they were not recovered they were to be paid out of the Metropolitan Poor Fund. The patient and his relatives are no longer to be liable, and the entire expense must be paid out of that fund.

The Metropolitan Common Poor Fund is raised by contributions from the several unions, parishes, and places in the metropolis, assessed according to rateable value, upon precepts issued by the Local Government Board. The fund is paid to a receiver appointed by that Board, and it is applied to a variety of purposes, among which are the maintenance of patients in fever or small-pox asylums. The Acts relating to its establishment, application, etc., are : 30 Vict. c. 6, ss. 61—72 ; 31 & 32 Vict. c. 122, s. 11 ; 32 & 33 Vict. c. 63, ss. 18, 21 ; 33 & 34 Vict. c. 18, ss. 1, 2 ; 34 & 35 Vict. c. 15 ; 39 & 40 Vict. c. 61, s. 43 ; 39 & 40 Vict. c. 79, ss. 10, 16, 40, 43 ; 42 & 43 Vict. c. 54, s. 19 ; 61 & 62 Vict. c. 45, s. 1.

(*c*) This is a re-enactment of 46 & 47 Vict. c. 35, s. 7 (now repealed).

Reception into hospital in metropolitan district of child from school outside London.

81.—(1) Where the London School Board send any child to an industrial school which is provided by them outside London, such child shall for the purpose of the enactments relating to the Metropolitan Asylum Managers be deemed to continue to be an inhabitant of London, and if such child is sent to any hospital of those managers he shall be deemed to have been sent from that place in London from which he was sent to the said industrial school (*a*).

(2) This section shall apply to that part of London which is not within the Metropolitan Asylum district as if it were within that district, and the board of guardians of the poor law union comprising that part shall pay for such child accordingly (*b*).

The London School Board ceased to exist on the coming into operation of the Education (London) Act, 1903, and its powers and

duties passed to the London County Council, which is now the local education authority for the administrative county of London.

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(*a*) The guardians of the place in London from which the child was sent to the school must, therefore, pay for his maintenance while in the hospital under s. 80 (2), *ante*, p. 169, and if the child is detained in the hospital under s. 69, the expenses of maintenance must be defrayed by the managers.

(*b*) "London" means the administrative county of London. See s. 141, *post*. For full information as to the unions and parishes comprised in the Metropolitan Asylum district, the reader is referred to Macmorran and Lushington's Poor Law General Orders, 2nd edition, p. 1063.

Prevention of Epidemic Diseases.

Sanitary authority to execute epidemic regulations. 38 & 39 Vict. c. 55.

82.—(1) The sanitary authority of any district within which or part of which regulations issued by the Local Government Board, in pursuance of section one hundred and thirty-four of the Public Health Act, 1875, set out in the First Schedule to this Act (in this Act referred to as the epidemic regulations) are in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating any disease to which the regulations relate, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require (*a*).

(2) The sanitary authority may direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation (*b*).

(3) The sanitary authority shall have power to enter on any premises or vessel for the purpose of executing or superintending the execution of any of the epidemic regulations (*c*).

(*a*) See s. 134 of the Public Health Act, 1875, as applied by s. 113, and see Sched. 1, *post*.

The foregoing sub-section is taken from the Diseases Prevention Act, 1855 (18 & 19 Vict. c. 116), s. 8 (now repealed). It corresponds with s. 136 of the Public Health Act, 1875.

The Public Health Act, 1896 (59 & 60 Vict. c. 19), repealed s. 130 of the Public Health Act, 1875, from "any person wilfully" to the end of the section, and in Part III. of Sched. V. the

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words re-enacting 29 & 30 Vict. c. 90, ss. 51, 52, also so much of the Public Health (London) Act, 1891, as extended or applied any provision of the Public Health Acts which is repealed by the 1896 Act, and in particular the second paragraph of s. 130 of the Public Health Act, 1875, and the whole of s. 2 of the Public Health Act, 1889, as set out in the First Schedule to the Act.

The Public Health Act, 1896, s. 1, provides as follows :

Amendment of 38 & 39 Vict. c. 55, ss. 130, 134, as to regulations with respect to disease.

(1) Regulations of the Local Government Board made in pursuance of section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875, or in pursuance of either of those sections, as extended to London by the Public Health (London) Act, 1891, may provide for such regulations being enforced and executed by the officers of customs and the officers and men employed in the coastguard as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by those sections may provide for—

(a) the signals to be hoisted by vessels having any case of epidemic, endemic, or infectious disease on board ; and

(b) the questions to be answered by masters, pilots, and other persons on board any vessel as to cases of such disease on board during the voyage or on the arrival of the vessel ; and

(c) the detention of vessels and of persons on board vessels ; and

(d) the duties to be performed in cases of such disease by masters, pilots, and other persons on board vessels.

(2) Provided that the regulations shall be subject to the consent—

(a) so far as they apply to the officers of Customs, of the Commissioners of her Majesty's Customs ; and

(b) so far as they apply to officers or men employed in the coastguard, of the Admiralty ; and

(c) so far as they apply to signals, of the Board of Trade.

(3) If any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875, or in pursuance of either of those sections as extended to London by the Public Health (London) Act, 1891, and as amended by this Act, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues ; and any such penalty, if not recovered under the provisions of the Acts relating to public health, shall be recoverable by action on behalf of the Crown in the High Court.

See the "Epidemic Regulations : Notification of Cases of Plague," issued by the Local Government Board on September 19th, 1900 (Stat. R. & O., 1900, p. 774).

Section 13 of the London County Council (General Powers) Act, 1893, provides that "the Local Government Board may assign to the council any powers and duties under the epidemic regulations made in pursuance of section 134 of the Public Health Act, 1875, which they may deem it desirable should be exercised and performed by the council. If the Local Government Board are of opinion that any sanitary authority in whose default the council have power to proceed and act under the Public Health (London) Act, 1891, is making or is likely to make default in the execution of the said regulations they may by Order assign to the council for such time as may be specified in the Order such powers and

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duties of the sanitary authority under the regulations as they may think fit. Where any such Order has been made the expenses incurred by the council in pursuance of the Order shall be recoverable from the sanitary authority in manner provided by sub-section (3) of section 101 of the Public Health (London) Act, 1891."

The provisions of ss. 130 and 134 of the Public Health Act, 1875, are set out in the First Schedule to this Act, and the provisions of the Public Health Act, 1904, and the Public Health (Regulations as to Food) Act, 1907, appear in the Appendix, *post*, with notes thereto.

(*b*) This sub-section is taken from 18 & 19 Vict. c. 116, s. 9 (now repealed).

(*c*) This sub-section is taken from 18 & 19 Vict. c. 116, s. 4 (now repealed), and corresponds to s. 137 of the Public Health Act, 1875.

See s. 115, *post*, which contains general provisions as to entry and the means of enforcing it, and the notes thereto.

The expressions "premises" and "vessel" are defined in s. 141, *post*.

Poor law medical officers entitled to costs of attendance on board vessels.

83.—(1) Whenever, in compliance with the epidemic regulations, any poor law medical officer performs any medical service on board any vessel, he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the poor law union for which he is appointed; and such charges shall be paid by the master of the vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick (*a*).

(2) Where such service is rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charge for the service with extra remuneration on account of distance, at the rate which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, and such charge shall be paid as aforesaid. Any dispute in respect of such charge may, where the charges do not exceed twenty pounds, be determined by a petty sessional court; and that court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made (*b*).

(*a*) This section is taken from 18 & 19 Vict. c. 116, s. 12 (now repealed), and corresponds to s. 138 of the Public Health Act, 1875.

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The expression "master" means the master or other person in charge of the vessel, and for the meaning of the expression "vessel," see s. 141, *post*.

(*b*) It is very unlikely that the charges will ever exceed £20 in any one case; but if they did any dispute as to them could only be determined in an action.

The expression "petty sessional court" is explained in note (*h*) to s. 5, *ante*, p. 28.

Local Government Board may combine sanitary authorities.

84. The Local Government Board may, if they think fit, by Order authorise or require any two or more sanitary authorities to act together for the purposes of the epidemic regulations and prescribe the mode of such joint action, and of defraying the cost thereof, and generally may make any regulations necessary or proper for carrying into execution this section.

This section takes the place of 29 & 30 Vict. c. 90, s. 40, and corresponds to s. 139 of the Public Health Act, 1875.

Metropolitan Asylum Managers a sanitary authority for prevention of epidemic diseases.

85.—(1) The Metropolitan Asylum Managers shall within their district have for the purpose of the epidemic regulations such powers and duties of a sanitary authority as may be assigned to them by the regulations; and the Local Government Board may make regulations for that purpose and thereby provide for the adjustment of the functions of the managers relatively to those of any sanitary authorities (*a*).

(2) Subject to such regulations the Metropolitan Asylum Managers may use any of their property, real or personal, and their staff, for the execution of any powers or duties conferred or imposed on them under this section (*b*).

(*a*) This sub-section is taken from 46 & 47 Vict. c. 35, s. 10 (now repealed).

See, for example, the Regulations relating to plague in the Order of the Local Government Board, dated September 19th, 1900 (Stat. R. & O., 1900, p. 774), and the Public Health (Tuberculosis) Regulations Order, December 18th, 1908 (Stat. R. & O., 1908, p. 779).

(*b*) This sub-section is taken from 46 & 47 Vict. c. 35, s. 2 (now repealed).

Power to let hospitals, etc.

86. Any authority or body of persons having the management and control of any hospital, infirmary,

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asylum, or workhouse may let the same or any part thereof to the Metropolitan Asylum Managers, and enter into and carry into effect contracts with those managers for the reception, treatment, and maintenance therein of persons suffering from cholera or choleraic diarrhœa within the district of the managers:

Provided that the power conferred by this section shall not, without the consent of the Local Government Board, be exercised with respect to any asylum under the Metropolitan Poor Act, 1867, or any workhouse. 30 & 31 Vict. c. 6.

This section is simply a re-enactment of 46 & 47 Vict. c. 35, s. 3 (now repealed).

The expression "hospital" is defined by s. 141, *post*.

87. The amount expended in pursuance of the epidemic regulations by any sanitary authority in providing any building for the reception of patients or other persons shall, to such extent as may be determined by the Local Government Board, together with two-thirds of the salaries or remuneration of any officers or servants employed in any such building under this Act, be repaid to such sanitary authority from the Metropolitan Common Poor Fund by the receiver of that fund, out of any moneys for the time being in his hands, on the precept of the said Board, to be issued after the production of such evidence in support of the expenditure as they may deem satisfactory, and the said Board may require contributions for the purpose of raising the sums so repayable. Repayment to sanitary authorities of certain expenses.

As to the Metropolitan Common Poor Fund, the receiver, etc., see the note to s. 80, *ante*, p. 169.

Mortuaries, etc.

88. Every sanitary authority shall provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make byelaws with respect to the management and charges for the use of the same; they may also provide for the decent Power of local authority to provide mortuaries.

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and economical interment, at charges to be fixed by such byelaws, of any dead body received into a mortuary.

Under 29 & 30 Vict. c. 90, s. 27, the power to provide a mortuary was permissive. The text imposes an obligation on the sanitary authority, and such obligation may be enforced in manner provided by ss. 100, 101, *post*.

As to the making of byelaws, see s. 114, *post*. Byelaws based upon the model series of byelaws relating to mortuaries are in force in the following boroughs, viz., Battersea, Bermondsey, Camberwell, Finsbury, Greenwich, Islington, Marylebone, Paddington, St. Pancras, Shoreditch, Stepney, Stoke Newington, Wandsworth, Westminster, and Woolwich.

See the notes to s. 105 (1), *post*.

Sanitary authorities may combine to provide a mortuary under s. 91, *post*.

As to the removal of dead bodies to a mortuary, see the next section.

Power of justice in certain cases to order removal of dead body to mortuary.

89.—(1) Where either—

(a) The body of a person who has died of any infectious disease is retained in a room in which persons live or sleep ; or

(b) The body of a person who has died of any dangerous infectious disease is retained without the sanction of the medical officer of health or any legally qualified medical practitioner for more than forty-eight hours, elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or workroom ; or

(c) Any dead body is retained in any house or room, so as to endanger the health of the inmates thereof, or of any adjoining or neighbouring house or building,

a justice may, on a certificate signed by a medical officer of health or other legally qualified medical practitioner, direct that the body be removed, at the cost of the sanitary authority, to any available mortuary, and be buried within the time limited by the justice ; and may if it is the body of a person who has died of an infectious disease, or if he considers immediate burial necessary, direct that the

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body be buried immediately, without removal to the mortuary (*a*).

(2) Unless the friends or relations of the deceased undertake to bury and do bury the body within the time so limited, it shall be the duty of the relieving officer to bury such body, and any expense so incurred shall be paid (in the first instance) by the board of guardians of the poor law union, but may be recovered by them in a summary manner from any person legally liable to pay the expense of such burial (*b*).

(3) If any person obstructs the execution of any direction given by a justice under this section, he shall be liable to a fine not exceeding five pounds (*c*).

(*a*) Clause (a) is taken from 29 & 30 Vict. c. 90, s. 27 (now repealed). Clause (b) is taken from 53 & 54 Vict. c. 34, s. 10. Clause (c) is taken from 29 & 30 Vict. c. 90, s. 27 ; but the concluding words "or of any adjoining or neighbouring house or building," are taken from 53 & 54 Vict. c. 34, s. 10. The rest of the section is taken from both Acts with slight amendments.

It is worthy of notice that clause (a) relates to any infectious disease, while clause (b) relates only to a dangerous infectious disease, an expression defined by s. 58, *ante*, p. 142. Clause (c) relates to any dead body.

The body of a person who has died of a dangerous infectious disease may be retained with the sanction of a medical practitioner or of the medical officer of health, in a room used as a dwelling-place, etc. See s. 72, *ante*, p. 161.

The concluding words, "without removal to the mortuary," are new.

(*b*) This sub-section is taken from 53 & 54 Vict. c. 34, s. 10.

The person in whose house the dead body lies is bound by common law to inter the body decently (*R.* v. *Price* (1884), 12 Q. B. D., at p. 252). On this ground it was held that the authorities of a public hospital, and not the guardians, were liable to bury a person who had died in the hospital (*R.* v. *Stewart* (1840), 12 A. & E. 773 ; 10 L. J. M. C. 40). An executor is liable to pay funeral expenses (*Brice* v. *Wilson*, cited in *Green* v. *Salmon* (1838), 8 A. & E. 348 ; *Rogers* v. *Price* (1829), 3 Y. & J. 28). A husband is liable for the expenses of burying his wife (*Jenkins* v. *Tucker* (1788), 1 H. Bl. 91 ; *Ambrose* v. *Kerrison* (1851), 10 C. B. 776 ; 20 L. J. C. P. 135 ; *Bradshaw* v. *Beard* (1862), 12 C. B. (N.S.) 344 ; and see *In re McMyn*, *Lightbown* v. *McMyn* (1886). 33 Ch. D. 575 ; 55 L. J. Ch. 845 ; 55 L. T. (N.S.) 834 ; 35 W. R. 179). A parent is bound to provide for the burial of his child if he has the means, but not if he has no means, nor is

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he bound to apply for relief by way of loan from the guardians to enable him to do so (*R.* v. *Vann* (1851), 21 L. J. M. C. 39 ; 15 Jur. 1090 ; 2 Den. C. C. 325).

(*c*) As to the recovery of this penalty, see s. 117, *post*.

Power of sanitary authority to provide places for *post mortem* examinations.

90.—(1) Any sanitary authority may, and if required by the county council shall, provide and maintain a proper building (otherwise than at a workhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such building (*a*).

(2) Any such building may be provided in connection with a mortuary, but this enactment shall not authorise the conducting of any post-mortem examination in a mortuary (*b*).

(*a*) This sub-section is taken from 29 & 30 Vict. c. 90, s. 28 (now repealed), and corresponds to s. 143 of the Public Health Act, 1875.

The sanitary authority may make regulations for the management of the building. These regulations do not require confirmation like byelaws.

The sanitary authority may borrow money to provide a *post-mortem* room. See s. 105, *post*.

The Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 24, provides that when a place has been provided by a sanitary authority for the reception of dead bodies during the time required to conduct a *post-mortem* examination, the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest.

As to fees to the honorary medical officer of a cottage hospital in which the deceased, being an inhabitant of the district, was a patient, see *Horner* v. *Lewis* (1898), 62 J. P. 345 ; 67 L. J. Q. B. 524 ; 78 L. T. (N.S.) 792.

(*b*) The repealed Act provided that the *post-mortem* room should not be at a mortuary-house. The provision in the text is an obvious improvement.

Power to sanitary authorities to unite for providing mortuary.

91. Any sanitary authorities may, with the approval of the county council, execute their duty under this Act with respect to mortuaries and buildings for post-mortem examinations by combining for the purpose thereof, or by

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contracting for the use by one of the contracting authorities of any such mortuary or building provided by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

This provision is new. Two or more authorities may agree to provide a common mortuary or *post-mortem* room. The agreement may provide for the share of the cost to be contributed by each for the building and its maintenance, or one sanitary authority may provide the mortuary, etc., and permit its use by another at such charges as may be agreed upon.

Place for holding inquests.

92. The county council shall provide and maintain proper accommodation for the holding of inquests, and may by agreement with a sanitary authority provide and maintain the same in connection with a mortuary or a building for post-mortem examinations provided by that authority, or with any building belonging to that authority, and may do so on such terms as may be agreed on with the authority.

This is a new provision. It should be observed that the section is imperative.

It will be convenient to have the place for holding inquests in connection with or very near the mortuary.

See the note to s. 105 as to borrowing money for this purpose.

The provisions of this Act were extended by s. 50 of the London County Council (General Powers) Act, 1897, which provides that "section 92 of the Public Health (London) Act 1891 shall be deemed to have authorised and shall authorise sanitary authorities upon such terms as may be agreed upon between such sanitary authorities and the council to provide and maintain accommodation for the holding of inquests in connection with a mortuary or other building belonging to such sanitary authority."

Mortuary for unidentified bodies.

93.—(1) (*a*) The county council may provide and fit up in London one or two suitable buildings to which dead bodies found in London and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may on the order of a coroner be removed, and in which they may be retained and preserved with a view to the ultimate identification of such dead bodies.

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(2) A Secretary of State (*b*) may make regulations as to—

(a) The manner in which and conditions subject to which any such bodies shall be removed to any such building, and the payments to be made at such building to persons bringing any unidentified dead body for reception ; and

(b) The fees and charges to be paid upon the removal or interment of any such dead body which has been identified after its reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same ; and

(c) The disposal and interment of any such bodies.

(3) The county council may provide at the said buildings all such appliances as they think expedient for the reception and preservation of bodies, and may make regulations (subject to the provisions aforesaid) as to the management of the said buildings and the bodies therein, and as to the conduct of persons employed therein or resorting thereto for the purpose of identifying any body (*c*).

(4) Subject to and in accordance with such regulations as may be made by a Secretary of State, any such body found in London may (on the order in writing of a coroner holding or having jurisdiction to hold the inquest on the same) be removed to any building provided under this section, and subject as aforesaid the inquest on any such body shall be held by the same coroner and in the same manner as if the said building were within the district of such coroner (*d*).

(*a*) This section replaces s. 22 of the London Council (General Powers) Act, 1890 (53 & 54 Vict. c. ccxliii). No such building as is mentioned in the section has yet been provided.

(*b*) There is no definition in this Act of the expression "Secretary of State." It usually is defined to mean one of his Majesty's Principal Secretaries of State, and practically means the Home Secretary.

(*c*) These regulations are not byelaws, and do not require confirmation.

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The provisions referred to are the regulations made by the Secretary of State under sub-s. (2).

(*d*) This provision was necessary, for an inquest is held by the coroner of the district where the body is, and under this section a body might be moved from the district of one coroner to the district in which the building is situate.

No action has been taken by the London County Council or Secretary of State under this section.

Byelaws as to Houses Let in Lodgings (*a*).

Power of sanitary authority to make byelaws as to lodging-houses.

94.—(1) Every sanitary authority shall make and enforce such byelaws (*b*) as are requisite for the following matters ; (that is to say,)

(a) For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family, and for the separation of the sexes in a house so let or occupied (*c*) :

(b) For the registration of houses so let or occupied :

(c) For the inspection of such houses :

(d) For enforcing drainage for such houses, and for promoting cleanliness and ventilation in such houses (*d*) :

(e) For the cleansing and lime-washing at stated times of the premises :

(f) For the taking of precautions in case of any infectious disease (*e*).

14 & 15 Vict. c. 28. 16 & 17 Vict. c. 41.

(2) This section shall not apply to common lodging-houses within the Common Lodging-Houses Act, 1851, or any Act amending the same (*f*).

(*a*) This section replaces 29 & 30 Vict. c. 90, s. 35, and 37 & 38 Vict. c. 89, s. 47 (now repealed). It corresponds to s. 90 of the Public Health Act, 1875, as amended by 48 & 49 Vict. c. 72, s. 8. It differs in some particulars from all these enactments.

What are houses let in lodgings.

In recent decisions of the Court of Appeal a distinction has been drawn between houses which are let in separate tenements, the landlord retaining no control over the house ; and houses in which, though some or all of the rooms are let, the landlord resides personally or by an agent, or otherwise exercises some control. The tenants of the tenements in the former case were held not to be lodgers within the meaning of the Registration Acts (*Bradley* v. *Baylis* (1881), 8 Q. B. D. 194 ; 45 J. P. 847 ; 51 L. J. Q. B. 183 ; 46 L. T. (N.S.) 253 ; 30 W. R. 823 ; *Ancketill* v. *Baylis* (1882),

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10 Q. B. D. 577 ; 47 J. P. 356 ; 52 L. J. Q. B. 104 ; 48 L. T. (N.S.) 343 ; 31 W. R. 233). These decisions appear to be of general application, and, if so, they will limit the number of houses to which this section applies. In *Bradley* v. *Baylis* JESSEL, M.R., made the following observations : " First of all, take the case of a *lodger*. It seems to me, as to unfurnished lodgings (and I will only deal with unfurnished lodgings, as it is the only class of cases with reference to which questions are likely to arise), where the owner of the house does not let the whole of it, but retains a part of his own residence and resides there, and when he does not let out the passages, staircase, and outer door, but gives to the inmates merely a right of ingress and egress, and retains to himself the general control, with the right of interfering —I do not mean an actual interference, but a right to interfere, a right to turn out trespassers, and so on—there I consider such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the room, is a *lodger*. That is one extreme case. Now, I take another case, where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal ownership for the time demised and retains no control over the house ; there, in my opinion, the inmates are *occupying tenants*, and are capable of being rated as such. That is an extreme case on the other side. There will be an immense number of intermediate cases, which, as I said before, can only be dealt with as they arise. Take such a case as the first of those before us. Does it make any difference that the inmates have latch-keys to the outer door and also keys to the inner door ? I think not. Does it make any difference that the landlord does not reside there personally, but has resident servants who occupy on his behalf part of the house ? I think not. I think that the inmates are still *lodgers*. Does it make any difference that the landlord does or does not repair ; I think not ; they are still *lodgers*." See also *Phillips* v. *Henson* (1877), 3 C. P. D. 26 ; 42 J. P. 137 ; 47 L. J. C. P. 273 ; 37 L. T. (N.S.) 432 ; 26 W. R. 214 ; *Morton* v. *Palmer* (1882), 9 Q. B. D. 89 ; 46 J. P. 150 ; 51 L. J. Q. B. 307 ; 46 L. T. (N.S.) 285 ; 30 W. R. 115 ; *Ness* v. *Stephenson* (1882), 9 Q. B. D. 245 ; 47 J. P. 134. In the latter case it was held that if the landlord, reserving a room in a house, lets the rest of it to a person, but retains such control and dominion over it as is usually retained by masters of houses let in lodgings, the relation of landlord and lodger may exist between the parties within the meaning of the Lodgers Goods Protection Act, 1871 (34 & 35 Vict. c. 79), although the lodger has the right of exclusively occupying the greater part of the premises and has separate and uncontrolled power of ingress and egress, and neither the landlord nor his agent sleeps or resides in the house and his lodger acts as caretaker of the part reserved ; and that the existence of the relationship of landlord

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and lodger is a question of fact. In a recent case decided with reference to that Act, the appellant occupied the first floor and basement of premises at a yearly rent, carrying on the business of a publisher there, but sleeping and residing elsewhere. He had no key of the outer door, which was under the control of his immediate landlord, who admitted him every morning. It was held that he was not a lodger. A lodger in the popular sense of the word means one who sleeps on the premises (*Heawood* v. *Bone* (1884), 13 Q. B. D. 179 ; 48 J. P. 710 ; 51 L. T. (N.S.) 125).

Where an occupier is entitled to and has the sole and exclusive use and occupation of part of a house, the fact that his landlord is resident in the house does not exclude the occupier, other conditions being fulfilled, from the franchise as an inhabitant occupier, if the landlord retains no control over the part of the house. In other words, such a person may be an occupier as distinguished from a lodger (*Kent* v. *Fittall*, [1906] 1 K. B. 60 ; 69 J. P. 428 ; 75 L. J. K. B. 310 ; 94 L. T. (N.S.) 76 ; 54 W. R. 225 ; 22 T. L. R. 63 ; 4 L. G. R. 36). And see *Douglas* v. *Smith*, [1907] 2 K. B. 568 ; 71 J. P. 433 ; 76 L. J. K. B. 969 ; 96 L. T. 826 ; 23 T. L. R. 612 ; 5 L. G. R. 1004.

A block of artizans' dwellings where the landlord does not reside, and which is divided into tenements each of which is occupied by one family, is not a house "let in lodgings or occupied by members of more than one family" within the meaning of this section, and a sanitary authority has therefore no power to make byelaws for the regulation of such a building (*Weatheritt* v. *Cantlay*, [1901] 2 K. B. 285 ; 65 J. P. 644 ; 70 L. J. K. B. 799 ; 84 L. T. 768 ; 49 W. R. 568).

An ordinary six-roomed house, not specially constructed to be let in separate tenements, having one common internal staircase and one front door, each floor of which is let to and occupied by a separate family, the landlord living elsewhere, and only attending once a week to collect rents, is a house occupied by more than one family within the foregoing section (*Kyffin* v. *Simmons* (1903), 67 J. P. 227 ; 1 L. G. R. 381).

Seamen's lodging-houses

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 214, provides as follows :

(1) A local authority hereinafter mentioned whose district includes a seaport may, with the approval of the Board of Trade, make byelaws relating to seamen's lodging-houses in their district, and those byelaws shall be binding upon all persons keeping houses in which seamen are lodged and upon the owners thereof and persons employed therein.

(2) The byelaws shall amongst other things provide for the licensing, inspection, and sanitary conditions of seamen's lodging-houses, for the publication of the fact of a house being licensed, for the due execution of the byelaws, for preventing the obstruction of persons engaged in securing that execution, for the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and for the exclusion from licensed houses of persons of improper character, and shall impose sufficient fines not exceeding fifty pounds for the breach of any byelaw.

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(3) The byelaws shall come into force from a date therein named, and shall be published in the London Gazette and in one newspaper at the least circulating in the district, and designated by the Board of Trade.

(4) If the local authority do not within a time in each case named by the Board of Trade make, revoke, or alter, any byelaws under this section, the Board of Trade may do so.

(5) Whenever her Majesty in Council orders that in any district or any part thereof none but persons duly licensed in pursuance of byelaws under this section shall keep seamen's lodging-houses or let lodgings to seamen from a date therein named, a person acting in contravention of that order shall for each offence be liable to a fine not exceeding one hundred pounds.

(6) A local authority may defray all expenses incurred in the execution of this section out of any funds at their disposal as sanitary authority, and fines recovered for a contravention of this section or of any byelaw under this section shall be paid to such authority and added to those funds.

(7) In this section the expression "local authority" means in the administrative county of London the county council . . . and the expression "district" means the area under the authority of such local authority.

Byelaws under this Act have been made by the London County Council. These were approved by the Board of Trade on August 16th, 1901.

(*b*) As to the making of byelaws, see s. 114, *post*. The Local Government Board have issued model byelaws under the corresponding section of the Public Health Act, 1875. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 445. In the memorandum prefixed to these byelaws, it is stated that the Board have had regard to the judgment of GROVE, J., in *Langdon* v. *Broadbent* (1877), 42 J. P. 56 ; 37 L. T. (N.S.) 434, and have exempted from the operation of the byelaws certain houses let in lodgings, which, from their character, are not likely to require supervision. The memorandum states that the exemption clause consists of two sections, of which one relates to unfurnished, and the other to furnished lodgings. It assumes that all houses below a certain rateable value will, if let in lodgings or occupied by members of more than one family, be within the scope of the byelaws. In the case of houses of higher rateable value, the clause confers exemption if the rent of each lodger exceeds a certain minimum. It will rest with the local authority when framing byelaws upon the basis of the model series, to determine what limits of rateable value or rent the circumstances of their district may render it desirable to prescribe.

Byelaws based upon this model series are in force in the city of London, and in each of the metropolitan boroughs except Chelsea.

As to the reasonableness of a byelaw applying to houses let in lodgings, see *Roots* v. *Beaumont* (1886), 51 J. P. 197, cited in note (*c*), *infra*. A byelaw made by a metropolitan borough council under this section provided that the landlord of a lodging-house should in the first week of April in every year cause every part of the premises to be cleansed :—*Held*, that the byelaw was unreasonable and void, inasmuch as it did not provide for notice to be given to the landlord before the commencement of the proceedings (*Stiles* v. *Galinski*, [1904] 1 K. B. 615 ; 68 J. P. 183 ;

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73 L. J. K. B. 485 ; 90 L. T. 437 ; 52 W. R. 462 ; 20 T. L. R. 219 ; 2 L. G. R. 341).

A byelaw made by the London County Council under s. 39 of this Act is unreasonable and void if it does not provide for notice to the person complained against before the commencement of proceedings (*Nokes* v. *Islington Borough Council*, [1904] 1 K. B. 610 ; 68 J. P. 95 ; 73 L. J. K. B. 100 ; 90 L. T. 22 ; 52 W. R. 399 ; 20 T. L. R. 95 ; 2 L. G. R. 334).

A byelaw was made under this section in the following terms : "Subject to the provisions of these byelaws, the landlord of a lodging-house shall, in the month of April, May or June in every year, cause every part of the premises to be cleansed" ; and "landlord" was defined as meaning the person for the time being receiving the rack-rent of the lodging-house, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rack-rent. The appellant, who was the owner of a lodging-house which was let to a tenant, was convicted of having failed to comply with the byelaw as to cleansing the lodging-house. The appellant had no right to enter the premises :—*Held*, that the conviction must be quashed, as the byelaw was unreasonable, inasmuch as it required the landlord of the lodging-house to cause the work of cleansing to be done although he might not be able to do this without committing a trespass (*Arlidge* v. *Islington Borough Council*, [1909] 2 K. B. 127 ; 73 J. P. 301 ; 78 L. J. K. B. 553 ; 25 T. L. R. 470).

Prior to the passing of the Act nearly all the sanitary authorities in London had made regulations under s. 35 of the Sanitary Act, 1866, for which the provisions in the above section are now substituted, and these regulations were kept in force by s. 142 (2) (b) of the present Act. Where no such regulations are in force the sanitary authority must make byelaws under s. 94 (1).

(*c*) The provision for the separation of the sexes did not occur in 29 & 30 Vict. c. 90, s. 35, though it does occur in s. 90 of the Public Health Act, 1875. In the model series above mentioned the Local Government Board have deemed it inexpedient to provide for a variation of the number of occupants or for the separation of the sexes. The omission of the latter provision is due "to the doubt which the Board have entertained as to how far this desirable object can be practically attained, in view of the ordinary conditions of life in lodgings of the poorer class. When, however, the local authority are satisfied that a rule on this subject can be enforced without hardship, as, for instance, in cases where it is found that individual holdings in the lodging-houses of a district generally comprise two or more rooms, the Board will readily co-operate with the authority in framing a byelaw to provide for the separation of the sexes."

A byelaw made under the corresponding provisions of the Public Health Act, 1875, required certain particulars to be furnished to the local authority by the occupiers of houses let in lodgings or occupied by members of more than one family. The defendant was charged under this byelaw, and it was proved that she was

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the tenant of a house, subletting unfurnished rooms to one person and occupying the rest of the house herself. It was held on a case stated that the house was a lodging-house within the meaning of the byelaw, and that there was nothing unreasonable in a byelaw applying to such a house (*Roots* v. *Beaumont* (1886), 51 J. P. 197).

(*d*) The words of the repealed Act were "for enforcing therein the provision of privy accommodation, and other appliances and means of cleanliness in proportion to the number of lodgers and occupiers." Having regard to the powers conferred by this Act upon the sanitary authority with regard to the providing of water-closets, it seems to have been thought unnecessary to repeat that provision in the byelaws.

(*e*) This clause did not occur in 29 & 30 Vict. c. 90, s. 35 (now repealed), though it does occur in the Public Health Act, 1875, s. 90.

(*f*) The Common Lodging-Houses Acts (14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41) were repealed by the Public Health Act, 1875, except so far as relates to the metropolitan police district, and they are still in force in that district. The metropolitan police district, as provided by 10 Geo. 4, c. 44, ss. 4, 34, and extended by Orders in Council under 2 & 3 Vict. c. 47, s. 2, now includes the county of London exclusive of the city and its liberties, the county of Middlesex, the county boroughs of Croydon and West Ham, and certain parishes and places in the counties of Surrey, Kent, Herts, and Essex.

These Acts contain no definition of a common lodging-house. COCKBURN, L.C.J, and Lord HATHERLEY, when law officers of the Crown, advised the General Board of Health in 1853, thus: "It may be difficult to give a precise definition of the term 'common lodging-house'; but looking to the preamble and general provisions of the Act (14 & 15 Vict. c. 28), it appears to us to have reference to that class of lodging-house in which persons of the poorer class are received for short periods, and, *though strangers to one another*, are allowed to inhabit one common room. We are of opinion that it does not include hotels, inns, publichouses, or lodgings let to the upper and middle classes." They afterwards explained the passage as to strangers thus: "Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household." And they added that, in their opinion, "the period of letting is unimportant in determining whether a lodging-house comes under the Act now in question." In the memorandum prefixed to the model byelaws issued by the Local Government Board under s. 80 of the Public Health Act, 1875, it is stated that, so far as the foregoing definition of a common lodging-house rests upon the basis of the habitation of a common room by lodgers who are strangers to one another in the sense of not being members of one family or household, it may be inferred that this characteristic equally distinguishes the common lodging-houses to which this Act applies; and that such an inference receives support from the terms of s. 87 of that Act.

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In *Langdon* v. *Broadbent* (1877), 42 J. P. 56 ; 37 L. T. (N.S.) 434, it was held that a lodging-house where hawkers and persons of a similar class were received, staying for various periods, having their meals in one room and paying 6*d.* a night, was a lodging-house within the above section. Grove, J., said : "Each case must be decided on its own facts. There may be lodging-houses resorted to by a higher class of persons to which the term 'common lodging-house' would not be applicable. The case does not find whether the lodgers occupied separate sleeping apartments. But I do not think it is necessary to show that the lodgers are all herded together in order to bring the case within the statute. Even if a common room is necessary to constitute a common lodging-house, the evidence here shows that they all took their meals together." And see *Halligan* v *Ganly* (1868), 19 L. T. (N.S.) 268.

Section 3 of the Common Lodging-Houses Act, 1853, provides that a person shall not keep a common lodging-house or receive a lodger therein until the house has been inspected and approved for that purpose by some officer appointed in that behalf by the local authority and has been registered. The appellant opened and kept a lodging-house for the reception of male lodgers, who slept in one common room capable of accommodating 100 persons. The lodgers were charged, at the discretion of the manager, a sum not exceeding 4*d.* per night for bed, supper, and breakfast ; but the house was maintained, not for the purpose of gain, but for the accommodation of the poorest class of persons only, partly with a charitable and partly with a religious object. The house had not been inspected or approved by the officer of the local authority, nor was it registered. The appellant having been summoned and convicted for keeping a common lodging-house in contravention of the provisions of the above section, it was held that the house, being maintained as a charitable institution and not for purposes of gain, was not a common lodging-house within the meaning of the Act, and that the conviction could not be supported. Mathew, J., said : "A common lodging-house in its ordinary sense means a lodging-house kept by somebody for the purpose of profit, and open to all comers, whether of a certain class or not. It is to lodging-houses of that description that the legislature has confined itself. But this particular institution presents neither of these conditions" (*Booth* v. *Ferrett* (1890), 25 Q. B. D. 87 ; 55 J. P. 7 ; 59 L. J. M. C. 136 ; 6 T. L. R. 337).

This decision, which at one time was regarded as overruled by later cases, is again restored by the most recent decision. A common lodging-house is that class of lodging-house in which persons of the poorer class are received for short periods, and, although strangers to one another, are allowed to inhabit one common room, and the fact that such a house is not carried on as a business for the sake of profit, but as a humane and charitable enterprise, does not take it out of the measure of sanitary protection provided by the Acts, or prevent it being a common lodging-

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house within their meaning. The question is not, with what object, or prompted by what motive, the house is carried on, but whether the house is such, and is so carried on as a lodging-house, as to be within the provisions of the Acts (*Logsdon* v. *Booth*, [1900] 1 Q. B. 401 ; 64 J. P. 165 ; 69 L. J. Q. B. 1 ; 81 L. T. 602 ; 48 W. R. 266). The fact that separate sleeping accommodation by means of cubicles, the other rooms being used in common, is afforded to lodgers at charges above the ordinary rate paid in common lodging-houses at an institution promoted by benevolent persons for the benefit of a class of poor persons superior to the "dosser" class, does not render such institution any the less a "common lodging-house," nor exempt it from registration and inspection (*Logsdon* v. *Trotter*, [1900] 1 Q. B. 617 ; 64 J. P. 421 ; 69 L. J. Q. B. 312 ; 82 L. T. (N.S.) 151 ; 48 W. R. 365 ; 19 Cox C. C. 460).

The cases of *Logsdon* v. *Booth* and *Logsdon* v. *Trotter* were followed in *Gilbert* v. *Jones*, [1905] 2 K. B. 691 ; 69 J. P. 392 ; 74 L. J. K. B. 929 ; 93 L. T. (N.S.) 520 ; 54 W. R. 94 ; 21 T. L. R. 709 ; 3 L. G. R. 987. But all these must now be regarded as overruled by *Parker* v. *Talbot*, [1905] 2 Ch. 643 ; 75 L. J. Ch. 8 ; 93 L. T. (N.S.) 522 ; 54 W. R. 132 ; 22 T. L. R. 10. There it was held that, having regard to the definition of a common lodging-house in s. 3 of the Common Lodging-Houses (Ireland) Act, 1860, as a house in which persons are harboured or lodged for hire, etc., a house used for lodging persons of the poorest class, which is carried on as a charitable institution, without taking any payment from those admitted was not a common lodging-house.

By the County of London (Common Lodging-Houses) Order, 1894, which was confirmed by the Local Government Board's Provisional Orders (Confirmation) (No. 12) Act, 1894 (57 & 58 Vict. c. cxxiv), the powers, duties and liabilities of the Commissioner of Police of the metropolis, or of any Assistant Commissioner of Police of the metropolis, nominated by one of his Majesty's Principal Secretaries of State, as the local authority for executing within so much of the metropolitan police district as is comprised within the administrative county of London, the unrepealed provisions of the Common Lodging-Houses Act, 1851, and the Common Lodging-Houses Act, 1853, were transferred to the London County Council as from November 1st, 1894.

Tents and Vans.

Tents and vans used for human habitation.

95.—(1) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious or dangerous to health, or is so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, shall be a nuisance liable to be dealt with summarily under this Act (*a*).

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(2) A sanitary authority may make byelaws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same (*b*).

(3) Where any person duly authorised by a sanitary authority or by a justice has reasonable cause to suppose either—

(a) That any tent, van, shed, or similar structure used for human habitation is in such a state or so overcrowded as aforesaid, or that there is any contravention therein of any byelaw made under this section ; or

(b) That there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disease,

he may enter by day such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether such tent, van, shed, or structure is in such a state or so overcrowded as aforesaid, or whether there is therein any such contravention, or a person suffering from a dangerous infectious disease, and the provisions of this Act with respect to the entry into any premises by an officer of the sanitary authority shall apply to the entry by any person duly authorised as aforesaid (*c*).

(4) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of her Majesty's naval or military forces.

(*a*) This provision is similar to that contained in s. 9 of 48 & 49 Vict. c. 72, which applied to the metropolis. Its effect is to bring tents, vans, sheds, etc. used for human habitation within the nuisance sections of this Act (ss. 1—14), as if they were "premises" within the meaning of s. 2 (1), (a) and (e). It will, therefore, be the duty of the sanitary authority to include tents, vans, etc. in the inspection of the district, and to enforce the provisions of the Act as required by s. 1, *ante*, p. 1.

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(*b*) As to the making of these byelaws, see s. 114, *post*.

Byelaws based upon the Local Government Board's model series of byelaws are in force in Battersea, Stepney and Woolwich.

(*c*) For the meaning of the expression "dangerous infectious disease," see s. 55 (8), *ante*, p. 136, and s. 58, *ante*, p. 142.

"Day" means between 6 a.m. and 9 p.m. See s. 141, *post*.

The general provisions of this Act with respect to the entry into premises are contained in s. 115, *post*.

An injunction will be granted to restrain the letting of land to gipsies or persons dwelling in tents when it can be shown that such occupation of the land is dangerous to the health of the neighbourhood (*Att.-Gen.* v. *Stone* (1895), 60 J. P. 168). And see *Att.-Gen.* v. *Brown*, Times, July 23rd, 1898 ; 20 Mun. C. C. 374.

Underground Rooms.

Provisions as to the occupation of underground rooms as dwellings.

96.—(1) Any underground room (*a*), which was not let or occupied separately as a dwelling before the passing of this Act (*b*), shall not be so let or occupied unless it possesses the following requisites ; that is to say,

(a) Unless the room is in every part thereof at least seven feet high measured from the floor to the ceiling, and has at least three feet of its height above the surface of the street or ground adjoining or nearest to the room : Provided that, if the width of the area hereinafter mentioned is not less than the height of the room from the floor to the said surface of the street or ground, the height of the room above such surface may be less than three feet, but it shall not in any case be less than one foot, and the width of the area need not in any case be more than six feet (*c*) ;

(b) Unless every wall of the room is constructed with a proper damp course, and, if in contact with the soil, is effectually secured against dampness from that soil (*d*) ;

(c) Unless there is outside of and adjoining the room and extending along the entire frontage thereof and upwards from six inches below the level of the floor thereof an open area properly paved at

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least four feet wide in every part thereof (*e*) : Provided that in the area there may be placed steps necessary for access to the room, and over and across such area there may be steps necessary for access to any building above the underground room, if the steps in each case be so placed as not to be over or across any external window ;

(d) Unless the said area and the soil immediately below the room are effectually drained (*f*) ;

(e) Unless, if the room has a hollow floor, the space beneath it is sufficiently ventilated to the outer air (*g*) ;

(f) Unless any drain passing under the room is properly constructed of a gas-tight pipe (*g*) ;

(g) Unless the room is effectually secured against the rising of any effluvia or exhalation (*h*) ;

(h) Unless there is appurtenant to the room the use of a water-closet and a proper and sufficient ash-pit (*i*) ;

(i) Unless the room is effectually ventilated (*k*) ;

(j) Unless the room has a fire-place with a proper chimney or flue ;

(k) Unless the room has one or more windows opening directly into the external air with a total area clear of the sash frames equal to at least one-tenth of the floor area of the room, and so constructed that one half at least of each window of the room can be opened, and the opening in each case extends to the top of the window (*l*).

(2) If any person lets or occupies, or continues to let, or knowingly suffers to be occupied, any underground room contrary to this enactment, he shall be liable to a fine not exceeding twenty shillings for every day during which the room continues to be so let or occupied (*m*).

(3) The foregoing provisions shall at the expiration of six months after the commencement of this Act extend

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to underground rooms let or occupied separately as dwellings before the passing of this Act, except that the sanitary authority, either by general regulations providing for classes of underground rooms, or on the application of the owner of such room in any particular case, may dispense with or modify any of the said requisites which involve the structural alteration of the building, if they are of opinion that they can properly do so having due regard to the fitness of the room for human habitation, to the house accommodation in the district, and to the sanitary condition of the inhabitants and to other circumstances, but any requisite which was required before the passing of this Act shall not be so dispensed with or modified (*n*).

(4) The dispensations and modifications may be allowed either absolutely or for a limited time, and may be revoked and varied by the sanitary authority, and shall be recorded together with the reasons in the minutes of the sanitary authority.

(5) If the owner of any room feels aggrieved by a dispensation or modification not being allowed as regards that room, he may appeal to the Local Government Board, and that Board may refuse the dispensation or modification, or allow it wholly or partly, as if they were the sanitary authority. Such allowance may be revoked or varied by the Board, but not by the sanitary authority (*o*).

(6) Where two or more underground rooms are occupied together, and are not occupied in conjunction with any other room or rooms on any other floor of the same house, each of them shall be deemed to be separately occupied as a dwelling within the meaning of this section (*p*).

(7) Every underground room in which a person passes the night shall be deemed to be occupied as a dwelling within the meaning of this section ; and evidence giving rise to a probable presumption that some person passes the night in an underground room shall be evidence,

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until the contrary is proved, that such has been the case (*q*).

(8) Where it is shown that any person uses an underground room as a sleeping place, it shall, in any proceeding under this section, lie on the defendant to show that the room is not separately occupied as a dwelling (*r*).

(9) For the purpose of this section the expression "underground room" includes any room of a house the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room (*s*).

(*a*) See the definition of an underground room in sub-s. (9).

(*b*) This section replaces 18 & 19 Vict. c. 120, s. 103, and 25 & 26 Vict. c. 102, s. 62 (both now repealed), but with many alterations. Under these sections certain conditions were required in the case of a room or cellar which was or had been occupied separately as a dwelling before August 14th, 1855, and certain other conditions in the case of a room or cellar which was not, and had not been, so occupied before that date. Now, all underground rooms which were not let or occupied separately as dwellings before August 5th, 1891, must fulfil the conditions imposed by this section; and even those which were so let or occupied before that date became subject to these conditions after March 1st, 1892, except in so far as a dispensation or modification may be granted under sub-s. (3).

As to what amounts to occupation as a dwelling, see sub-s. (7).

In *Gowen* v. *Sedgwick* (1904), 68 J. P. 484, it was held that the owner of a new house, who had allowed it to be occupied by a caretaker rent free, could not be convicted on a summons charging him with having "let" the house in contravention of a byelaw.

(*c*) In the case of a room let before 1855 there was no provision as to the height of the room; but in the case of a room let after 1855 as a dwelling the height had to be seven feet, of which *one* only had to be above the surface of the footway of the nearest street. The proviso in the text is quite new.

(*d*) This requirement is quite new.

(*e*) The width of the area was formerly three feet only, and in the case of a room let before 1855 it might be at the front, back, or side. The provision as to paving is new. The proviso to this clause is unchanged.

(*f*) There was no provision for drainage in the case of a room let before 1855, and the text requires more than was formerly required of a room let after that year, in that the area as well as the soil below the room must now be drained.

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(*g*) This is a new requirement.

(*h*) This was formerly required in the case of a room let after 1855.

(*i*) This was formerly required in the case of a room let after 1855, except that under the old Act there might be a privy instead of a water-closet. For the definition of the expression "ashpit," see s. 141, *post*.

(*k*) This requirement is new.

(*l*) The requirements were formerly as follows : In the case of a room let before 1855, it was necessary to have a window opening of at least nine superficial feet in area, which window opening had to be fitted with a frame filled in with glazed sashes, of which at the least 4½ superficial feet had to be made to open for ventilation. In the case of a room not let before 1855 the room was required to have an external glazed window of at least nine superficial feet in area clear of the frame, and made to open in such manner as was approved by the surveyor of the Metropolitan Board of Works (London County Council).

(*m*) As to what amounts to occupation and the evidence of it, see sub-ss. (7), (8).

As to the recovery of this fine, see s. 117, *post*.

(*n*) The requisites required before the passing of this Act have been, to some extent, noticed, but it may be convenient here to state them in full :

Any room of a house, the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, and any cellar where such room or cellar is or has been occupied separately as a dwelling, at or before the time of the passing of this Act, may continue to be so let or occupied if it possesses the following requisites ; that is to say :

If there be an area not less than three feet wide in every part from six inches below the floor of such room or cellar to the surface or level of the ground adjoining to the front, back, or external side thereof, and extending the full length of such side ;

If such area, to the extent of at least five feet long and two feet six inches wide, be in front of the window of such room or cellar, and be opened or covered only with open iron gratings ;

If there be in every such room or cellar an open fireplace, with proper flue therefrom ;

If there be a window opening of at least nine superficial feet in area, which window opening must be fitted with a frame filled in with glazed sashes, of which at the least four and a half superficial feet must be made to open for ventilation :

And no such room nor any cellar not so let or occupied as aforesaid at or before the time of the passing of this Act shall be so let or occupied, unless it possesses the following requisites ; that is to say :

Unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof ;

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Unless the same be at least one foot of its height above the surface of the footway of the street adjoining or nearest to the same ;

Unless there be outside of and adjoining the same room or cellar, and extending along the entire frontage thereof and upwards, from six inches below the level of the floor thereof to the surface of the said footway, an open area at least three feet wide in every part ;

Unless the same be effectually drained and secured against the rise of effluvia from any sewer or drain ;

Unless there be appurtenant to such room or cellar the use of a water-closet or privy, and an ashpit furnished with proper doors and coverings kept and provided according to the provisions of this Act ;

Unless the same have a fire-place with a proper chimney or flue ;

Unless the same have an external glazed window of at least nine superficial feet in area clear of the frame, and made to open in such manner as is approved by the surveyor of the Metropolitan Board of Works :

Provided always, that in any area adjoining a room or cellar there may be placed steps necessary for access to such room or cellar, and over or across any such area there may be steps necessary for access to any building above the room or cellar to which such area adjoins, if the steps in such respective cases be so placed as not to be over or across any such external window.

(*o*) If the Local Government Board on appeal allow any dispensation or modification they alone can revoke or vary it.

(*p*) It must be remembered that it is only when an underground room is *separately* occupied as a dwelling that the Act applies. Therefore, if a room is occupied underground in conjunction with a room or rooms on a higher floor there is no separate occupation of the former room. But if two or more underground rooms are occupied together, each is to be deemed to be separately occupied unless they are occupied in conjunction with rooms on a higher floor.

(*q*) This provision is taken from 18 & 19 Vict. c. 120, s. 103, and 25 & 26 Vict. c. 102, s. 62 (both now repealed), without change.

(*r*) The occupation of the underground room as a dwelling is not an offence unless the room is separately occupied ; but it lies on the defendant to show that it is not separately occupied if it is shown to be used as a sleeping place.

(*s*) This definition is new.

Enforcement of provisions as to underground rooms.

97.—(1) Any officer of a sanitary authority appointed or determined by that authority for the purpose shall, without any fee or reward, report to the sanitary authority, at such times and in such manner as the sanitary authority may order, all cases in which underground rooms

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are occupied contrary to this Act in the district of such authority (*a*).

(2) Any such officer or any other person having reasonable grounds for believing that any underground room is occupied in contravention of this Act may enter and inspect the same at any hour by day; and if admission is refused to any person other than an officer of the sanitary authority the like warrant may be granted by a justice under this Act as in case of refusal to admit any such officer (*b*).

(3) A warrant of a justice authorising an entry into an underground room may authorise the entry between any hours specified in the warrant (*c*).

(*a*) This duty formerly devolved upon the district surveyor under 18 & 19 Vict. c. 120, s. 103, and 25 & 26 Vict. c. 102, s. 62 (both now repealed). Under these enactments he had to report in June and December every year, and at all other times when required.

The words "appointed or determined" are unusual.

(*b*) "Day" means between 6 a.m. and 9 p.m. See s. 141, *post*. If it is desired to enter at any other hour a justices' warrant must be obtained. See sub-s. (3).

As to the warrant of a justice to admit an officer, see s. 115, *post*.

(*c*) See note (*b*), *supra*.

Provision in case of two convictions for unlawfully occupying underground room.

98. Where two convictions for an offence relating to the occupation of an underground room as a dwelling have taken place within a period of three months (whether the persons convicted were or were not the same), a petty sessional court may direct the closing of the underground room for such period as the court may deem necessary, or may empower the sanitary authority of the district permanently to close the same, in such manner as they think fit, at their own cost.

This section is taken from 29 & 30 Vict. c. 90, s. 36 (now repealed). It is presumed that the order will only prohibit the use of the room as a dwelling-place, not its use for any other purpose.

A similar provision is contained in s. 75 of the Public Health Act, 1875.

Authorities for Execution of Act.

Definition of sanitary authority.

99.— (1) Subject to the provisions of this Act, the sanitary authority for the execution of this Act (in this

Act referred to as "the sanitary authority") shall be as follows ; (namely,) Sect. 99.

18 & 19 Vict. c. 120. 48 & 49 Vict. c. 33. 50 & 51 Vict. c. 17.

(a) In the city of London the Commissioners of Sewers (*a*) ; and

(b) In each of the parishes mentioned in Schedule (A) to the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, other than Woolwich, the vestry of the parish ; and

(c) In each of the districts mentioned in Schedule (B) to the same Act, as so amended, the district board for the district ; and

(d) In the parish of Woolwich, the local board of health ; and

(e) In any place mentioned in Schedule (C) to the Metropolis Management Act, 1855, the board of guardians for such place or for any parish or poor law union of which it forms part, or, if there is no such board of guardians, the overseers of the poor for such place, or for the parish in which it is situate, and the said guardians and overseers respectively shall have the same powers for the purposes of this Act as a vestry or district board have under this Act, and their expenses shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in the said place (*b*).

(2) The area within which this Act is executed by any sanitary authority is in this Act referred to as the district of that authority.

(3) The purposes for which a committee of a vestry or district board may be appointed under the Metropolis Management Act, 1855, and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly (*c*).

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(4) Where a sanitary authority appoint a committee for the purposes of this Act, that committee, subject to the terms of their appointment, may serve and receive notices, take proceedings, and empower any officer of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act (*d*).

(5) A sanitary authority may acquire and hold land for the purposes of their duties without any licence in mortmain (*e*).

(*a*) In the city of London the authority for the execution of this Act is now the common council, to whom the powers of the Commissioners of Sewers were transferred by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii).

(*b*) By the provisions of s. 1 of the London Government Act, 1899 (62 & 63 Vict. c. 14), the whole of the administrative county of London, exclusive of the city of London, was divided into metropolitan boroughs, and for that purpose it was made lawful for her Majesty, by Order in Council, subject to and in accordance with that Act, to form each of the areas mentioned in the First Schedule of the Act into a separate borough subject to certain alterations of area and adjustment of boundaries as might appear to her Majesty in Council expedient for the simplification or convenience of administration.

The First Schedule is as follows :

AREAS WHICH ARE TO BE BOROUGHS.

The parishes of—

Battersea.
Bethnal Green.
Camberwell.
Chelsea.
Fulham.
Hackney.
Hammersmith.
Hampstead.
Islington.
Kensington.
Lambeth.
Paddington.
St. Marylebone.
St. Pancras.
Shoreditch.

The area consisting of the parishes of Mile End Old Town and St. George's-in-the-East and the districts of the Limehouse and Whitechapel Boards of Works including the Tower of London and the liberties thereof.

The district of the Poplar Board of Works.

The district of the Wandsworth Board of Works.

The area consisting of the parishes of St. George the Martyr, Christchurch, Southwark, St. Saviour, Southwark, and Newington.

The area consisting of the parishes of Rotherhithe, Bermondsey, Horselydown, and St. Olave and St. Thomas, Southwark.

The area of the parliamentary division of Holborn.

The area consisting of the parliamentary divisions of East and Central Finsbury.

The area of the parliamentary borough of Deptford.

The area of the parliamentary borough of Greenwich.

The area of the parliamentary borough of Lewisham.

The area of the parliamentary borough of Woolwich.

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The area of the ancient parliamentary borough of Westminster, comprising the parishes of St. Margaret and St. John, Westminster, the parish of St. George, Hanover Square, the parish of St. James, Westminster, the parish of St. Martin-in-the-Fields and the district of the Strand Board of Works, and including the Close of the Collegiate Church of St. Peter, Westminster, and the Liberty of the Rolls.

The area consisting of the parish of Stoke Newington and of the urban district of South Hornsey, or so much thereof as may be incorporated with the county of London under this Act.

By the Local Government Act, 1888, s. 40, the metropolis was created an administrative county by the name of the administrative county of London.

By s. 100 of the same Act the expression "metropolis" was defined to mean the city of London, and the parishes and places mentioned in Schedules A, B, and C of the Metropolis Management Act, 1855, as amended by subsequent Acts.

In Woolwich the execution of the Act will now devolve on the council of the borough consisting of or comprising Woolwich in accordance with the provisions of s. 19 of the London Government Act, 1899. Under the provisions of s. 20 of that Act, Penge, which formed part of the area of the Lewisham Board of Works, became an urban district of itself in the county of Kent. The provisions of the Public Health (London) Act, 1891, do not apply to that area.

Under the provisions of s. 18 (2), (3) of the London Government Act, 1899, that part of the urban district of Hornsey which was wholly surrounded by the county of London became part of the metropolitan borough of Stoke Newington, which comprises the Stoke Newington district.

The vestries and district boards of the metropolis have therefore ceased to exist, and their powers and duties were, by s. 4 of the London Government Act, 1899, transferred to the substituted metropolitan borough councils.

(*c*) The provisions of the Metropolis Management Act, 1855, with reference to the appointment of committees are as follows :

Section 58.—"It shall be lawful for . . . the board of works for any district, and any such vestry, respectively, to appoint a committee or committees for any purposes which, in the discretion of the board or vestry, would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee : *Provided always, that the acts of every such committee shall be submitted to the general body of the board or vestry appointing such committee for their approval.*"

Section 59.—"Every committee so appointed may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the purposes of their appointment ; but no business shall be transacted at any meeting of the committee, unless three members of the committee are present."

The metropolitan borough councils now take the place of the vestries and district boards. Section 58, so far as it related to district boards and their districts, and the words in italics at the

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end of the section, were repealed by the London Government Act, 1899 (62 & 63 Vict. c. 14).

Section 8 (2) of that Act provides that "every committee shall report their proceedings to the council, but, to the extent to which the council so direct, the acts and proceedings of the committee shall not require the approval of the council. Provided that a committee shall not raise money by loan or by rate, or spend any money beyond the sum allowed by the council."

(*d*) This is a new and useful provision. It was held in *St. Leonard, Shoreditch (Vestry of)* v. *Holmes* (1885), 50 J. P. 132, that an officer of a sanitary authority could not himself give a notice which the Act required to be given by the sanitary authority without their previous sanction or direction. Such a direction could only be given at a meeting of the authority, and this might involve much loss of time. The text now enables the sanitary authority to appoint a committee who may serve and receive notices, etc. in their behalf, and empower an officer to institute any proceedings. But it will still apparently be necessary that the officer should have the previous direction of the committee.

As to the necessity of a previous approval of the acts of a public health committee and the effect of the ratification by a vestry of acts done by such committee, see *Firth* v. *Staines*, [1897] 2 Q. B. 70 ; 61 J. P. 452 ; 66 L. J. Q. B. 510 ; 76 L. T. (N.S.) 496 ; 45 W. R. 575.

Where a committee appointed under an authority given by the Land Drainage Act, 1881, delegated its duties to a committee of three members, it was held that every act must be the joint act of the three, and that it was not competent for them to apportion their duties among themselves (*Cook* v. *Ward* (1877), 2 C. P. D. 255 ; 41 J. P. 439 ; 26 L. T. (N.S.) 893 ; 25 W. R. 593). It must not be taken, however, that this case authorises a committee appointed for purposes of this Act to delegate its powers to a sub-committee. It is here cited to show that the committee must act as a body, not by individual members.

(*e*) A similar provision is contained in s. 7 of the Public Health Act, 1875. Without it lands could not be acquired, and held for purposes of this Act without a licence, under 51 & 52 Vict. c. 42, s. 1.

The Local Government (Transfer of Powers) Act, 1903, provides that where the Local Government Board propose by Provisional Order to transfer any power, duty or liability of a Government Department to the council of a county or county borough, the Board shall give notice to all local authorities who, in their opinion, are likely to be affected by the transfer, and if within a prescribed period a majority of those authorities notify that they object to the proposed transfer, the Order is not to be proceeded with so far as it relates to that transfer, but without prejudice to the power of the Board to propose a new Order. The Common Council of the City of London and the metropolitan borough councils are local authorities for this purpose.

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Power of county council to prosecute on default of sanitary authority.

100. The county council, on it being proved to their satisfaction that any sanitary authority have made default in doing their duty under this Act with respect to the removal of any nuisance, the institution of any proceedings, or the enforcement of any byelaw, may institute any proceeding and do any act which the authority might have instituted or done for that purpose, and shall be entitled to recover from the sanitary authority in default all such expenses in and about the said proceeding or act as the county council incur, and are not recovered from any other person, and have not been incurred in any unsuccessful proceeding.

This is a new provision.

The county council are the London County Council. See s. 141, *post*.

The sanction of the Local Government Board is not required under s. 117 (3), *post*, for the recovery of these expenses. The expenses will apparently be recoverable in a summary manner under s. 117 (1), and if under £50 in the county court under s. 117 (2).

This section does not extend to any default of the Commissioners of Sewers, or their successors, the Corporation of the city of London. See ss. 133, 135, *post*.

Proceedings on complaint to Local Government Board of default of sanitary authority.

101.—(1) Where complaint is made by the county council to the Local Government Board that a sanitary authority have made default in executing or enforcing any provisions which it is their duty to execute or enforce of this Act, or of any byelaw made in pursuance thereof, the Local Government Board, if satisfied after due inquiry that the authority have been guilty of the alleged default, and that the complaint cannot be remedied under the other provisions of this Act, shall make an Order limiting a time for the performance of the duty of such authority in the matter of such complaint. If such duty is not performed by the time limited in the Order, the Order may be enforced by writ of mandamus, or the Local Government Board may appoint the county council to perform such duty (*a*).

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(2) Where such appointment is made, the county council shall, for the purpose of the execution of their duties under the said appointment, have all the powers of the defaulting sanitary authority, and all expenses incurred by the county council in the execution of the said duties, together with the costs of the previous proceedings, so far as not recovered from any other person, shall be a debt from the sanitary authority in default to the county council, and shall be paid by the sanitary authority out of any moneys or rate applicable to the payment of the expenses of performing the duty in which they have made default (*b*).

(3) For the purpose of recovering such debt the county council, without prejudice to any other power of recovery, shall have the same power of levying the amount by a rate, and of requiring officers of the defaulting authority to pay over money in their hands, as the defaulting authority would have in the case of expenses legally payable out of a rate raised by that authority (*c*).

(4) The county council shall pay any surplus of the rate so levied to or to the order of the defaulting authority.

(5) If any loan is required to be raised for the purpose of the execution of their duties under the said appointment, the county council with the consent of the Local Government Board may raise the same, and may for that purpose borrow the required sum in the name of the defaulting authority for the same period, on the same security, and on the same terms as that authority might have borrowed, and the principal and interest of such loan shall be a debt due from the defaulting authority, and shall be secured and may be recovered in like manner as if the loan had been borrowed by that authority (*d*).

(6) The surplus (if any) of any loan not applied for the purpose for which it is raised shall, after payment of the expenses of raising the same, be paid to or to the order of the defaulting authority, and be applied as if it were the surplus of a loan raised by that authority (*e*).

(*a*) A somewhat similar provision is contained in s. 299 of the Public Health Act, 1875. But under the provision in the text

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the complaint can only be made by the county council. And the Order cannot be made if the complaint can be remedied under the other provisions of this Act, *e.g.*, if the county council can themselves take proceedings under the last preceding section.

The writ of *mandamus* may apparently be issued, notwithstanding the alternative remedy given by the section to appoint the county council to perform the duty in question.

It should be mentioned that s. 135 contains special proceedings relating to complaints to the Local Government Board in respect of default on the part of the Commissioners of Sewers [now the Corporation] of the city of London.

No Order has been made by the Local Government Board under this section, nor have the Board appointed the London County Council to perform the duty of any sanitary authority.

(*b*) The county council will simply take the place of the sanitary authority in executing the duty of the latter, and the expenses will be payable by the sanitary authority out of the funds mentioned in s. 103, *post*.

The expenses will be recoverable by action, or in manner provided by sub-s. (3).

(*c*) The county council will, therefore, be able to raise the amount payable to them as if they were the sanitary authority, and providing for payment of expenses by means of the rates mentioned in s. 103, *post*.

The power formerly of a district board or vestry, and now of a metropolitan borough council, to require officers to pay over money in their hands is conferred by 18 & 19 Vict. c. 120, s. 65. See the provision contained in s. 13 of the London County Council (General Powers) Act, 1893, set out on p. 172, *ante*.

(*d*) As to the power of a sanitary authority, and the purposes for which they may borrow, see s. 105, *post*.

(*e*) See as to this the notes to s. 105, *post*.

The London (Equalisation of Rates) Act, 1894, s. 1 (8), provides as follows:

"Where the Local Government Board under s. 101 of the Public Health (London) Act, 1891, are satisfied that a sanitary authority have been guilty of such default as in that section mentioned, and have made an order limiting a time for the performance of the duty of the authority, the London County Council shall, if so directed by the Local Government Board, withhold the whole or any part of the payment (if any) next accruing due from the Equalisation Fund to such sanitary authority. Any sums which may during any financial year be withheld in accordance with the foregoing enactment shall be carried forward to the credit of the Equalisation Fund in the following year, and the amount to be apportioned among the sanitary districts for determining the grant due shall be proportionately increased."

102. . . .

This section is repealed by the London Government Act, 1899, which in effect provides for the creation of a borough consisting

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of or comprising Woolwich, which will now for all purposes form part of the metropolis.

The metropolitan borough of Woolwich comprises the area of the parliamentary borough of Woolwich, and consists of the parishes of Woolwich, Eltham, and Plumstead. See the London Government Act, 1899, First Schedule, and the Borough of Woolwich Order in Council, No. 407, May 15th, 1900.

By the London (Woolwich) Scheme, 1900, confirmed by an Order in Council, No. 626, dated August 7th, 1900, the general law applying to metropolitan boroughs was made to apply within the parish of Woolwich in like manner as it applied to the rest of London, and accordingly the Public Health Acts and other enactments not applying to London, so far as they applied to Woolwich, were repealed, and the Metropolis Management Acts, 1855—1893, and the other Acts applying to London, so far as they did not before that date apply to the parish of Woolwich. were applied to that parish in like manner as they applied to the rest of London, subject, however, to the provisions mentioned in the said scheme.

Expenses of execution of Act.

103. The expenses incurred by sanitary authorities in London under this Act shall, save as otherwise in this Act mentioned, be defrayed as follows ; (namely,)

In the case of the Commissioners of Sewers, out of their sewer rate and consolidated rate, or either of such rates :

In the case of any vestry or district board, out of their general rate :

In the case of the local board of health of Woolwich, out of the district fund or general district rate.

The Commissioners of Sewers were appointed under 11 & 12 Vict. c. clxiii. by the common council of the city of London. Their duties under that Act consisted in the making, etc. of sewers, drains, and vaults, and of paving, cleansing, lighting, and improving the several streets within the city, and the enforcing of various sanitary provisions relating to drains, closets, ashpits, etc. They had power under the Act to make a sewer rate for the purpose of constructing, altering, repairing, and cleansing the sewers within the city, and for otherwise maintaining the sewerage and drainage, such rate not to exceed 4*d.* in the £ in any one year ; and a consolidated rate not to exceed 1*s.* 6*d.* in the £ in any year for general purposes of the Act. They were also empowered to borrow on the credit of either of these rates (ss. 207, 208). This Act was amended by 14 & 15 Vict. c. xci, and 38 & 39 Vict. c. iv. The latter contains provisions for the borrowing of money by the commissioners. The powers and duties of the

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commissioners are now transferred to the common council of the city by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii).

In a London borough constituted under the London Government Act, 1899, all the expenses of the council will be paid out of the general rate (and this will apply to the borough consisting of or comprising Woolwich) made under s. 10 of that Act which provides as follows :

(1) A scheme under this Act shall provide for all the expenses of a borough council being paid out of the general rate, and for the discontinuance of a separate sewers rate and separate lighting rate, but shall make provision for protecting the interests of owners and occupiers of any hereditament which is exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments.

(2) After the appointed day the general rate and the poor rate shall be assessed, made, and levied together by the borough council as one rate, which shall be termed the general rate, and shall be assessed, made, collected, and levied, as if it were the poor rate, and all enactments applying or referring to the poor rate shall, subject to the provisions of this Act as to audit, be construed as applying or referring also to the general rate.

(3) Where a borough comprises more than one parish, the amount to be raised to meet the expenses of the borough council, or other sums payable as part of those expenses, shall, subject to any provision required for the adjustment of local burdens, be divided between the parishes in proportion to their rateable value.

(4) Where any of the adoptive Acts, or any local or other Act, does not extend to the whole borough, any rate required to meet the expenses incurred under the Act shall, subject to the provisions of any scheme under this Act, be levied together with, and as an additional item of, the general rate over the area to which the Act extends.

Pursuant to this provision a scheme called "The London Rating Scheme, 1901," was duly confirmed by Order in Council, dated March 9th, 1901 (Stat. R. & O., 1901, p. 226).

The Public Health (London) Act, 1891, Amendment Act, 1893, deals with expenses in connection with the provision of wharves, destructors, etc. See this Act in the Appendix, *post*.

Expenses of Metropolitan Asylum Board.

104.—(1) All expenses incurred by the Metropolitan Asylum Managers in the execution of the provisions of this Act relating to the provision and maintenance of carriages, buildings, and horses, and the conveyance in such carriages of persons suffering from any dangerous infectious disease shall to such extent as the Local Government Board may sanction be defrayed out of the Metropolitan Common Poor Fund (*a*).

(2) Save as aforesaid, all expenses incurred by the said managers in the execution of this Act shall so far as they are not recovered from guardians in pursuance of

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this Act be defrayed in the same manner as the expenses mentioned in section thirty-one of the Metropolitan Poor Act, 1867, are to be defrayed under that section; and shall be raised and be recoverable in the same manner as expenses under that Act (*b*).

30 & 31 Vict. c. 6.

(3) The provision of vessels and buildings in pursuance of this Act shall be purposes for which the Metropolitan Asylum Managers may borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts amending the same (*c*).

(*a*) As to the Metropolitan Common Poor Fund, see the note to s. 80, *ante*, p. 170.

(*b*) Expenses under the Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), s. 31, are defrayed by contributions from the unions and parishes forming the district. These contributions are to be assessed on each parish and district according to its rateable value (s. 55).

(*c*) This sub-section states in general terms the effect of a number of separate enactments: 42 & 43 Vict. c. 54, s. 16; 46 & 47 Vict. c. 35, s. 4; 47 & 48 Vict. c. 60, s. 2; 52 & 53 Vict. c. 56, s. 7.

Power of vestries and district boards to borrow.

105.—(1) The provision of hospitals and of mortuaries under this Act, and the purposes of the epidemic regulations under this Act, shall be purposes for which vestries and district boards are authorised to borrow (*a*).

(2) A sanitary authority, with the consent of the Local Government Board, may borrow for the purpose of providing, as required or authorised by this Act—

(a) Sanitary conveniences, lavatories, and ashpits, and

(b) Premises, apparatus, carriages, and vessels for the disinfection, destruction, and removal of infected articles, and

(c) A building for post-mortem examinations and accommodation for the holding of inquests (*b*).

(3) The purposes for which a sanitary authority are authorised under this Act to borrow shall be purposes for which that authority may borrow under the Acts relating to the execution of the other duties of that

authority, and, where the consent of the Local Government Board is required and given to any such loan, the consent of any other authority shall not be required (*c*).

(*a*) This sub-section replaces 46 & 47 Vict. c. 35, s. 5, and 53 & 54 Vict. c. ccxliii., s. 24, both now repealed.

As to the provision of hospitals, see s. 75, *ante*. As to the epidemic regulations, see s. 82, *ante;* and as to the provision of mortuaries, see s. 88, *ante*.

The vestries and district boards are now superseded by the metropolitan borough councils established under the London Government Act, 1899.

See the notes to s. 142, *post*.

(*b*) In addition to the purposes above mentioned, it is provided by the London County Council (General Powers) Act, 1896 (59 & 60 Vict. c. clxxxviii), s. 32, that the purposes for which a sanitary authority are empowered to borrow under this section shall extend to and include the purposes of providing shelter or house accommodation for persons removed from their houses in case of infectious disease. See s. 60 (4), *ante*, p. 145.

It should be observed that the consent of the Local Government Board is required for a loan for any of these purposes. The importance of this appears by sub-s. (3).

As to the provision of sanitary conveniences, lavatories, and ashpits, see s. 44, ante, p. 101. As to premises, etc. for disinfection, see s. 59, *ante*, p. 142. As to a *post-mortem* building, see s. 90.

Loans have been sanctioned for conveniences and lavatories in Battersea, Bermondsey, Bethnal Green, Camberwell, Deptford, Finsbury, Fulham, Greenwich, Hackney, Hammersmith, Hampstead, Holborn, Islington, Kensington, Lambeth, Lewisham, Marylebone, Paddington, Poplar, Shoreditch, Southwark, Stepney, St. Pancras, Wandsworth, Westminster and Woolwich.

Loans have been sanctioned for the purposes of this sub-s. (b) in Battersea, Bermondsey, Deptford, Fulham, Islington, Lewisham, Limehouse, Rotherhithe, Wandsworth, Westminster and Woolwich.

Loans have been sanctioned for *post-mortem* chambers and *post-mortem* rooms in Battersea, Bermondsey, Deptford, Greenwich, Lewisham, Paddington, Poplar, Westminster and Woolwich.

Loans for inquest rooms and coroners' courts have been sanctioned in Battersea, Deptford, Hammersmith, Kensington, Lewisham, Poplar, Stepney, Westminster and Woolwich.

See the provisions of the Public Health (London) Act, 1891, Amendment Act, 1893 (56 & 57 Vict. c. 47), s. 3, *post*, which provides that, "notwithstanding anything in the principal Act, expenses incurred or to be incurred by a vestry or district board as sanitary authority for and in connection with the provision of land, wharves, destructors, plant, and equipment for the purposes of collection, removal, and disposal of house and street refuse, shall be and be deemed to have been expenses for the purposes of

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which a vestry or district board may borrow money as expenses incurred by them in the execution of the Metropolis Management Act, 1855. And sections one hundred and eighty-three to one hundred and ninety-one (both included) of that Act shall apply and have affect accordingly."

(*c*) The powers of borrowing conferred on a district board or vestry were given by 18 & 19 Vict. c. 120, s. 183, and the councils of the new London boroughs will presumably borrow under the same section. Under that section they can borrow for the purpose of defraying expenses incurred under the Metropolis Management Acts, with the sanction of the London County Council. But this sanction will not be required if the loan is for the purposes mentioned in sub-s. (2), and the consent of the Local Government Board has been obtained.

Appointment of medical officers of health.

106.—(1) Every sanitary authority shall appoint one or more medical officers of health for their district (*a*).

(2) The same person may, with the sanction of the Local Government Board, be appointed medical officer of health for two or more districts, by the sanitary authorities of such districts; and the Local Government Board shall prescribe the mode of such appointment and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities (*b*).

(3) Every person appointed or reappointed after the commencement of this Act as medical officer of health of a district shall (except during the two months next after the time of his appointment, or except in cases allowed by the Local Government Board) reside in such district or within one mile of the boundary thereof, and, if while not so residing as required by this enactment he assumes to act or receives any remuneration as such medical officer of health, he shall cease to hold the office (*c*).

(4) A medical officer of health may exercise any of the powers with which a sanitary inspector is invested (*d*).

(5) The annual report of a medical officer of health to the sanitary authority shall be appended to the annual report of the sanitary authority (*e*).

(*a*) As to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health, see s. 108, *post*. See also s. 139, *post*, as to existing officers.

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See the duties which may devolve upon a medical officer under Part IV. of the London County Council (General Powers) Act, 1907, set out in the Appendix, *post*, in connection with milk supply (tuberculosis). See also the provision in s. 2 (5) of the Notification of Births Act, 1907 (7 Edw. 7, c. 40).

(*b*) Where a person holds office for two districts, he must live within a mile of the boundary of each, unless he obtains the consent of the Local Government Board under sub-s. (3).

(*c*) This sub-section will not apply to a medical officer who was in office when the Act passed, unless after that date he is reappointed.

(*d*) A medical officer of health has not only the powers conferred upon him by the Act in express terms, but, in addition, those conferred on the sanitary inspector.

(*e*) Every district board and vestry was required to make an annual report in the month of June in every year, and to send a copy to the London County Council. To this annual report, which will now be made by the borough council, must be appended the annual report of the medical officer. This sub-section replaces the repealed part of 18 & 19 Vict. c. 120, s. 198, and 25 & 26 Vict. c. 102, s. 43.

Appointment of sanitary inspectors.

107.—(1) Every sanitary authority shall appoint an adequate number of fit and proper persons as sanitary inspectors, and may distribute among them the duties to be performed by sanitary inspectors, and every such inspector shall be a person qualified and competent by his knowledge and experience to perform the duties of his office (*a*).

(2) Where the Local Government Board, on a representation from the county council, and after local inquiry, are satisfied that any sanitary authority have failed to appoint a sufficient number of sanitary inspectors, the Board may order the authority to appoint such number of additional sanitary inspectors and to allow them such remuneration as the order directs, and the sanitary authority shall comply with the order (*b*).

(3) The sanitary inspectors shall report to the sanitary authority the existence of any nuisances ; and the sanitary authority shall cause a book to be kept in which shall be entered all complaints made of any infringement of the provisions of this Act or of any byelaws made thereunder, or of nuisances ; and every such inspector shall forthwith

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inquire into the truth or otherwise of such complaints, and report upon the same, and such report shall be laid before the sanitary authority at their next meeting, and together with the order of the sanitary authority thereon shall be entered in a book, which shall be kept at their office, and shall be open at all reasonable times to the inspection of any inhabitant of the district, and of any officer either generally or specially authorised for the purpose by the county council; and it shall be the duty of such inspector, subject to the direction of the sanitary authority, or of a committee thereof, to make complaints before justices and take legal proceedings for the punishment of any person for any offence under this Act or any such byelaws (*c*).

(*a*) This sub-section is taken from 18 & 19 Vict. c. 120, s. 133, and 23 & 24 Vict. c. 77, s. 9, both now repealed.

As to the qualification, appointment, duties, salary, and tenure of office of a sanitary inspector, see the next section. See especially sub-s. (2) (d) of that section as to the qualification of a sanitary inspector appointed after January 1st, 1895.

A power to appoint health visitors is contained in s. 6 of the London County Council (General Powers) Act, 1908, set out in the Appendix, *post*.

(*b*) As to the holding of local inquiries, see s. 129, *post*.

No provision is made for enforcing the Order of the Local Government Board. This may apparently be done by *mandamus*.

(*c*) This sub-section is, in substance, a re-enactment of 18 & 19 Vict. c. 120, s. 133, now repealed. The provision for inspection of the book by officers of the county council is new, as also is that relating to the direction of a committee under s. 99, *ante*, p. 196. See *St. Leonard, Shoreditch (Vestry of)* v. *Holmes* (1885), 50 J. P. 132, cited in note (*d*) to s. 99, *ante*, p. 200.

Provisions as to medical officers and sanitary inspectors.

108.—(1) Subject to the provisions of this Act as to existing officers, the Local Government Board shall have the same powers as they have in the case of a district medical officer of a poor law union with regard to the qualification, appointment, duties, salary, and tenure of office of every medical officer of health and sanitary inspector, and one-half of the salary of every such medical officer and sanitary inspector shall be paid by the county council out of the Exchequer Contribution Account in accordance with section twenty-four of the Local Govern-

51 & 52 Vict. c. 41.

ment Act, 1888, and that section shall be construed as if in sub-section two thereof the reference to the Public Health Act, 1875, included a reference to this Act (*a*). Sect. 108.

(2) Provided that—

(a) A medical officer of health shall be legally qualified for the practice of medicine, surgery, and midwifery, and also either be registered in the Medical Register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886, or have been during three consecutive years preceding the year one thousand eight hundred and ninety-two a medical officer of a district or combination of districts in London or elsewhere with a population according to the last published census of not less than twenty thousand, or have before the passing of the Local Government Act, 1888, been for not less than three years a medical officer or inspector of the Local Government Board ; and 49 & 50 Vict. c. 48.

(b) A medical officer of health shall be removable by the sanitary authority with the consent of the Local Government Board, or by that Board, and not otherwise :

Provided that the Local Government Board shall take into consideration every representation made by the sanitary authority for the removal of any medical officer, whether based on the general interests of the district, on the conduct of such officer, or on any other ground ; and

(c) Any such medical officer shall not be appointed for a limited period only ; and

(d) A sanitary inspector appointed after the first day of January one thousand eight hundred and ninety-five shall be holder of a certificate of such body as the Local Government Board may from time to time approve, that he has by examination shown himself competent for such

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office, or shall have been, during three consecutive years preceding the year one thousand eight hundred and ninety-five, a sanitary inspector or inspector of nuisances of a district in London, or of an urban sanitary district out of London containing according to the last published census a population of not less than twenty thousand inhabitants (*b*).

(*a*) The provisions of this Act as to existing officers are contained in s. 139, *post*.

Under 4 & 5 Will. 4, c. 76, s. 46, the Local Government Board have power to define and specify the qualification, duties, salary, appointment and tenure of office of district medical officer, and they have done so by General Orders dated May 25th, 1857, December 10th, 1859, and July 14th, 1880. See Macmorran and Lushington's Poor Law Orders (1905 ed., Macmorran and Naldrett), pp. 343, 358, and 653. A provision similar to that in the text is contained in the Public Health Act, 1875, as amended by the Local Government Act, 1888, s. 24 (3).

On December 8th, 1891, the Local Government Board issued a General Order with respect to the appointment, tenure of office, salary and duties of every medical officer of health or sanitary inspector appointed by any sanitary authority in the county of London on or after January 1st, 1892, or who, having been appointed by such sanitary authority prior to that date, shall be reappointed by them on or after that date, and who in either case shall not be appointed in pursuance of a temporary arrangement made with the Board's sanction under s. 109 of the Act. See Stat. R. & O., 1891, p. 466. This Order rescinded Orders previously made, except so far as such Orders related to any medical officer of health who, on January 1st, 1892, held office under an appointment made before that date. These earlier Orders were dated March 28th, 1889, and October 21st, 1889.

Formerly, when the qualification, etc. of a medical officer or inspector of nuisances were prescribed by the Local Government Board, one-half of his salary was paid out of moneys provided by Parliament. Since the Local Government Act, 1888, the Government grant has ceased, and by s. 24 of that Act, the county council are required to pay out of the Exchequer Contribution Account, one-half of the salary of every medical officer and inspector of nuisances, when his qualification, etc., are in accordance with the regulations of the Local Government Act made by Order under this Act.

The text of s. 24 of the Local Government Act, 1888, as applied by the above sub-section, is as follows: "Whereas certain grants heretofore made out of the Exchequer in aid of local rates (in this Act referred to as local grants) will by reason of the duties on the local taxation licences and the probate duty grant

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being by this Act made payable to local authorities, cease, it is therefore hereby enacted as follows :

"(1) So much of any enactment as requires or authorises payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed as from the 31st day of March next after the passing of this Act [1889] without prejudice to any right accrued before that day.

"(2) In substitution for local grants, the council of each county shall from time to time as from the said day pay out of the county fund and charge to the Exchequer Contribution Account the following sums, that is to say—

. . . . .

"(c) They shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the *Public Health (London) Act*, 1891, or any Act repealed by that Act, but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by Order of the Board under any of the said Acts, a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into her Majesty's Exchequer and not to the said local authority."

(*b*) Clause (a) contains substantially the same provisions as s. 18 (2), of the Local Government Act, 1888, with regard to the qualification of the medical officer of a county appointed after January 1st, 1892.

The Medical Act, 1886 (49 & 50 Vict. c. 48), s. 21, provides that every registered medical practitioner to whom a diploma for proficiency in sanitary science, public health, or State medicine, has, after special examination, been granted by any college or faculty of physicians or surgeons, or university, in the United Kingdom, or by any such bodies acting in combination, shall, if such diploma appears to the Privy Council, or to the General Council, to deserve recognition in the Medical Register, be entitled, on payment of such fee as the General Council may appoint, to have such diploma entered in the said register, in addition to any other diploma or diplomas in respect of which he is registered.

The medical officer of health of the Local Government Board is appointed under 21 & 22 Vict. c. 97, s. 4 ; 34 & 35 Vict. c. 70. Inspectors are appointed under 10 & 11 Vict. c. 109, s. 19, and 34 & 35 Vict. c. 70, s. 2.

The provision as to the qualification of sanitary inspectors is new.

On July 11th, 1892, the Board approved of the Sanitary Institute as a body to grant certificates under this section. Subsequently the Board received communications from other bodies desiring to be approved under the section on proposing that a

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joint board should be formed for the purpose of granting certificates. After a full discussion of the matter the Board decided that the holding of examinations and the granting of certificates should be done by one body rather than by a number of bodies acting independently, and a new association called "The Sanitary Inspectors Examination Board" was formed. A copy of the memorandum and articles of association of this board, and of the licence granted by the Board of Trade can be found in the Parliamentary Paper, House of Commons, No. 134, Session 1899.

The first meeting of the new board was held on April 18th, 1899. On April 24th the Local Government Board withdrew their approval granted to the Sanitary Institute, and approved of the Examination Board as a body to grant certificates under this section.

A copy of the Regulations of this Board as to examinations and instruction follows :

THE SANITARY INSPECTORS EXAMINATION BOARD.

Incorporated 8th February, 1899.

REGULATIONS AS TO EXAMINATIONS AND INSTRUCTION.

The examination shall consist of two parts, preliminary and technical.

The preliminary examination shall be written and oral, upon the following subjects :

English, including writing, spelling, composition, and dictation.

Arithmetic, including fractions, vulgar and decimal, simple proportion, common weights and measures, mensuration of rectangles and rectangular solids as required by Schedule 1, Standard 6, of the Day School Code, 1898, of the Education Department, together with mensuration of circles, cylinders, and spheres.

No candidate shall be approved who fails to show in each of these subjects such proficiency as shall satisfy the examiners of his ability to prepare official reports.

The technical examination shall be written, oral, and practical, upon the following subjects so far as they bear upon the duties of a sanitary inspector :

1. Elementary physics and chemistry in relation to water, soil, air and ventilation.
2. Elementary statistical methods.
3. Municipal hygiene or hygiene of communities, including prevention and abatement of nuisances, sanitary defects in and about buildings and their remedies, water supplies, sanitary appliances, drainage, refuse removal and disposal, offensive trades, disinfection, food inspection.
4. Statutes, and the Orders, Memoranda, and Model Byelaws of the Local Government Board, and the byelaws in force in the administrative county of London.

Every candidate must forward to the Secretary of the Board not later than fourteen days before the commencement of the examination notice of his intention to present himself for examination, and half the appointed fee. The remaining half of the fee must be paid not later than seven days before the date of the examination.

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Candidates for the technical examination must pass the preliminary examination, unless they shall have passed an examination recognised by the Board in substitution for it (*see next page*); and must forward to the Secretary of the Board not later than fourteen days before the commencement of the examination :

1. Evidence of having attained the age of twenty-one years.
2. A recent testimonial as to personal character ; if possible, from a clergyman, medical officer of health, or other person holding an official position.
3. Evidence of having passed a recognised alternative examination, in the case of candidates who claim exemption from the preliminary examination.
4. Evidence of training, consisting of :
   (a) Evidence of having held for not less than three years whole time employment as sanitary inspector, inspector of nuisances, or inspector and surveyor. Provided that in the case of a person holding the certificate of the Sanitary Institute, the Incorporated Sanitary Association of Scotland, or other examining body approved by the Board, the term of employment be reduced to twelve months subsequent to having obtained such certificate : or
   (b) A certificate of instruction as prescribed below from an institution recognised by the Board.

   Provided that a person who is already on Part I. of the Board's Register as having, prior to 31st December, 1898, obtained the certificate of the Sanitary Institute or the Royal Institute of Public Health, shall not be required to produce such evidence of employment as a sanitary inspector, or certificate of instruction.

The certificate of instruction must show that the candidate has attended a course of instruction approved by the Board, consisting of not less than 32 systematic lectures supplemented by demonstrations and comprising the subjects of the technical examination, including :

(a) Elementary physics and chemistry in relation to water, soil, air and ventilation.
(b) Building construction in its sanitary relations. Measurement and drawing plans to scale.
(c) The practical duties of a sanitary inspector, *e.g.*, drawing up notices as to sanitary defects, taking samples of water, food, and drugs for analysis, food inspection, drain-testing, disinfection, methods of inspection, note-taking and reporting.

The fee for the preliminary examination shall be one guinea, and for the technical examination, three guineas. No fees will be returned except in the case of a candidate who having entered for both examinations fails to pass the preliminary examination, in which case the fee for the technical examination will be returned to him.

If a candidate be prevented from attending by illness, or by other cause deemed sufficient by the Board, he will be admitted to the next examination without further fee.

An unsuccessful candidate will be admitted to one subsequent examination on payment of one-half the above fees.

The examinations will be held twice in each year, commencing in the third week in January and the first week in May.

Every candidate who passes the examination will receive a certificate to that effect, qualifying him for appointment as sanitary inspector under section 108 (2) (d) of the Public Health (London) Act, 1891, and under

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any subsequent Act of Parliament or Order of the Local Government Board which may require sanitary inspectors or inspectors of nuisances to hold certificates.

St. Stephen's House, London, S.W.

All communications to be addressed to the Hon. Secretary, 1, Adelaide Buildings, London Bridge, London, E.C.

May, 1905.

EXAMINATIONS RECOGNISED IN SUBSTITUTION FOR THE PRELIMINARY EXAMINATION.

1. The local examination of the Examinations Board of the National Union of Teachers (based on the work of the Sixth Standard, as set forth in the Code of the Education Department), mensuration having been taken as one of the three optional subjects required by the Regulations.
2. The junior local examination of the University of Oxford.
3. The junior local examination of the University of Cambridge.
4. The junior certificate of the Central Welsh Board.
5. The third-class certificate examination of the College of Preceptors ; OR, any equivalent or higher examination comprising all the subjects stated in the Board's Regulations for the preliminary examination.

Temporary arrangement for duties of medical officer or sanitary inspector.

109. A sanitary authority, where occasion requires, may, with the sanction of the Local Government Board, make any temporary arrangement for the performance of all or any of the duties of a medical officer of health or sanitary inspector, and any person appointed by virtue of any such arrangement to perform those duties, or any of them, shall, subject to the terms of his appointment, have all the powers, duties, and liabilities of a medical officer of health or sanitary inspector as the case may be.

This provision is new. The temporary officer must apparently be qualified as in the last preceding section mentioned. Compare s. 79 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

On October 31st, 1907, the Local Government Board communicated with the several borough councils with reference to the subject-matter of this section and suggested that definite arrangements should be made by resolution of such councils. The Board thought that under ordinary circumstances, and where the absence of the medical officer of health would not be for any lengthened period, the best course would usually be that he should be empowered to arrange with the medical officer of health of some neighbouring borough to deal with any matter which might require attention during his absence, the council being informed of the name of the officer who has consented to undertake the

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duty. In any case in which the absence of the medical officer of health might be prolonged it would no doubt be necessary that a deputy medical officer of health with the necessary qualifications should be appointed, but any such case could be dealt with as it arose, and the Local Government Board did not consider it to be needful that the suggested resolution of the borough council need extend to it.

Jurisdiction as to ships.

110.—(1) For the purposes of this Act any vessel lying in any river or other water within the district of a sanitary authority shall (subject to the provisions of this Act with respect to the port sanitary authority of the port of London) be subject to the jurisdiction of that authority in the same manner as if it were a house within such district (*a*).

(2) The master of any such vessel shall be deemed for the purposes of this Act to be the occupier of such vessel (*b*).

(3) This section shall not apply to any vessel under the command or charge of any officer bearing her Majesty's commission, or to any vessel belonging to any foreign government.

(*a*) This section is taken from 29 & 30 Vict. c. 90, ss. 30, 32 (now repealed).

As to the port sanitary authority of the port of London, see s. 111, *post*.

(*b*) The word "occupier" has been retained although the term "master," as defined by s. 141, *post*, has been substituted throughout this Act.

Port Sanitary Authority of Port of London.

Port sanitary authority of port of London.

111. The mayor, commonalty, and citizens of the city of London shall continue to be the port sanitary authority of the port of London, as established for the purposes of the laws relating to the customs of the United Kingdom, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

This section is taken from 35 & 36 Vict. c. 79, s. 20 (now repealed), and 38 & 39 Vict. c. 55, s. 291.

The Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 11—16, provides that the Commissioners of the Treasury may by their warrant appoint any port in the United Kingdom

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and declare the limits thereof, and may annul the limits of any port already appointed or to be thereafter set out, and may declare the same to be no longer a port: Provided that such alterations or variations in limits shall not affect any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to his Majesty's Customs) granted to any person or body by any Act of Parliament, etc., but they shall be deemed to be and remain the same for the purposes of such Act as if no such alteration or variation had been made. The Commissioners of the Treasury may from time to time revoke or alter any warrant made by them.

The warrant of the Treasury appointing the port of London and declaring its limits will be found in the London Gazette of August 10th, 1883, p. 3966. The limits extend from high water mark at Teddington Lock to an imaginary line from the pilot mark at the entrance of Havengore Creek thence to the land's end, Warden Point, Sheppey (limit of port of Faversham), and up the Medway to the port of Rochester.

Powers of port sanitary authority of port of London.

38 & 39 Vict. c. 55.

112.—(1) The Local Government Board may by Order assign to the port sanitary authority of the port of London any powers, rights, duties, capacities, liabilities, or obligations of a sanitary authority under this Act, or of a sanitary authority under the Public Health Act, 1875, and any Act extending or amending the same respectively, with such modifications and additions (if any) as may appear to the Board to be required, and the Order may extend to the said port a byelaw made under this Act otherwise than by the port sanitary authority, and any such byelaw until so extended shall not extend to the said port; and the said port sanitary authority shall have the powers, rights, duties, capacities, liabilities, and obligations assigned by such Order in and over all waters within the limits of the said port, and also in and over such districts or parts of districts of riparian authorities as may be specified in any such Order, and the Order may extend this Act, and any part thereof, and any byelaw made thereunder, to such waters and districts and parts of districts when not situate in London (*a*).

(2) The said port sanitary authority may acquire and hold land for the purposes of their constitution without any licence in mortmain (*b*).

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(3) The said port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority the exercise of any powers conferred on the port sanitary authority by the Order of the Board, but except in so far as such delegation extends no other authority shall exercise any powers conferred on such port sanitary authority by the Order of the Board within the limits of the port of London (*c*).

(4) "Riparian authority" in this section means any sanitary authority under this Act and any sanitary authority under the Public Health Act, 1875, whose district or part of whose district forms part of or abuts on any part of the said port, and any conservators, commissioners, or other persons having authority in or over any part of the said port (*d*).

(*a*) See the definition of riparian authorities in sub-s. (4).

The Orders of the Local Government Board issued under this section assigning powers of sanitary authorities to the port sanitary authority of the port of London, are dated March 25th, 1892, and December 24th, 1894.

(*b*) See the note (*e*) to s. 99, *ante*, p. 200.

(*c*) As to riparian authorities, see sub-s. (4).

A similar provision is contained in s. 289 of the Public Health Act, 1875.

(*d*) The port of London extends beyond the county of London.

As to sanitary authorities under the Act, see s. 99, *ante*, p. 196. Sanitary authorities under the Public Health Act, 1875, are the several urban and rural sanitary authorities.

Application of Public Health Acts as to Cholera, etc.

Powers of Local Government Board as to epidemic disease.

113. The sections of the Public Health Acts (relating to regulations and Orders of the Local Government Board with respect to cholera, or other epidemic, endemic, or infectious diseases) set out in the First Schedule to this Act, shall extend to London, and shall apply in like manner as if a sanitary authority under this Act were a local authority within the meaning of those sections.

See these sections and the notes thereto in the First Schedule, *post;* note (*a*) to s. 82, *ante*, p. 171, and s. 47 as to unsound food, *ante*, p. 110, and the notes thereto.

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The existing regulations (so far as they affect London) made by the Local Government Board, relating to cholera, yellow fever, plague and tuberculosis, are dated as follows :

Epidemic regulations : Notification of cases of plague. September 19th, 1900. Stat. R. & O. (rev.), Vol. XI., Public Health (E.), p. 5.

Regulations as to cholera, yellow fever and plague : Ships arriving from foreign ports. September 9th, 1907. Stat. R. & O., 1907, p. 924.

Regulations as to cholera and plague : Outward bound ships. Specified articles. September 9th, 1907. Stat. R. & O., 1907, p. 944.

Regulations as to cholera and plague : Coasting ships. September 9th, 1907. Stat. R. & O., 1907, p. 939.

Regulations as to tuberculosis. December 18th, 1908. Stat. R. & O., 1908, p. 779.

Byelaws.

Byelaws.

114. All byelaws made by the county council or by any sanitary authority under this Act shall be made subject and according to the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, and set forth in the First Schedule to this Act ; and those sections shall apply in like manner as if the county council or sanitary authority were a local authority :

38 & 39 Vict. c. 55.

Provided that the county council, in making any byelaws which will have to be observed and enforced by any sanitary authority, shall consider any representations made to the council by that authority, and not less than two months before applying to the Local Government Board for the confirmation of any such byelaws shall send a copy of the proposed byelaws to every such authority.

The incorporated provisions of the Public Health Act, 1875, are set out in Schedule 1, *post*.

The application of the proviso has been noticed under the several sections under which the county council are to make byelaws to be enforced by the sanitary authorities.

The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 32 (3), provides, " Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws."

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Legal Proceedings.

General provisions as to powers of entry.

115.—(1) Where a sanitary authority have by virtue of this Act power to examine or enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, they may examine or enter by any members of the authority, or by any officers or persons authorised by them, either generally or in any particular case (*a*).

(2) Where a sanitary authority, or their officers, or any persons acting under such authority, or under any of their officers, have by virtue of any enactment in this Act, a right to enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, then, subject to any special provisions contained in such enactment, the following provisions shall apply, that is to say—

(a) The person so claiming the right to enter shall, if required, produce some written document, properly authenticated on the part of the sanitary authority, showing the right of the person producing the same to enter ;

(b) Any person refusing or failing to admit any person who is authorised and claims to enter the premises shall if—

(i) The entry is for the purpose of carrying into effect an order of a court of summary jurisdiction, and either is stated in the said document to be for that purpose or is claimed by an officer of the sanitary authority, or

(ii) It is proved that the refusal or failure is with intent to prevent the discovery of some contravention of this Act or any byelaw under this Act, or

(iii) The refusal or failure is declared by the enactment conferring the right of entry to render the person refusing or failing subject to a fine,

be liable to a fine not exceeding five pounds (*b*).

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(3) If a justice is satisfied by information on oath—

(a) That there is reasonable ground for such entry, and that there has been a refusal or failure to admit to such premises, and either that reasonable notice of the intention to apply to a justice for a warrant has been given, or that the giving of notice would defeat the object of the entry, or

(b) That there is reasonable cause to believe that there is on the said premises some contravention of this Act or of any byelaw under this Act, and that an application for admission or notice of an application for the warrant would defeat the object of the entry,

the justice may by warrant under his hand authorise the sanitary authority or their officers or other person, as the case may require, to enter the premises, and if need be by force, with such assistants as they or he may require, and there execute their duties under this Act (*c*).

(4) Any person obstructing the execution of any such warrant, or of any warrant granted by a justice in pursuance of any other provision of this Act, and authorising the entry by the sanitary authority or their officer or any other person into any premises, shall be liable to a fine not exceeding twenty pounds, or, in a case where a greater punishment is imposed by this Act or any other enactment, either to such fine or to that greater punishment (*d*).

(5) The warrant shall continue in force until the purpose for which the entry is necessary has been satisfied.

(6) Where a house or part of a house is alleged to be overcrowded so as to be a nuisance liable to be dealt with summarily under this Act, a warrant under this section may authorise an entry into such house or part of a house at any hour of the day or night specified in the warrant (*e*).

(*a*) The sections under which power of entry is given by this Act are ss. 5 (9), 10, 12 (3), 20 (7), 23 (6), 26 (2), 27 (2), 36 (3), 39 (1), 40 (2), 42 (2), 47 (1), 60 (3).

The authority to enter may be a general authority to enter as occasion may require, or a particular authority applicable only to a given case. See also the provisions as to right of entry contained in s. 24 of the London County Council (General Powers) Act, 1904, and s. 12 of the London County Council (General Powers) Act, 1908, set out in the Appendix, *post*.

(*b*) As to the authentication of the document showing the right to enter, see s. 127, *post*. The signature of the clerk will be the general mode of authentication.

As to the recovery of the fine, see s. 117, *post*.

This section does not authorise a forcible entry except under a warrant under sub-s. (3).

(*c*) As to the form of the warrant, see Form E. in the Third Schedule, *post*.

In an appeal by case stated from the refusal of a metropolitan magistrate to grant a warrant under this sub-section authorising an entry upon premises for the purpose of examining the sanitary arrangements, the appellant, who was an inspector under the Act, had applied to the respondents for admission to their school for the purpose of examining the sanitary arrangements ; the respondents had refused her admission, and she had thereupon given them notice, as required by s. 115 (3), of her intention to apply to the magistrate for a warrant authorising her to enter. Upon applying to the magistrate for the warrant, the only evidence which the appellant tendered was that she had applied to be admitted and had been refused admission, and that she desired admission for the purpose of discharging her duties under s. 40 of this Act. The magistrate refused the warrant on the ground that there was no evidence of any reasonable ground for such entry under this sub-section :—*Held*, that the appeal must be dismissed. It was not necessary to establish a primâ facie case of a breach of the Act in order to justify the magistrate in ordering that entry should be permitted. The Act, by s. 10, gives the inspector a right of entry, but before that right can be exercised compulsorily she must satisfy the magistrate that she has reasonable grounds for wishing to exercise it. The mere wish is not itself any evidence of such a reasonable ground, but something must be proved which shows that it is reasonable she should wish to exercise it (*Vines* v. *North London Collegiate School* (1899), 63 J. P. 244).

Where a local authority and their officers, of their own motion and without asking any person's permission, enter premises for the purpose of examining as to the existence of any nuisance thereon, they are not employed in the execution of the Public Health Act, 1875, inasmuch as s. 102 of that Act does not authorise entry by the local authority without permission first being requested. Therefore the owner of the premises cannot be convicted under such circumstances upon an information preferred against him under s. 306 of that Act for wilfully obstructing the local authority in the execution of the Act (*Consett Urban District Council* v. *Crawford*, [1903] 2 K. B. 183 ; 67 J. P. 309 ; 72 L. J. K. B. 571 ; 88 L. T. 836 ; 51 W. R. 669 ; 1 L. G. R. 558).

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Where, by virtue of s. 102 of the Public Health Act, 1875, an application is made to a justice for an order to enter premises where a nuisance is alleged to exist, such justice, although he has not to decide whether a nuisance in fact exists, may consider where there are reasonable grounds for suspecting there is a nuisance, and for that purpose may receive evidence as to the true state of the facts. If a justice makes an order for the officer to enter to inspect, such order ought to be made in reference to a particular subject-matter (*Wimbledon Urban District Council* v. *Hastings* (1903), 67 J. P. 45 ; 87 L. T. 118. And see *Duncan* v. *Dowding*, [1897] 1 Q. B. 575 ; 61 J. P. 280 ; 66 L. J. Q. B. 362 ; 76 L. T. 294 ; 45 W. R. 383 ; 18 Cox, C. C. 527).

(*d*) As to the recovery of this fine, see s. 117, *post*.

(*e*) It may be impossible to detect a case of overcrowding without entry by night, *i.e.*, between 9 p.m. and 6 a.m. The general right of entry given by s. 10 is limited to entry by day.

Penalty on obstructing execution of Act.

116.—(1) If any person—

(a) Wilfully obstructs any member or officer of a sanitary authority or any person duly employed in the execution of this Act, or

(b) Destroys, pulls down, injures, or defaces any bye-law, notice, or other matter put up by authority of the Local Government Board or county council, or of a sanitary authority, or any board or other thing upon which such byelaw, notice, or matter is placed or inscribed, or

(c) Wilfully damages any works or property belonging to any sanitary authority,

he shall be liable to a fine not exceeding five pounds (*a*).

(2) Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provision of this Act, a petty sessional court, on complaint, shall by order require such occupier to permit the execution of any works which appear to the court necessary for the purpose of obeying or carrying into effect such provision of this Act ; and if within twenty-four hours after service on him of the order such occupier fails to comply therewith, he shall be liable to a fine not exceeding five pounds for every day during the continuance of such non-compliance (*b*).

(3) If the occupier of any premises, when requested by or on behalf of the sanitary authority to state the

name and address of the owner of the premises, refuses or wilfully omits to disclose or wilfully misstates the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a fine not exceeding five pounds (*c*).

(*a*) It should be observed that in clause (c) the words are "wilfully damages," and not "wilfully and maliciously damages." In *White* v. *Feast* (1872), L. R. 7 Q. B. 353, BLACKBURN, J., said: "It is obvious that very many injuries may be done to property wilfully, without being malicious, by persons so poor that a civil action would be no remedy, so that it might well be desirable to protect property, and yet not desirable that the person, though poor, should be ousted of his civil rights if the act were done under a fair and reasonable supposition of right." And see *Watkins* v. *Major* (1875), L. R. 10 C. P. 662.

Although no byelaw had been made under this section, and the provision in 18 & 19 Vict. c. 120, s. 126, had been repealed by s. 142 (4), *post*, it was held that an occupier who refused to allow his refuse to be removed at the usual weekly period was guilty of an offence against sub-s. (1) (a) of this section, though no nuisance was alleged (*Borrow* v. *Howland* (1896), 60 J. P. 391; 74 L. T. 787; 12 T. L. R. 414; 18 Cox C. C. 368).

As to the recovery of the fine, see the next section.

(*b*) The 18 & 19 Vict. c. 120, s. 209, contained a similar provision. The corresponding section of the Public Health Act, 1875, is s. 306.

As to the meaning of the expression "petty sessional court," see the note (*h*) to s. 5, *ante*, p. 28.

As to the service of the order, see s. 128, *post*.

As to the recovery of the fine, see the next section.

(*c*) This is a re-enactment of 18 & 19 Vict. c. 120, s. 209 As to the recovery of the penalty, see the next section.

Summary proceedings for offences, expenses, etc.

117.—(1) All offences, fines, penalties, forfeitures, costs, and expenses under this Act or any byelaw made under this Act directed to be prosecuted or recovered in a summary manner, or the prosecution or recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts (*a*).

(2) Proceedings for the recovery of a demand not exceeding fifty pounds, which a sanitary authority or

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any person are or is empowered to recover in a summary manner, may, at the option of the authority or person, be taken in the county court as if such demand were a debt (*b*).

(3) A proceeding under this Act shall not be taken by the county council against a sanitary authority save with the sanction of the Local Government Board, unless such proceeding is for the recovery of expenses or of money due from the sanitary authority to the council (*c*).

(*a*) Offences will be prosecuted, and fines, etc. recovered before a metropolitan police magistrate, or two or more justices sitting in open court, in manner provided by the Summary Jurisdiction Acts.

It is necessary to bear in mind the distinction between a proceeding to recover a fine for an offence which is a criminal proceeding, and a proceeding to recover a liquidated sum due to the complainant, such as expenses incurred under this Act in executing works. The fine is enforced by distress, and in default of distress imprisonment, without regard to the means of the defendant. But the liquidated sum is a civil debt as defined by ss. 6, 35, of the Summary Jurisdiction Act, 1879, and imprisonment cannot be imposed in default of distress without proof of means. The distinction is clearly pointed out in *R.* v. *Paget* (1881), 8 Q. B. D. 151 ; 46 J. P. 151 ; 51 L. J. M. C. 9 ; 45 L. T. (N.S.) 794 ; 30 W. R. 336 ; and *R.* v. *Kerswill and Another, Torquay JJ.*, [1895] 1 Q. B. 1 ; 59 J. P. 342 ; 64 L. J. M. C. 70 ; 71 L. T. (N.S.) 574 ; 43 W. R. 59 ; 11 T. L. R. 8.

(*b*) But for this provision there would be no right of action in cases within sub-section (1), for it is a general rule that where a statute creates a liability and provides means of enforcing it, there is no other remedy. See *Vestry of St. Pancras* v. *Batterbury* (1857), 2 C. B. (N.S.) 477 ; 21 J. P. 424 ; 26 L. J. C. P. 243 ; 3 Jur. (N.S.) 1106 ; *Doe* v. *Bridges* (1831), 1 B. & Ad., at p. 859 ; *Re Boor* (1889), 40 Ch. D., at p. 576 ; *Lamplugh* v. *Norton* (1889), 22 Q. B. D., at p. 456 ; *Pasmore* v. *Oswaldtwistle Urban District Council*, [1898] A. C. 387 ; 62 J. P. 628 ; 67 L. J. Q. B. 635 ; 78 L. T. 569. Therefore, in cases within sub-s. (1), where the demand exceeds £50, it is submitted that there is no cause of action in the High Court.

A similar clause is s. 261 of the Public Health Act, 1875. Under that section it has been held that the right of action in the county court being an alternative remedy, the action must be brought within the six months limited by 11 & 12 Vict. c. 43, s. 11, as in summary proceedings (*Tottenham Local Board* v. *Rowell* (1876), 1 Ex. D. 514 ; 46 L. J. Q. B. 432 ; 35 L. T. (N.S.) 887 ; 25 W. R. 135 ; *West Ham Local Board* v. *Maddams* (1876), 1 Ex. D. 516 n. ; 40 J. P. 470 ; 33 L. T. (N.S.) 809).

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These cases were distinguished in *Leeds (Mayor of)* v. *Robshaw* (1887), 51 J. P. 441. In that case the Leeds Improvement Act, 1877, s. 96, provided that summary proceedings before justices for the recovery of expenses must be brought within one year. Section 109 provided that when any person neglected to pay any sum due to the corporation, such sum might be recovered in any court of competent jurisdiction for the recovery of debts of the like amount. Other remedies were given for the recovery of these sums, one by an Act of 1842 by way of distress, in which there was no limit of time, and another by an Act of 1866, by action at law. It was held that the limitation of one year did not apply to proceedings by way of action of debt in the county court.

The limitation imposed by 11 & 12 Vict. c. 43, s. 11, of the time within which complaints may be made before justices applies to actions in the county court under s. 11 of the Act to recover the costs and expenses incurred in and about obtaining and carrying into effect a nuisance order ; so that the action must be commenced within six months from the time when the costs and expenses were incurred (*Hammersmith (Vestry of)* v. *Lowenfield*, [1896] 2 Q. B. 278 ; 60 J. P. 600 ; 65 L. J. Q. B. 662 ; 75 L. T. (N.S.) 182 ; 45 W. R. 60. The court considered themselves bound by *Tottenham Local Board* v. *Rowell*, *supra*, but this decision cannot easily be reconciled with *Leeds (Mayor of)* v. *Robshaw*, *supra*).

(*c*) Thus a proceeding could not be instituted by the county council under s. 22 without the sanction of the Local Government Board ; but such sanction is not required for the recovery of expenses under s. 100.

Evidence by defendant.

118. Any person charged with an offence under this Act, and the wife or husband of such person, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

This section appears now to be superseded by the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36).

Application of fines and disposal of things forfeited.

119.—(1) All fines recovered under this Act shall, notwithstanding anything in any other Act, be paid to the sanitary authority and applied by them in aid of their expenses in the execution of this Act, except that any fine imposed on the sanitary authority shall be paid to the county council (*a*).

(2) All things forfeited under this Act may be sold or disposed of in such manner as the court ordering the forfeiture may direct (*b*).

(*a*) As to the expenses of the sanitary authority, see s. 103, *ante*, p. 204.

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(*b*) For example, swine kept in an unfit place, or found straying in a street, are liable to be forfeited under s. 17 (2), *ante*, p. 46.

Proceedings in certain cases against nuisances.

120.—(1) Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, the sanitary authority or other complainant may institute proceedings against any one of such persons, or may include all or any two or more of them in one proceeding ; and any one or more of such persons may be ordered to abate the nuisance, so far as it appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which in the opinion of the court contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance ; and the costs may be distributed as to the court may appear fair and reasonable (*a*).

(2) Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included (*b*).

(3) Where some only of the persons by whose act or default any nuisance has been caused have been proceeded against under this Act, they shall, without prejudice to any other remedy, be entitled to recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of and incidental to such proceedings and abating such nuisance, and of any fine and costs ordered to be paid by the court in such proceedings (*c*).

(4) Whenever in any proceeding under the provisions of this Act relating to nuisances it becomes necessary to mention or refer to the owner or occupier of any premises,

it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description (*d*).

(*a*) This sub-section (1) is taken from 18 & 19 Vict. c. 121, ss. 33, 35 (now repealed), and corresponds to s. 255 of the Public Health Act, 1875.

In consequence of the overflow of the sewage from the premises of the respondent and the premises of other persons, it ran some distance to the premises of A., where it accumulated and constituted a nuisance. While it was on the premises of the respondent and the others it was no nuisance, and it became such only when it reached the premises of A. It was held that an order might be made on each party whose sewage assisted in causing the nuisance (*Hendon Union* (*Guardians of*) v. *Bowles* (1869), 34 J. P. 19; 20 L. T. (N.S.) 609; 16 W. R. 510). And see *Brown* v. *Bussell*, *ante*, p. 20, and *Lambton* v. *Mellish*, [1894] 3 Ch. 163; 58 J. P. 835; 63 L. J. Ch. 929; 71 L. T. (N.S.) 385; 43 W. R. 5; 10 T. L. R. 601.

(*b*) This provision is also contained in s. 255 of the Public Health Act, 1875, but has not hitherto been contained in any of the Acts relating to London.

(*c*) This is a new provision, conferring on the persons proceeded against a right to contribution from all other persons who might have been made co-defendants with them, and this right to contribution extends even to the fine and costs of the legal proceedings.

The occupier of a dominant tenement had a right by implied grant to send sewage through a drain running under and also carrying the drainage of the servient tenement. Through a defect in the drain a nuisance arose upon the servient tenement, the occupier whereof was ordered by a court of summary jurisdiction to abate, and did abate, the nuisance. In proceedings under s. 120 of this Act, by the occupier of the servient tenement to recover a proportionate part of the cost of abating the nuisance from the occupier of the dominant tenement:—*Held*, that the occupier of the dominant tenement was not merely, as such, a person through whose act or default the nuisance was caused within the meaning of this section, and therefore he was not liable to contribute (*Nathan* v. *Rowse* [1905] 1 K. B. 527; 74 L. J. K. B. 285). See also *Reeve* v. *Sadler* (1903), 67 J. P. 63; 88 L. T. 95; 51 W. R. 603; 1 L. G. R. 441.

(*d*) This sub-section (4) is taken from 18 & 19 Vict. c. 121, s. 35. It corresponds to s. 267 of the Public Health Act, 1875. As to the service of a notice, etc. addressed to the owner or occupier simply, see s. 128, *post*.

Notwithstanding this permission it will be found in general to be most expedient to ascertain, if possible, the names of the owners and occupiers. *Linforth* v. *Butler* (1899), 1 Q. B. 116; 68 L. J. Q. B. 3; 79 L. T. (N.S.) 498; 47 W. R. 171, may be referred to.

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Recovery of expenses by sanitary authority from owner or occupier.

121. Any costs and expenses which are recoverable under this Act by a sanitary authority from an owner of premises may be recovered from the occupier for the time being of such premises (*a*) ; and the owner shall allow the occupier to deduct any money which he pays under this enactment out of the rent from time to time becoming due in respect of the premises, as if the same had been actually paid to the owner as part of the rent ; Provided that—

(a) The occupier shall not be so required to pay any further sum than the amount of rent which either is for the time being due from him, or which after demand from him of such costs or expenses, and notice not to pay any rent without first deducting the same (*b*), becomes payable by him, unless he refuses, on the application of the sanitary authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable ; but the burden of proof that the sum demanded from any such occupier is greater than the aforesaid amount of rent shall lie on such occupier ; and

(b) Nothing in this section shall affect any contract between any owner and occupier of any premises whereby the occupier agrees to pay or discharge all rates, dues, and sums of money payable in respect of such premises, or shall affect any contract whatsoever between landlord and tenant (*c*).

This section is taken from 25 & 26 Vict. c. 102, s. 96, and 29 & 30 Vict. c. 90, s. 34 (now repealed). It is similar in terms to s. 104 of the Public Health Act, 1875.

(*a*) Upon similar words in 25 & 26 Vict. c. 102, s. 36, it was held that an unsatisfied judgment against the owner for a proportion of paving expenses was no bar to an action for the same expenses against the occupier (*Bermondsey (Vestry of)* v. *Ramsay* (1871), L. R. 6 C. P. 247 ; 35 J. P. 567 ; 40 L. J. C. P. 206 ; 24 L. T. (N.S.) 429 ; 19 W. R. 774). See also as to the right to proceed against a subsequent owner, *Plumstead District Board of*

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Works v. *Ingoldby* (1872), L. R. 8 Ex. 63, 174 ; 37 J. P. 759 ; 42 L. J. Ex. 50, 136 ; 29 L. T. (N.S.) 375 ; 21 W. R. 77, 817. It should be observed that this section does not, nor does any other section in this Act, make the expenses a charge on the premises. Upon similar words in the Metropolis Management Acts it has been held that there is no charge upon the land, but only successive personal liabilities imposed on the successive owners. Therefore, where an owner sold premises, in respect of which paving expenses were due and the purchaser had to pay such expenses, it was held that he could not recover from the vendor (*Egg* v. *Blayney* (1888), 21 Q. B. D. 107 ; 52 J. P. 517 ; 57 L. J. Q. B. 460 ; 59 L. T. (N.S.) 65 ; 36 W. R. 893).

(*b*) The sanitary authority must make this demand and serve this notice. As to the authentication and service of the notice, see ss. 127, 128, *post*.

On similar words in 25 & 26 Vict. c. 102, s. 96, it was held that in order to entitle an occupier to avail himself of the proviso, the money must have been actually paid, and consequently that a distress for rent which became due after a notice under that section made before payment to the vestry which gave the notice was not illegal (*Ryan* v. *Thompson* (1868), L. R. 3 C. P. 144 ; 32 J.P. 135 ; 37 L.J.C.P. 134 ; 17 L.T. (N.S.) 506 ; 16 W.R. 314).

It is also to be observed that the text applies only to costs and expenses which the local authority are entitled to recover from the owner. Therefore expenditure by a tenant in abating a structural nuisance pursuant to a magistrate's order after notice to abate served on the tenant only cannot be set off against rent due to the landlord (*Butcher* v. *Ruth* (1887), 22 L. R. Ir. 380). As to the tenant's right to recover from his landlord in such a case, see the following note and the notes to s. 11, *ante*, p. 33.

The payment made by an occupier of premises to the local authority under s. 96 of the Metropolis Management Act, 1862, is not a payment of rent, but a payment of a sum on account of the charges and expenses incurred by the local authority measured by the amount of the rent due from the occupier to his landlord, and which the occupier is entitled to deduct from his rent, provided that he has entered into no contract with his landlord which prevents him from so doing ; but if he has entered into an agreement with his landlord to pay such charges as those in question, he is not entitled to make the deduction, and the rent remains due notwithstanding the payment to the local authority, and the landlord can distrain for it (*Skinner* v. *Hunt*, [1904] 2 K. B. 452 ; 68 J. P. 402 ; 73 L. J. K. B. 680 ; 91 L. T. 270 ; 20 T. L. R. 556 ; 2 L. G. R. 769).

(*c*) A similar clause is to be found in other Acts ; for example, the Public Health Act, 1875, ss. 104, 226.

It frequently happens that statutes which impose a burden primarily upon the owner of premises, contain express provisions enabling landlords and tenants to agree between themselves that

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the burden shall ultimately fall on the latter. Such burdens sometimes take the form of an obligation on an owner to pay money to a local authority in respect of work done for the benefit of premises, *e.g.*, paving work under the Metropolis Management Acts, 1855 and 1862, and under the Private Street Works Act, 1892. In other cases the duty is cast upon the owner of doing the work himself, but on his default the local authority may carry out the work and charge him with the cost, *e.g.*, work done in the abatement of nuisances caused by structural defects under ss. 94—98 of the Public Health Act, 1875, or ss. 4, 5 of the Public Health (London) Act, 1891, *supra*, and paving work done under s. 150 of the Public Health Act, 1875. Section 104 of the Public Health Act, 1875, expressly provides for the making of agreements as to who shall ultimately bear expenses incurred for the abatement of nuisances under that Act, and a similar provision is contained in s. 121 of the Public Health (London) Act, 1891, *supra*.

Owners of premises have, perhaps not unnaturally, tried so to frame covenants in leases granted by them as to cast upon the lessees the burden of whatever money has to be paid in respect of the demised premises. In so far as such burdens are in respect of permanent improvements of which they will not get the full benefit, tenants have, quite naturally, sought to escape payment. The result has been that a very large number of cases turning upon the construction of covenants as to rates, etc. have come before the courts. The principle of law underlying the cases is the same whether the expenses are those of the nature referred to in s. 121, *supra*, or are expenses in connection with paving, etc. and they will therefore all be collected in this note.

Prior to a recent decision of the Court of Appeal (see *Foulger* v. *Arding*, *infra*), the authorities on the subject were in an unsatisfactory condition, and even now, although many cases decided since *Foulger* v. *Arding*, *infra*, have further cleared the air, it cannot be said that the law is clear. It will, however, probably be found that the authorities warrant the following propositions : (1) primâ facie a covenant which merely throws rates, taxes and assessments upon a tenant, imposes upon him a liability to pay only assessments of a temporary or recurring nature ; (2) a covenant containing such words as "duties," "outgoings," "impositions," or "charges" *may* impose upon a tenant a liability to pay for permanent improvements of the demised premises.

We will first refer to a case showing what the position will be where the only agreement of the tenant is "to pay his rent, without deduction," and will then refer to cases where express covenants as to rates, etc. have been construed, and also to some cases (not arising between landlord and tenant) in which expressions commonly used in covenants in leases have been construed.

A lease in which a tenant has merely covenanted to pay his rent without deduction cannot be construed as a contract between landlord and tenant which will oust the statutory right of the tenant to deduct the payments referred to in the section. See

Home and Colonial Stores v. *Tod* (1891), 63 L. T. (N.S.) 829, a case decided under the similarly-worded section (s. 96) of the Metropolis Management Act, 1862.

By a local Act commissioners were authorised to flag footways, and the costs thereof were to be paid by the tenants or occupiers of the houses next adjoining, Another clause enabled the tenant to deduct the costs so paid by him out of his rent :—*Held*, that this charge was within the terms of a covenant in a lease subsequently made, whereby the tenant covenanted to pay all taxes, rates, duties, levies, assessments and payments whatever, which were or during the term might be rated, levied, assessed, or imposed on the premises (*Payne* v. *Burridge* (1844), 13 L. J. Ex. 190 ; 12 M. & W. 727). This case was followed in *Brett* v. *Rogers*, *infra*.

Expenses of drainage works done upon premises under the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), were held to be payable by a lessee under a covenant to pay, bear and discharge "all such parliamentary, parochial, county, district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burdens, duties and services whatsoever, as during the term should be taxed, assessed, or imposed upon or in respect of the premises or any part thereof" (*Sweet* v. *Seager* (1857), 2 C. B. (N.S.) 119 ; 21 J. P. 406 ; 29 L. T. (O.S.) 109 ; 5 W. R. 560 ; 3 Jur. (N.S.) 588).

Premises were demised by the plaintiff to the defendant for seven years, at the "clear yearly rent" of £90, the latter covenanting that he would "pay and discharge all taxes, rates, assessments and impositions whatsover (except property tax) which during the term should become payable in respect of the demised premises." It was held that the tenant was not liable to pay sewering and paving expenses under a local Act which empowered the local authority to order streets to be sewered and paved by the owners of the adjoining premises, and in case of default of such owners to do the work themselves and to charge the respective owners with their proportionate parts of the expenses thereof. The plaintiff neglected to do the required work, and the local authority caused it to be done, and the amount of the plaintiff's apportionment was paid by him. The Court of Common Pleas, distinguishing *Sweet* v. *Seager*, *supra*, held that the payment was not made by the plaintiff for a rate, assessment, or imposition which had become payable in respect of the demised premises, but was in the nature of a penalty for the breach of the duty imposed upon him by the Act of Parliament (*Tidswell* v. *Whitworth* (1867), L. R. 2 C. P. 326 ; 39 L. J. C. P. 103 ; 15 L. T. (N.S.) 574 ; 15 W. R. 427). This case was followed in *Rawlins* v. *Briggs*, *infra*, and distinguished in *Midgley* v. *Coppock*, *infra*.

Tidswell v. *Whitworth*, *supra*, was decided in the year 1867, and in the following year it was distinguished. A lessee covenanted that he would, during the continuance of the term, pay and discharge "all taxes, rates, duties, and assessments whatsover which

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during the continuance of the demise should be taxed, assessed, or imposed on the tenant or landlord of the premises demised in respect thereof." It was held that the tenant was liable to pay paving expenses charged by the vestry against the landlord under the Metropolis Management Acts on the ground that the amount charged was a "duty" imposed upon the owner in respect of the premises within the covenant (*Thompson* v. *Lapworth* (1868), L. R. 3 C. P. 149 ; 32 J. P. 184 ; 37 L. J. C. P. 74 ; 17 L. T. 507 ; 16 W. R. 312). This case was distinguished in *Rawlins* v. *Briggs*, *infra*, and followed in *Wix* v. *Rutson*, *infra*.

Tidswell v. *Whitworth*, *supra*, and *Thompson* v. *Lapworth*, *supra*, are the starting points of two streams of authorities, as to which COLLINS, M.R., in *Foulger* v. *Arding*, *infra*, at p. 708 of the report in the Law Reports, said : "The distinction which appears to have been taken between the covenants in *Tidswell* v. *Whitworth* and *Thompson* v. *Lapworth*, and for some time to have been treated as the cardinal distinction in such cases, was that in the first of those cases there was no reference to any persons upon whom the impositions intended to be covered by the covenant were charged or imposed, whereas, in the second, the covenant spoke of them as imposed 'on the tenant or landlord of the premises demised in respect thereof.' It appears to me that, in the earlier cases which followed, stress was laid on the presence or absence of words of this kind rather than on the words used in the description of the nature of the obligations included in the covenant, and the presence or absence in that description of particular words such as 'duties' or 'outgoings.' Later on greater emphasis appears to have been laid in the cases on the presence of words like 'duties' or 'outgoings' in the description of the obligations included in the covenant than on that of words describing the person or persons on whom they were imposed. *Brett* v. *Rogers* (noticed *infra*) may be referred to as one of the latter class of cases, the last of which is *Farlow* v. *Stephenson* (see *infra*), where the court no doubt gave effect to the word 'duties' as throwing the obligation on the tenant, though there were no words in the covenant describing the person or persons on whom the duties were imposed."

We will now proceed with our enumeration of the cases.

A landlord's covenant to pay all rates, taxes, tithes, and all other charges payable in respect of the premises, was held not to apply to the cost of cleansing a piece of ornamental water effected under an order in execution of the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121) s. 16 (*Bird* v. *Elwes* (1868), L. R. 3 Ex. 225 ; 32 J. P. 694 ; 37 L. J. Ex. 91 ; 18 L. T. (N.S.) 727 ; 16 W. R. 1120).

A tenant covenanted to pay all outgoings charged on the premises or on the landlord in respect thereof. A drain was made after notice served upon him by the lessee, who was in occupation, under an arrangement made between the landlord and tenant, that the person held to be liable should bear the charge, and it was decided

that the lessee was liable (*Crosse* v. *Raw* (1874), L. R. 9 Ex. 209 ; 43 L. J. Ex. 144 ; 23 W. R. 6). This decision was followed in a case where the plaintiff demised premises to the defendant at a yearly rent "clear of all present and future rates, taxes, and deductions," and a covenant was contained in the lease that the defendant should pay the rent, and also bear and pay all the rates, taxes, and outgoings then payable or thereafter to become payable in respect of the premises. The plaintiff having paid certain paving expenses, brought an action to recover them from the defendants. It was held that the omission of the word "outgoings" in the reddendum clause did not qualify the covenant so as to take it out of the decision in *Crosse* v. *Raw*, *supra*, and that the plaintiff was therefore entitled to recover (*Gardner* v. *Furness Rail. Co.* (1883), 47 J. P. 232). *Crosse* v. *Raw*, *supra*, was also approved of by the Court of Appeal in *Budd* v. *Marshall*, *infra*.

A lessee for a term of twenty-one years covenanted to pay the rent reserved "without any deduction or abatement except land tax and landlord's property tax," and further "to pay and discharge all and all manner of taxes, rates, charges, assessments, and impositions whatever (except as aforesaid) then or at any time or times during the term to be charged, assessed, or imposed on the premises thereby demised, or in respect thereof, or of the said rent as aforesaid, by authority of Parliament or otherwise howsoever." The lessor, in compliance with a notice received under s. 94 of the Public Health Act, 1875, executed works necessary to abate a nuisance arising from the bad condition of the drains upon the premises. It was held by the Court of Common Pleas, upon the authority of *Tidswell* v. *Whitworth*, *supra*, and distinguishing *Thompson* v. *Lapworth*, *supra*, that the payment made by the lessor for the works was not a "rate, charge, assessment, or imposition assessed or imposed on the demised premises or in respect thereof," but was made in performance of a duty imposed upon him by the Act of Parliament, and that he was not entitled to call upon the lessee to repay the amount (*Rawlins* v. *Briggs* (1878), 3 C. P. D. 368 ; 47 L. J. C. P. 487 ; 27 W. R. 138). It should be observed that in this case s. 257 of the Public Health Act, 1875, was not cited. It is difficult to reconcile this decision with the decision in *George* v. *Coates*, *infra*, and the former case must, we think, be regarded as overruled.

A lease contained covenants to pay the rent clear of all deductions for or in respect of the sewers rate or any other rates, taxes, duties, charges, and assessments whatsoever, whether parliamentary, parochial, or otherwise howsoever, except income tax on rent ; and further, that the lessee would at all times bear, pay and discharge the land tax (if any), sewers rate, borough rate, improvement rate, tithes, and tithe rent-charge in lieu of tithes, and all other taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or otherwise, which then were, or which at any time or times thereafter during the said term should be

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taxed, charged, rated, assessed, or imposed on the said premises or any part thereof, or upon the landlord or tenant in respect thereof, or in respect of the said yearly rent, except as aforesaid. There was also a covenant by the lessee to repair. It was held by the Court of Appeal (BAGGALLAY and BRAMWELL, L.JJ., BRETT, L.J., dissenting) that the tenant was liable to repay to the landlord the expense of making good defective drainage on the requirement of the local sanitary authority under the Public Health Act, 1875, the expense being a "duty" within the meaning of the covenant (*Budd and Another* v. *Marshall* (1880), 5 C. P. D. 481 ; 44 J. P. 584 ; 50 L. J. Q. B. 24 ; 42 L. T. (N.S.) 793 ; 29 W. R. 148). This decision was followed by NORTH, J., in the case of *In re Bettingham, Melhado* v. *Woodcock* (1892), 9 T. L. R. 48, and by WILLS, J., in *Clayton* v. *Smith* (1895), 11 T. L. R. 374. See also *In re Robertson and Thorne* (1883), 47 J. P. 566, and *Smith* v. *Robinson*, *infra*.

The plaintiffs bought of the defendant three houses, and by the contract of sale the latter agreed to discharge "all rates, taxes, and outgoings," up to the time of completion. The purchase was completed, and afterwards payment was demanded from the plaintiffs of the expenses incurred under a local Act in improving the street in which the houses stood. The work had been done some time before the houses belonged to the defendant, and at the time of the sale to the plaintiffs ; neither party knew of the charge. The plaintiffs, having paid the sum demanded, sued the defendant for repayment. It was held, distinguishing *Tidswell* v. *Whitworth*, *supra*, that the charge for improving the street was an "outgoing" which the defendant had bound himself to discharge, and that the plaintiffs were entitled to recover (*Midgley and Another* v. *Coppock* (1879), 4 Ex. D. 309 ; 43 J. P. 683 ; 48 L. J. Ex. 674 ; 40 L. T. (N.S.) 870). This case was followed in *Tubbs* v. *Wynne*, *infra*.

The defendant, on taking a house, covenanted to pay "all rates, taxes, charges, and assessments whatsoever, which now are, or may be, charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof." It was held that paving expenses under s. 150 of the Public Health Act, 1875, were "a charge upon the premises," or "upon a person in respect thereof," so as to entitle the lessor to recover from the defendant the amount of such expenses when paid by him (*Hartley* v. *Hudson* (1879), 4 C. P. D. 367 ; 43 J. P. 784 ; 48 L. J. C. P. 701).

A lessee for a term of seven, fourteen, or twenty-one years of a house in a new street in the metropolis, covenanted to pay all rates and assessments taxed, rated, charged, assessed, or imposed upon the demised premises, or upon or payable by the occupier or tenant in respect thereof. It was held by the Court of Appeal that the tenant was not liable to repay to the landlord the amount of paving expenses apportioned in respect of the demised house under the Metropolis Management Acts, 1855 and 1862, as it was not charged on the premises, but was charged or imposed by the Acts on the owner in respect of the premises (*Allum and Another* v. *Dickinson* (1882), 9 Q. B. D. 632 ; 47 J. P. 102 ; 52 L. J. Q. B. 190 ; 47 L. T. (N.S.) 493 ; 30 W. R. 930).

A tenant of premises in the metropolis agreed to pay "all rates, taxes and assessments payable in respect of the premises during the term." The street in which the premises were was paved by the vestry. It was held by the Divisional Court that the sum assessed upon the owners as their proportion of the expenses of paving the street was not a rate, tax, or assessment within the meaning of the covenant, but a charge imposed upon the owners for the permanent improvement of their property (*Wilkinson* v. *Collyer* (1884), 13 Q. B. D. 1 ; 48 J. P. 791 ; 53 L. J. Q. B. 278 ; 51 L. T. (N.S.) 299 ; 32 W. R. 614).

It should be remembered that in the metropolis paving expenses are not a charge upon the premises, while they are such a charge in districts subject to the Public Health Act, 1875. It is submitted that that is the true point of distinction between the last two cases and *Hartley* v. *Hudson*, *supra*.

By a lease of land in the metropolis the lessee covenanted that he would pay "the tithe or rent-charge in lieu of tithes, land tax (if any), sewers rates, main drainage rates, and all other taxes, rates, impositions, and outgoings whatsoever, then or thereafter to be charged or imposed on or in respect of the said premises, or on any part thereof (except the landlord's property tax)." The lessor having had to pay his share of the cost of paving a new street, sought to recover the amount from the lessee, but MATHEW, J., held that the case was governed by *Tidswell* v. *Whitworth* and *Rawlins* v. *Briggs*, *supra*, and gave judgment for the defendant (*Hill* v. *Edward*, W. N. (1885), p. 32 ; 1 C. & E. 481). It is difficult to reconcile the decision in this case with the later decisions.

A lessee of a house in a new street in the metropolis covenanted to pay "all existing and future taxes, rates, assessments, land tax, tithe, or tithe rent-charge, and outgoings of every description for the time being payable either by the landlord or tenant in respect of the said premises." It was held by the Divisional Court that the owner's proportion of the cost of paving the street was an "outgoing" payable by the lessee under the covenant (*Aldridge* v. *Fearn* (1886), 17 Q. B. D. 212 ; 55 L. J. Q. B. 587 ; 34 W. R. 578). The court pointed out that the words of the covenant in this case were more comprehensive than in *Wilkinson* v. *Collyer* or *Hill* v. *Edward*, *supra*.

A testator directed the rents and profits of a leasehold house, "after payment of all ordinary outgoings for ground rent, repairs, taxes, expenses of insurance or otherwise," to be paid to his widow for life, and after her death to certain other persons. The trustees of the will, upon notice from the vestry under the Metropolis Management Acts, executed certain drainage works. As a second ground for the decision, it was held that the cost of the works was an "outgoing" within the meaning of that term as used in the will, and must therefore be paid by the tenant for life (*Re Crawley*, *Acton* v. *Crawley* (1885), 28 Ch. D. 431 ; 49 J. P. 598 ; 54 L. J. Ch. 652 ; 52 L. T. (N.S.) 460 ; 33 W. R. 611).

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By an agreement for a lease of a house for three years at a rent of £75 per annum, the tenant agreed "to pay all sewers rates, tithe rent-charge, land tax (if any) and all existing and future rates, taxes, assessments, and outgoings of every description payable by landlord or tenant in respect of the premises during the tenancy (except the landlord's property tax)." The local board made a claim upon the landlord and tenant for the amount of paving expenses apportioned in respect of the house. It was held that the words of the agreement were large enough to cover this payment, and that their meaning could not be regarded as altered because the agreement was only for a term of three years. It was held, therefore, that the tenant must pay the amount claimed by the board (*Batchelor* v. *Bigger*, W. N. (1889), p. 51 ; 60 L. T. (N.S.) 416).

The plaintiffs were tenants of a house in Lambeth under a lease from the defendant, by which a rent of £40 was reserved "to be paid without deduction, except landlord's property tax, by equal quarterly payments, free and clear from all deductions for main drainage and sewer rates, metropolitan and local improvement rates, taxes, land tax, tithe rent-charge and commutation in lieu of tithes," and the lessees covenanted to pay "the said yearly rent of £40 at the times and in manner aforesaid, free and clear of all deductions, except as aforesaid," and to pay and discharge during the said tenancy all main drainage and sewer rates, etc. (following the words of the reservation). In May, 1890, the Lambeth Vestry required the defendant, as owner of the premises, to construct a drain into the common sewer under the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 73, and the defendant not complying, did the work themselves, and recovered the costs, £17 17*s*., from the plaintiffs under s. 96 of the amending Act (25 & 26 Vict. c. 102). The plaintiffs deducted this amount from their next half-year's rent, and upon the defendant threatening to distrain, brought this action for an injunction to restrain him. It was held that the payment in question was not within the express covenant in the lease (*Home and Colonial Stores* v. *Tod* (1891), 63 L. T. (N.S.) 829). It has already been pointed out that the covenant to pay the rent without deduction could not be construed as a contract between landlord and tenant to exclude the tenant's right to deduct this payment from his rent under s. 96 of the Act (25 & 26 Vict. c. 102). See p. 231, *supra*.

By a covenant in a lease the tenant covenanted to pay all rates, taxes, and assessments whatsoever which then were or during the said term should be imposed or assessed upon the demised premises or the landlord or tenant in respect thereof by authority of Parliament or otherwise, and also to make, uphold, support, cleanse, and repair, and keep in repair, all sewers, drains, cesspools, necessaries, privies, vaults, and other easements belonging to the demised premises. The local authority served on the mortgagee in possession (as the owner) a notice requiring him to abate a nuisance arising from pumping sewage from a cesspool, and on the owner's

default, did the work. The owner paid the expenses under threat of legal proceedings, and brought an action to recover them from the tenant. At the trial, before A. L. Smith, J., it was held that the tenant was not liable under either covenant (*Lyon* v. *Greenhow* (1892), 8 T. L. R. 457).

A lessee covenanted to pay, bear and discharge all land tax, sewers rate, main drainage rate, and all other rates, taxes, assessment charges, or impositions whatsoever, parliamentary, parochial, or otherwise, taxed, charged, assessed, or imposed upon the demised premises, or on the lessor for or in respect of the premises. The lessee also covenanted to repair. The lessee failed to repair, in consequence of which a drain on the premises got out of order, and caused a nuisance. The sanitary authority made an order on the lessor, under the Public Health (London) Act, 1891, to abate the nuisance. The lessor incurred expenses in complying with this order and sued the lessee to recover the amount:—*Held* (approving *In re Bettingham*, *Melhado* v. *Woodcock*, *supra*), that the expenses so incurred were a charge imposed on the lessor in respect of the premises, and that the lessor was entitled to recover (*Smith* v. *Robinson*, [1893] 2 Q. B. 53; 58 J. P. 73; 62 L. J. Q. B. 509; 69 L. T. (N.S.) 434; 41 W. R. 588; 9 T. L. R. 493; 5 R. 469).

By the will of a testator, who died in 1846, certain freehold messuages were demised to trustees, their heirs and assigns, upon trust, to permit A. and B. during their joint lives, and the survivor of them during his life, to hold the same, and receive the rents, and after the death of the survivor, upon trust for the first and other sons of B. successively in strict settlement. During the life of one of the equitable tenants for life, the trustees applied certain capital moneys held by them upon similar trusts in payment of expenses incurred for drainage and works in respect of the demised messuages which were without sufficient drains as specified in the Public Health Act, 1848, s. 49:—*Held*, that the trustees were "owners" within the meaning of that Act, and had rightly paid the drainage expenses in question out of the capital moneys; but that as between the tenant for life and the remainderman the capital moneys so applied must be treated as a charge upon the messuages. By a clause in his will the testator declared that the parties beneficially entitled to the rents and profits of any of his houses should keep the same in good and absolute repair:—*Held*, that these drainage works were not repairs within the meaning of that clause (*Re Barney*, *Harrison* v. *Barney*, [1894] 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. (N.S.) 180; 43 W. R. 105; 8 R. 459).

By conditions of sale of land within the metropolis the date fixed for completion was May 8th, all outgoings up to that date being cleared by the vendor. Before May 8th a magistrate made an order to take down dangerous structures on the land. This order was not complied with, and, after May 8th, the county council took down the structures and demanded and received from

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the purchaser the expenses of so doing. It was held, following *Midgley* v. *Coppock*, *supra*, that the liability having been incurred before May 8th, the expenses were "outgoings" which the purchaser was entitled to recover from the vendor (*Tubbs* v. *Wynne*, [1897] 1 Q. B. 74 ; 66 L. J. Q. B. 116). This decision was followed in *Barsht* v. *Tagg*, *infra*. See also *In re Highett and Bird's Contract*, [1903] 1 Ch. 287 ; 72 L. J. Ch. 220 ; 87 L. T. (N.S.) 697 ; 51 W. R. 227, and the observations on this case by ROMER, L.J., in *In re Allen and Driscoll's Contract*, [1904] 2 Ch. 226 ; 68 J. P. 469 ; 73 L. J. Ch. 614 ; 91 L. T. 676 ; 52 W. R. 680 ; 20 T. L. R. 605.

A lessee covenanted to pay "the land tax, sewers rate, and all other taxes, rates, duties, assessments, and impositions, parliamentary, parochial, or otherwise, which now are or shall at any time during this demise be assessed or imposed on or in respect of the said demised premises or of the rent hereby reserved (landlord's property tax only excepted)." It was held by the Divisional Court, following *Payne* v. *Burridge*, *ante*, that the tenant was liable to pay drainage expenses incurred by the lessor in complying with the requirement of the vestry under the Public Health (London) Act, 1891. The obligation imposed upon the lessor to take up a defective drain and lay a new one, was a "duty" imposed on the lessor in respect of the demised premises (*Brett* v. *Rogers*, [1897] 1 Q. B. 525 ; 66 L. J. Q. B. 287 ; 76 L. T. (N.S.) 26 ; 45 W. R. 334). This decision was approved and followed in *Farlow* v. *Stevenson*, *infra*.

A tenant of premises outside the metropolis covenanted to pay "all rates, taxes, and assessments whatsoever, which now are, or during the term shall be, imposed or assessed upon the premises, or the landlords or tenants in respect thereof, by authority of Parliament or otherwise, except the landlord's property tax." It was held by CHANNELL, J., that the lessee was not liable to pay paving expenses recovered in a summary manner from the owner under s. 150 of the Public Health Act, 1875 (*Baylis and Another* v. *Jiggens and Another*, [1898] 2 Q. B. 315 ; 67 L. J. Q. B. 793 ; 79 L. T. (N.S.) 78).

The decision in *Baylis* v. *Jiggens* was followed by the Divisional Court in *Lumby* v. *Faupel* (1903), 67 J. P. 202 ; 88 L. T. (N.S.) 562 ; 51 W. R. 522 ; 19 T. L. R. 426, where it was held that a landlord who had paid paving expenses incurred under s. 150 of the Public Health Act, 1875, could not recover from a tenant whose covenant was "to pay all rates, taxes, and assessments whatsoever which now are or during the said term shall be imposed or assessed upon the said premises." On appeal this decision was affirmed, but on another ground, viz., that upon which *Surtees* v. *Woodhouse* was decided. See that case, *infra*, and also *Lumby* v. *Faupel* (in the Court of Appeal) cited therewith.

In a lease of a factory for twenty-one years the tenants covenanted to pay all rates and taxes, sewers rate, main drainage rate, parish dues, and all other rates, taxes, impositions and outgoings what-

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soever which were then or should at any time thereafter be assessed, charged, or in anywise imposed upon or in respect of the demised premises by authority of Parliament or otherwise. Also to pay a fair share and proportion of all costs and expenses which the lessors, in respect of being owners and lessors of the premises demised, might be called upon to pay, bear or contribute, or would be liable to in or about every or any reparation, pulling down, rebuilding or raising of every or any party wall, party fence wall, timber partition, or party arch, or incidental thereto, or in or about any drainage or sewerage, or otherwise by virtue of any Act or Acts of Parliament. During the term the lessors, as owners of the demised premises, were compelled to spend £710 in constructing a fire escape according to the requirements of s. 7 of the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75). In an action to recover this expense from the tenant, it was held that this was not an imposition or outgoing under the first covenant, and, even if it was, the second covenant was to be read as a proviso to the first and took it out of the first. The tenant was therefore only liable to pay a fair share of the expense (*Arding* v. *Economic Printing and Publishing Co.* (1898), 79 L. T. (N.S.) 622).

The expense of paving a new street incurred by a landlord under s. 77 of the Metropolis Management Amendment Act, 1862, was held to be recoverable by him from a tenant under a covenant by the tenant in his lease, to pay and discharge all taxes, charges, rates, duties, tithes and tithe rent-charge, assessments and impositions whatever which are now or may at any time hereafter be taxed, charged, rated, assessed, or imposed upon the premises or any part thereof, or upon the landlord or tenant in respect thereof, landlord's property tax only excepted (*Wix* v. *Rutson*, [1899] 1 Q. B. 474 ; 68 L. J. Q. B. 298 ; 80 L. T. (N.S.) 168). This decision followed *Thompson* v. *Lapworth*, *supra*.

A covenant by a lessee that he will pay all sewers rates, and all other rates, taxes, outgoings and assessments whatsoever imposed or assessed upon or payable in respect of the premises, was held to include the cost of works amounting to a reconstruction of the house drainage rendered necessary in order to comply with a notice to abate a nuisance on the premises given under the Public Health (London) Act, 1891 (*Antil* v. *Godwin* (1899), 63 J. P. 441 ; 15 T. L. R. 426).

Where a lessee had by his lease covenanted to pay "all taxes, rates, duties, and assessments whatsoever, which now are or hereafter may become payable for or in respect of the demised premises," it was held that he was liable, as between himself and his landlord, to pay the expense of reconstruction of a drain which had been required by the vestry under the Metropolis Management Act, 1855, s. 85 (*Farlow* v. *Stevenson*, [1900] 1 Ch. 128 ; 69 L. J. Ch. 106 ; 81 L. T. (N.S.) 589 ; 48 W. R. 213, approving and following *Brett* v. *Rogers*, *supra*).

Conditions of sale for the purchase of freeholds provided that the purchase should be completed on August 11th, and that a

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purchaser paying his purchase-money should as from that day be let into possession or receipt of rents and profits, and up to that date all rents, rates, taxes and outgoings were, if necessary, to be apportioned, and such apportioned rents were to be paid on completion by each purchaser to the vendor. If the completion of the purchase was delayed beyond the before-mentioned day, the remainder of the purchase-money was to bear interest from that day to the day of actual payment thereof, or at the option of the vendor he might receive the rents and profits up to the day of the actual completion of the purchase. Owing to the purchaser's default the purchase was not completed on the date fixed, and the vendor remained in possession of the rents and profits. In November, notices were served upon the vendor under the Public Health (London) Act, 1891, to abate nuisances on the premises, and the vendor in complying with the notices expended a sum of £24. In an action for specific performance by the purchaser, the vendor claimed to be entitled to payment by the purchaser of the £24, as well as of the balance of the purchase-money. It was held, following *Tubbs* v. *Wynne*, *supra*, that £24 being an outgoing, which from the time when a good title was shown must clearly be borne by the purchaser in the absence of express stipulation, the plaintiff would, as from August 11th, have been entitled to the rents and profits, and liable to pay the £24 if the conditions had not given the vendor the option to keep the rents and profits in lieu of interest, but that there was nothing to relieve the plaintiff from the obligation to pay the outgoings, and that he could only obtain specific performance on paying the £24 and the balance of his purchase-money (*Barsht* v. *Tagg*, [1900] 1 Ch. 231 ; 69 L. J. Ch. 91 ; 81 L. T. (N.S.) 777 ; 48 W. R. 220).

Conditions of sale of leasehold premises in an urban district provided that the purchaser should be entitled to possession or to the rents and profits as from September 29th, down to which time all outgoings were to be paid by the vendor. On July 26th, the urban district council served a notice under s. 150 of the Public Health Act, 1875, requiring the owner of the premises to sewer, level, and make up the street within one calendar month. The purchaser called on the vendor to comply with this notice, contending that the expense was an outgoing within the meaning of the condition of sale. This the vendor denied, and refused to do the work, and work was done by the urban district council in default, and after September 29th they apportioned the sum to be paid in respect of the premises at £153 15*s.* 10*d.* It was held by BYRNE, J., that the vendor was not liable to pay it as an outgoing under the conditions of sale (*Re Waterhouse's Contract* (1900), 44 Sol. J. 645).

The lessee of a factory covenanted to pay and discharge "all rates, taxes, charges, and assessments and outgoings whatsoever, whether parliamentary, parochial, local, or of any other description, which now are or may at any time hereafter be assessed, charged, or imposed upon the demised premises, or the landlord or occupier in respect thereof (the landlord's property tax only excepted) . . .

and from time to time and at all times during the said term well and substantially to repair, cleanse, maintain, amend and keep the demised premises and all additions or additional buildings . . . with all necessary reparations, cleansings, and amendments whatsoever, original structural defects in the building of the premises excepted . . ." It was held by the King's Bench Division that the lessee was not liable to bear the expenses to which the lessor had been put in complying with the requirements (*i.e.*, the provision of means of escape from fire) of the sanitary authority under s. 7 of the Factory and Workshop Act, 1891 (*Monk* v. *Arnold*, [1902] 1 K. B. 761 ; 71 L. J. K. B. 441 ; 86 L. T. 580 ; 50 W. R. 667). This decision was, however, based upon that of the same court in *Foulger* v. *Arding*, [1901] 2 K. B. 151 ; 70 L. J. K. B. 580 ; 84 L. T. 467 ; 49 W. R. 442, which was reversed on appeal. See the decision of the Court of Appeal, *infra*.

A lessee covenanted to pay "all rates, taxes, assessments, and outgoings then payable, or thereafter becoming payable, whether by the landlord or tenant in respect of the said demised premises, or any part thereof, or in respect of the rent or any part thereof." It was held by the King's Bench Division that the lessee was liable for apportioned paving expenses under the Public Health Act, 1875, which the landlord had paid (*Weld and Others* v. *Clayton-le-Moors Urban District Council* (1902), 86 L. T. (N.S.) 584).

Many of the above cases came up for consideration by the Court of Appeal in *Foulger* v. *Arding*, [1902] 1 K. B. 700 ; 71 L. J. K. B. 499 ; 86 L. T. (N.S.) 488 ; 50 W. R. 417 ; 18 T. L. R. 422, where the facts were as follows : The defendant was tenant to the plaintiff of a dwelling-house in the parish of Streatham, under a lease for a term of sixteen years from June 24th, 1892. The lease contained a covenant that the tenant would "pay and discharge all taxes, rates, including sewers main drainage assessments and impositions whatsoever, which now are, or which at any time or times hereafter during the continuance of the said term hereby granted, be taxed, rated, assessed, charged, or imposed upon or in respect of the said premises, or any part thereof, on the landlord, tenant, or occupier of the said premises, by authority of Parliament or otherwise howsoever (landlord's property tax and tithe only excepted)." The lease contained no covenant to repair either by the landlord or tenant. The sanitary authority required the lessor to abate a nuisance caused by a foul and offensive privy on the premises, and to remove the privy and construct a water-closet in accordance with the byelaws of the London County Council. The lessor did the work, and it was held that he was entitled to recover the expense incurred by him in so doing, such expense being covered by the words "impositions charged or imposed upon or in respect of the said premises on the landlord, tenant, or occupier of the same." COLLINS, M.R., in giving judgment, said (see p. 705 of the report in the Law Reports) : "The decisions on this subject remove one or two difficulties which might arise if the construction

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of such a covenant as this were being considered for the first time. It is clear on the authorities that, where there is a defect inherent in the structure of the premises at the time of the demise, and which is the subject-matter of an obligation imposed by statute on the landlord, the burden of that obligation may, nevertheless, by a covenant of this kind, be thrown upon the tenant. It is also clear from the authorities that a covenant of this kind may, if it contains appropriate words, be construed as being directed, not only to receiving charges such as rates and taxes, but also to charges in the nature of capital expenditure incurred once for all, such as charges in respect of structural work. If the matter were unencumbered by authority, and could be looked at with clear eyes, regardless of the labyrinth of cases on the subject, I think that no one could doubt that an obligation, such as that in the present case, imposed upon a landlord in respect of a structural defect, which he was bound by statute to remedy, or to pay the cost of remedying, might properly be described as an imposition charged or imposed upon the landlord in respect of the premises. It seems to me that, if the matter were clear of authority, the obligation imposed on the plaintiff in this case would come within the plain meaning of the words of the covenant. The only possible answer appears to me to be that which was indicated by an observation of my brother ROMER during the argument. It may be asked, If so wide a sense is to be given to the word 'imposition,' where is the line to be drawn? If it is to be construed as capable of covering this case, must it not be equally capable of covering such a case as one in which demised premises were built beyond the building line of a street, and there was a consequent obligation on the landlord to pull down part of the premises and rebuild in conformity with the building line? It is said that it could not possibly be contended that such an obligation was within the meaning of the term 'imposition' as used in a covenant of this kind. This argument may, as it seems to me, be met by pointing out that underlying the whole matter is the consideration that we are dealing with a contract of demise between landlord and tenant, and the covenant must be assumed to relate only to matters which may reasonably be supposed to have been contemplated by the parties as being within the purview of such a contract; and such an extreme case as that of an obligation to pull down and rebuild the premises is so far outside of anything that can possibly be conceived of as being within the contemplation of the parties that it is necessarily excluded from the meaning of words which might otherwise have been wide enough to include it." His lordship later on said, "I think that, apart from authority, it would be impossible to say that the word 'impositions' is not large enough to cover the obligation in the present case"; and he proceeded to show that there was nothing in the authorities to debar the court from giving its natural meaning to that word, and then said, "it seems to me also that an obligation of this kind is one of the very things that the parties would probably contemplate in entering into this covenant, as being a

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matter which might ordinarily arise as an incident of the relation between landlord and tenant. It is not an imposition of a class which is so far outside that relation that it could not have been contemplated by the parties."

According to the last-mentioned decision, the course to be pursued, when construing covenants in leases, would appear to be to first determine whether the words of the covenant are primâ facie wide enough to cover the obligation in question, and, if they are, to ascertain whether the obligation is one of a class which would reasonably be within the contemplation of the parties. The ground of the decision in *Foulger* v. *Arding*, *supra*, has since been frequently applied.

A lessee covenanted to pay and discharge all land tax, sewer rate, main drainage rate, tithes, tithe rentcharge, and all parliamentary, parochial and other rates, assessments and impositions whatsoever which should or might be laid, imposed on, or payable in respect of [a factory] or any part thereof during the term. This was held (following the decision in *Foulger* v. *Arding*, *supra*), to impose upon the lessee the liability to repay to the lessor the expense incurred in complying with a requirement under s. 7 (2) of the Factory Act, 1891 (*Shephard* v. *Barber* (1902), 67 J. P. 238).

A lessee of a house for seven years covenanted "to pay during the term the sewers rate and all other taxes, rates, charges, and assessments whatsoever, parliamentary, parochial, or otherwise, which then were or thereafter should be imposed, charged, or assessed, upon or in respect of the premises, or payable by either the owner or occupier in respect of the same, the landlord's property tax only excepted." In compliance with a notice from the local authority the lessee repaired a defective drain which was causing a nuisance, and sought to recover from the lessor the cost of so doing. It was held by the Court of Appeal that the case was not distinguishable from *Foulger* v. *Arding*, *supra*, and that the lessee could not recover (*George* v. *Coates* (1903), 88 L. T. 48).

A lessee covenanted to pay and bear "all present and future rates, taxes, duties, assessments and outgoings charged upon the said premises or the owner or occupier in respect thereof." The lessee sublet the premises, the sub-lessee covenanting "to observe and perform all the lessee's covenants and conditions contained in the original lease, and to indemnify [the lessee] from and against all claims and demands in respect thereof." Before the date of the sub-lease the local authority executed and completed certain private street works under the Private Street Works Act, 1892, but the final apportionment on the adjoining premises, including the premises in question, was not made until after the sub-lease. The lessee having paid the original lessor the amount apportioned in respect of the premises, as being an "outgoing" within the terms of the covenant in the original lease, sought to recover the amount from the sub-lessee :—*Held*, that the apportioned amount, though not yet ascertained, became a charge on the premises and

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owner as from the date of the completion of the works ; and that, as the date of the sub-lease was subsequent to the completion, he was not liable to indemnify his lessor (*Surtees* v. *Woodhouse*, [1903] 1 K. B. 396 ; 67 J. P. 232 ; 72 L. J. K. B. 302 ; 88 L. T. (N.S.) 407 ; 51 W. R. 275 ; 19 T. L. R. 221). This decision was followed by the Court of Appeal in *Lumby* v. *Faupel* (1904), 68 J. P. 265 ; 90 L. T. (N.S.) 140 ; 20 T. L. R. 237.

The subject-matter of a tenancy was a cottage and yard adjoining a wharf, and the rent was £20. The lease contained a covenant to pay "all rates, taxes, assessments and outgoings of every description, payable in respect of the premises during the tenancy," and the tenants covenanted to keep the demised premises in tenantable repair during the tenancy. The tenants had held the premises for over ten years. It was held by FARWELL, J., that a supply of water to a water-closet required by the sanitary authority under the Public Health (London) Act, 1891, was, and that the paving and draining of a yard and repairs to drains required by the said authority under the said Act were not, within the reasonable contemplation of the parties to the demise (*Valpy* v. *St. Leonard's Wharf Co., Limited* (1903), 67 J. P. 402).

An agreement for a three years' tenancy at a rent of £55 per annum, contained covenants by the tenant to pay "all taxes, rates, assessments, and outgoings of every description for the time being payable in respect of the premises as they become due." During the tenancy the landlord was compelled by the local authority to spend £83 10*s.* in relaying defective drains on the premises. It was held by WRIGHT, J., distinguishing *Valpy* v. *St. Leonard's Wharf Co., Limited*, *supra*, that he could recover the amount from the tenant under his covenant ; the fact that the tenancy was one for three years only was no sufficient reason for limiting the words "outgoings payable in respect of the premises," and not construing them in their ordinary sense (*Stockdale* v. *Ascherberg*, [1903] 1 K. B. 873 ; 67 J. P. 435 ; 72 L. J. K. B. 492 ; 88 L. T. (N.S.) 767 ; 19 T. L. R. 457 ; affirmed, [1904] 1 K. B. 447 ; 68 J. P. 241 ; 73 L. J. K. B. 206 ; 90 L. T. (N.S.) 111 ; 52 W. R. 289 ; 20 T. L. R. 235).

By an agreement for a lease of a house in London for a term of three years at the "clear yearly rent" of £54, to be paid free and clear of all deductions whatsoever (property tax only excepted), the tenant agreed to pay and discharge "all rates, taxes, assessments, and impositions whatsoever, whether parliamentary, parochial, or otherwise, that may become due or assessed in respect of the messuage, premises, and garden during the tenancy (property tax excepted as aforesaid), and to keep the premises in as good repair as at the commencement of the tenancy, fair wear and tear excepted." During the term notices were served upon the landlord and the tenant, by the sanitary authority, stating that the premises were in such a state, by reason of their insanitary condition, as to be a nuisance, and requiring specified sanitary work to be executed. The tenant executed the work at a cost of £118,

and claimed to recover this sum from the landlord. It was held, applying *Foulger* v. *Arding*, *supra*, and *Stockdale* v. *Ascherberg*, *supra*, that the expense was an imposition within the meaning of the agreement which fell on the tenant, notwithstanding the absence of such words as "imposed on the landlord or tenant," and notwithstanding the shortness of the tenancy (*In re Warriner*, *Brayshaw* v. *Ninnis*, [1903] 2 Ch. 367 ; 67 J. P. 351 ; 72 L. J. Ch. 701 ; 88 L. T. (N.S.) 766 ; 19 T. L. R. 543).

A tenant occupied a house for three years at a yearly rent of £70 under an agreement by him to pay all "rates, taxes, assessments, and outgoings whatsoever, in respect of the said premises." He held over on the expiration of the term without any fresh agreement, and paid rent at the same rate. It was held by WRIGHT, J., applying *Valpy* v. *St. Leonard's Wharf Co., Limited*, *supra*, that whilst so holding over he could not be liable for an expense of £70 incurred by his landlord in executing structural sanitary repairs ; having regard to the relative amounts of the rent and expenditure, he could not be presumed to have become a yearly tenant subject to so onerous an obligation (*Harris* v. *Hickman*, [1904] 1 K. B. 13 ; 68 J. P. 65 ; 73 L. J. K. B. 31 ; 89 L. T. (N.S.) 722 ; 20 T. L. R. 18).

A lease of premises used as a bakehouse contained a covenant by the lessee to pay "all existing and future . . . impositions and outgoings of every description for the time being payable either by landlord or tenant in respect of the premises." It was held that the covenant imposed upon the lessee the liability for the expense of making structural alterations necessary to be done in order to obtain the certificate of the district council for the use of the premises as an underground bakehouse (*Goldstein* v. *Hollingsworth*, [1904] 2 K. B. 578 ; 68 J. P. 383 ; 73 L. J. K. B. 826 ; 91 L. T. 85 ; 20 T. L. R. 550). The same result followed when the covenant was "to pay all existing and future taxes, rates, assessments, and outgoings, whether parliamentary, parochial, or otherwise, for the time being payable either by the landlord or tenant in respect of the said premises" (*Morris* v. *Beal*, [1904] 2 K. B. 585 ; 68 J. P. 542 ; 73 L. J. K. B. 830 ; 20 T. L. R. 682).

A similar effect was given by WARRINGTON, J., in *Stuckey* v. *Hooke* (1905), 69 J. P. 119 ; 3 L. G. R. 633 (reversed on appeal, where, however, this point was not decided ; but see the dictum of FLETCHER MOULTON, L.J., ([1906] 2 K. B. 20 ; 70 J. P. 393 ; 75 L. J. K. B. 504 ; 94 L. T. 723 ; 54 W. R. 509 ; 22 T. L. R. 508 ; 4 L. G. R. 815)) to a covenant to "bear, pay, and discharge all burdens, duties, assessments, outgoings, and impositions whatsoever, at any time during the said term charged, assessed, or imposed on the said premises, or upon the landlord or tenant in respect thereof." See also *Horner* v. *Franklin*, [1905] 1 K. B. 479 ; 69 J. P. 117 ; 74 L. J. K. B. 291 ; 92 L. T. 178 ; 21 T. L. R. 225 ; 3 L. G. R. 423, where, however, the Court of Appeal expressed no opinion as to whether the expenses then in question were an "outgoing" within the lessees' covenant.

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By a lease dated 1894, plaintiff demised premises to defendants for twenty-one years, at an annual rent of £105 16*s.*, clear of all deductions (except property tax), and the defendants covenanted to pay the rent reserved, and "all rates, taxes, and outgoings now payable, or hereafter becoming payable, in respect of the said premises." The lease also contained a repairing covenant. It was held by the King's Bench Division that the defendants were liable for the cost of paving works executed under s. 150 of the Public Health Act, 1875 (*Greaves* v. *Whitmarsh, Watson & Co., Limited*, [1906] 2 K. B. 340 ; 70 J. P. 415 ; 75 L. J. K. B. 633 ; 95 L. T. (N.S.) 425 ; 4 L. G. R. 718). It was said by the court in the last-mentioned case that no distinction could be drawn between the cost of making up a street and the cost of sanitary work.

See also *Mansfield and Others* v. *Relf*, [1908] 1 K. B. 71 ; 71 J. P. 556 ; 77 L. J. K. B. 145 ; 97 L. T. 745 ; 24 T. L. R. 79 ; *Salaman* v. *Holford*, [1909] 2 Ch. 64 ; 78 L. J. Ch. 536 ; 100 L. T. 929 ; and *Drieselman* v. *Winstanley*, 53 Sol. J. 631.

Before concluding this portion of our note, three recent decisions as to the construction of covenants to repair might be referred to :

If the house is of such a kind that by its own inherent nature it will in course of time fall into a particular condition, the effects of that result are not within the tenant's covenant to repair.

A lease contained a covenant to "substantially and effectually repair, uphold and maintain," and to deliver up the premises in a condition in accordance with such covenant. The London County Council gave the lessee a "dangerous structure notice" in reference to a bay window, and the lessee took such window down, and put in a new window flush with the main wall ; thereupon the landlord brought an action to compel him to replace the bay window. The judge found that, owing to the inherent nature of the premises, the bay window could not have been made to comply with the council's requirements without building a practically new window and supporting it on columns of some kind, and he gave judgment for the defendant :—*Held*, that the defendant was not liable (*Wright* v. *Lawson* (1903), 68 J. P. 34 ; 19 T. L. R. 510).

A road was in 1888 widened and made up by two frontagers under an agreement, whereby M. was not "to be under any liability to contribute to the maintenance or repair of the said roadway and sewers and main drain, or any works connected therewith ; but the same were to be wholly and solely maintained by T., unless and until the same should be taken to by the parish or some other local or public authority." In 1901 the local authority made up the road, or street, and apportioned on M. as a frontager the sum of £108 :—*Held*, reversing the decision of BIGHAM, J. (67 J. P. 238 ; 19 T. L. R. 57), that the agreement did not apply to the works executed by the authority, and that M. could not recover the £108 from T. (*Moore* v. *Todd* (1903), 68 J. P. 43 ; 19 T. L. R. 642).

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A covenant to contribute a proportionate part of the expenses of repairing and maintaining a road until undertaken by the local authority does not extend to contributing a proportion of the expense of an entire reconstruction of the road. In construing such a covenant, regard must be had to the standard of the condition of the road at the time when the covenant was entered into, and the obligation is to contribute a proportionate part of the expense of putting it into a state of repair corresponding to the standard contemplated or existing at that time. Where the road is reconstructed for the purpose of its being taken over by the local authority, the covenantor is liable to contribute a proportionate part of such expenses as would have been incurred in putting it into the state of repair above mentioned, but is not liable to contribute to the expenses of such work as amounts to reconstruction. Decision of Joyce, J. (68 J. P. 181), affirmed. (*Scott* v. *Brown* (1904), 69 J. P. 89 ; 4 L. G. R. 103).

Money paid under compulsion—right of recovery.

We may here conveniently consider the numerous decisions in cases where actions have been brought by owners against tenants, or vice versâ, or by owners or occupiers against local authorities in order to recover the expense of executing works which the defendants ought to have done themselves, and might have been compelled to do. These decisions, it will be found, turn upon the point whether the work executed was in fact done under compulsion or voluntarily, for the principle of law applicable to such actions is that a person who executes under compulsion work which another is legally compellable to do has a right of action for the expenses incurred by him against such other person.

Most of the cases have been decided under the Public Health (London) Act, 1891. Section 3, *ante*, provides that an authority must give such directions to their officers as will secure the existence of any nuisance being immediately brought to the notice of any person who may be required to abate it, and the officers shall do so by serving a written intimation ; s. 4 (1), *ante*, provides for the service by the authority of an abatement notice upon the person responsible for the nuisance, or the owner or occupier, requiring abatement thereof ; s. 4 (3), *ante*, requires such last mentioned notice to be served on the owner when the nuisance is due to a structural defect ; s. 4 (4), *ante*, imposes a penalty for non-compliance with a notice served under s. 4 ; s. 5, *ante*, provides for the making of an abatement order by justices upon complaint if the abatement notice is not complied with ; and, lastly, s. 11 (1), *ante*, enacts that all expenses incurred in serving the notice, making the complaint, or obtaining or carrying into effect the justices' order, shall be deemed to be money paid at the request of the person on whom the order is made, or (if no order is made) then of the person by whose act or default the nuisance was caused. The first case decided under this Act was *Gebhardt* v. *Saunders*, [1892] 2 Q. B. 452 ; 56 J. P. 741 ; 67 L. T. (N.S.) 684 ; 40 W. R. 571. The plaintiff was tenant to the defendants of a house in London, in which a nuisance arose from an accumulation of sewage

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in the cellar. The authority served at the premises a notice under s. 4 (1) addressed to "the owner or occupier," and the plaintiff did the necessary work; in the course of the work it appeared that the nuisance arose from a structural defect, but no notice had been served on the defendants, as ought to have been done under s. 4 (3), if this fact had been known beforehand. It was held by the Divisional Court that as the plaintiff would have been liable to a penalty under s. 4 (4), had he not obeyed the notice, he must be regarded as having done the work under compulsion, and that he could recover against the defendants under the words of s. 11 (1), "expenses incurred . . . in carrying the order into effect," on the ground that the word "order" was wide enough to include a notice involving a penalty for disobedience. CHARLES, J., also held that the defendants were liable, apart from s. 11, upon the common law principle which we have already referred to, the fact that the nuisance arose from a structural defect rendering the defendants legally compellable to abate it, although such fact was not apparent in time to serve a notice under s. 4 (3). See also a similar decision under the Metropolis Management Acts (*Castleberg* v. *Kenyon*, Times, June 16th, 1879). In the next case under this Act the sanitary authority had served on certain premises an intimation or warning, addressed to the owners, that if certain necessary works were not completed within a specified time they would commence proceedings against them by the service of a statutory notice. Thereupon the occupier, without forwarding the document to the owners, or informing them of it, caused the work to be executed, and then sought to recover the amount expended thereon from the owners:—*Held*, by the Court of Appeal, that the occupiers, not being compellable to execute the work, had acted as mere volunteers in doing so, and had no claim to be reimbursed by the owners (*Thompson and Norris Manufacturing Co.* v. *Hawes* (1895), 59 J. P. 580; 73 L. T. (N.S.) 369).

In the next case an abatement notice under s. 4 (1) had been served, in consequence of which, and without waiting for an order to be made on it, the person primâ facie liable to abate the nuisance had executed the work required, and it was afterwards discovered that he was not legally liable to do so, but that the sanitary authority were. It was held, following *Gebhardt's Case* on both points, that he was entitled at common law to be recouped the expenses he had been put to through their default, and also by virtue of s. 11 (1) of the Act (*Andrew* v. *St. Olave's Board of Works*, [1898] 1 Q. B. 775; 62 J. P. 328; 67 L. J. Q. B. 592; 78 L. T. (N.S.) 504; 46 W. R. 424). Since the last mentioned decision, the compulsory nature of a notice under s. 4 (1) has not been again disputed; but there have been decisions as to the effect of an intimation notice under s. 3. In *Proctor* v. *Islington Borough Council* (1903), 67 J. P. 164, and *Silles* v. *Fulham Borough Council*, [1903] 1 K. B. 829; 67 J. P. 273; 72 L. J. K. B. 397; 88 L. T. 753; 51 W. R. 598; 19 T. L. R. 398, the authorities had served

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notices headed "Intimation," and signed by a sanitary inspector, requiring certain work to be done to a "drain," and threatening that, in default, the authority "may commence proceedings against you by the service of a statutory notice." The work was done, but, finding that the so-called "drain" was in fact a "sewer," the recipients of the notices claimed to recover the expenses incurred by them from the authority. In each case Wright, J., held that the notice was one under s. 3, and did not amount to compulsion. In *Silles' Case* there was no appeal upon this point, and in *Proctor's Case*, though the plaintiff appealed, no decision was given. The court obtained the consent of both parties to their dealing with the matter informally, and they made an award in favour of the plaintiff.

In a later case a sanitary inspector served upon the owners of a house an intimation under s. 3, that the house was in such a state as to be a nuisance owing to the drain being defective. The owners called upon the tenant to do the work, it being alleged that he was liable under a covenant to pay expenses of this nature. The tenant refused to do the work, and the owners therefore did it without waiting to be served with a notice under s. 4. It was held that an action could not be maintained against the tenant to recover the expense on the ground that the work was done voluntarily and not under compulsion (*Harris* v. *Hickman*, [1904] 1 K. B. 13; 68 J. P. 65; 73 L. J. K. B. 31; 89 L. T. (N.S.) 722; 20 T. L. R. 18; 2 L. G. R. 1). In a still later case a Divisional Court held with regret that they must regard a notice under s. 3 as not amounting to sufficient compulsion to entitle the plaintiff to recover from the authority the money expended by him in repairing what proved to be a sewer. The learned judges would have decided otherwise, but for *Thompson and Norris Manufacturing Co.* v. *Hawes*, *supra* (*Oliver* v. *Camberwell Borough Council* (1904), 68 J. P. 165; 90 L. T. (N.S.) 285; 52 W. R. 511; 2 L. G. R. 617).

In a more recent case, where a group of premises, drained by a combined operation, discharged their drainage through a common pipe or conduit into a public sewer, the pipe being defective and causing a nuisance, the defendants served "intimation" notices on several owners, including the plaintiffs, requiring them to repair the pipe and abate the nuisance, and threatening proceedings if the said notice should not be complied with. The plaintiffs denied liability, did the work required under protest, and brought an action to recover the cost of the work and damages for injury to their premises caused by the defective condition of the said pipe. It was held by Channell, J., that the said pipe was a sewer and repairable by the defendants, and that although service of an intimation notice does not by itself amount to compulsion, where work is done in compliance with such a notice under protest, or without admitting liability, such work is done under compulsion and not voluntarily, and the expenses of doing such work can be recovered from the local authority which was in fact liable to do

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it. The above-mentioned cases are referred to by CHANNELL, J., in his judgment (*Wilson's Music and General Printing Co.* v. *Finsbury Borough Council*, [1908] 1 K. B. 563 ; 72 J. P. 37 ; 77 L. J. K. B. 471 ; 98 L. T. 574 ; 6 L. G. R. 349).

We will now refer to decisions under the Public Health Act, 1875. In the first case in order of date it was held that when a person is called upon by a sanitary authority to abate, and does abate, a nuisance by doing work which the sanitary authority themselves are liable to do, and where that person afterwards seeks to recover from them the cost of the work, upon the principle that, where one person is compelled to do work which another is legally compellable to do, the cost of the work may be recovered by the one as money paid at the other's request, regard must be had to the fact that in the case of a nuisance prompt action by someone is imperative ; and that because of that fact it is not necessary to show that there was actual, direct, or irresistible compulsion in order to bring the case within the principle above enunciated. It is sufficient to show that the sanitary authority took steps which practically amounted to compulsion (*North* v. *Walthamstow Urban District Council* (1898), 62 J. P. 836 ; 67 L. J. Q. B. 972). In the last-mentioned case there was no statutory notice under s. 94 of the Act, but there was a peremptorily worded notice, signed by the inspector of nuisances, requiring drains to be repaired within seven days.

The owner of a house, who was enlarging his premises, was required by the local authority's surveyor (amongst other things) to take up and relay the back drain of the house (which was in fact a sewer) and to construct an interception chamber or manhole ; and these works the owner, upon being told that they must be done, though no actual steps were taken to enforce their execution, agreed to do under protest, and did do under the direction and by order of the surveyor of the local authority, but without any legal proceedings being taken against him, and without serious threat of such proceedings. The liability in law for carrying out these works rested on the local authority. In an action by the owner to recover the costs of the works from the local authority, on the ground that he was compelled by them to do works which the local authority were compellable by law to do :—*Held*, that the owner in the execution of these works was acting as a volunteer and not under compulsion, and was therefore not entitled to recover, although without legal proceedings or the threat of such, there may be sufficient compulsion to prevent a person being regarded as a volunteer (*Ellis* v. *Bromley Rural District Council* (1899), 63 J. P. 711 ; 81 L. T. (N.S.) 224).

A nuisance arose from an obstruction in a pipe near a house, and the local authority served on the owner of the house a notice under s. 94 requiring her to abate the nuisance and to relay the drain. She, although protesting that the pipe was a sewer, did the work, and afterwards sued the authority :—*Held*, by CHANNELL, J., following his own decision in *North* v. *Walthamstow Urban District Council*, *supra*, that the expense of the work done to the sewer was money paid under compulsion, and that the owner was entitled

to recover it from the local authority (*Haedicke* v. *Friern Barnet Urban District Council*, [1904] 2 K. B. 807 ; 68 J. P. 473 ; 73 L. J. K. B. 976 ; 20 T. L. R. 567, reversed on appeal on another ground, [1905] 1 K. B. 110 ; 69 J. P. 45 ; 74 L. J. K. B. 130 ; 91 L. T. (N.S.) 750 ; 53 W. R. 211 ; 21 T. L. R. 49 ; 3 L. G. R. 20). In the last-mentioned case Channell, J., expressed the view that less evidence of compulsion is required when a local authority is being sued than is required when a landlord sues his tenant, or vice versâ. In the case of landlord and tenant his lordship considered that actual compulsion must be proved.

Notices were served by a local authority under the Public Health Act, 1875, and under certain local Acts on the appellant and on the respondent, who were the owners of two adjoining houses, requiring them to abate a nuisance arising from the drains on their premises and to perform certain necessary works. The drainage of the respondent's house passed through the appellant's drain into a sewer. The appellant complied with the terms of his notice, but the respondent took no steps :—*Held*, that neither under s. 104 of the Public Health Act, 1875, nor at common law had the appellant any right of contribution as against the respondent (*Reeve* v. *Sadler* (1903), 67 J. P. 63 ; 88 L. T. (N.S.) 95 ; 51 W. R. 603).

A landlord, liable among others to repair a bridge *ratione tenuræ*, demised the land, and the lessee covenanted to pay the rent, clear of land tax and all other taxes and deductions whatsoever, either parliamentary or parochial, taxed or imposed, or to be taxed or imposed, upon the premises, or upon the lessor in respect thereof, property tax excepted. By statute, reciting the liability *ratione tenuræ* and that part of the bridge was out of repair, it was enacted that the landowners liable as above should repair the said parts, during the continuance of the Act ; and on their default road trustees were empowered to do the repairs and recover against the owners. A power of distress under a justice's warrant was also given to enforce payment, and for raising the sums required power was given to the landowners to call meetings, and to meet and make rates according to the value of the chargeable lands, such rates to be levied, if necessary, by distress. A subsequent Act, also reciting the above-mentioned liability, made further provision as to the holding of such meetings and laying rates for the said repair :—*Held*, that the original liability for contribution to repairs did not, by these enactments, become a parliamentary tax or deduction within the lessee's covenant, and, therefore, the court finding no clause in the above statutes which extended the ultimate liability to lessees and occupiers as well as owners, that the lessee having been compelled, in the lessor's default, to pay a rate made as above and charged upon him as lessee and occupier, might recover the amount from the lessor (*Baker* v. *Greenhill* (1842), 3 Q. B. 148 ; 11 L. J. Q. B. 161).

A sewers rate is not a "parliamentary tax" within the meaning of a covenant to pay parliamentary taxes (*Brewster* v. *Kitchel* (1697), 2 Salk. 615 ; *Palmer* v. *Earith* (1845), 14 M. & W. 428).

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In another case the plaintiff demised premises to the defendant at a yearly rent "clear of all present and future rates, taxes, and deductions," and a covenant was contained in the lease that the defendant should pay the rent, and also bear and pay all the rates, taxes, and outgoings then payable or thereafter to become payable in respect of the premises. The plaintiff having paid certain paving expenses, brought an action to recover them from the defendant. It was held that the omission of the word "outgoings" in the reddendum clause did not qualify the covenant so as to take it out of the decision in *Crosse* v. *Raw*, and that the plaintiff was, therefore, entitled to recover (*Gardner* v. *Furness Rail. Co.* (1883), 47 J. P. 232).

In a lease of a shop and basement and of three rooms on the third floor of the same house, the lessor covenanted to pay "all rates and taxes chargeable in respect of the demised premises." Water was separately supplied by a water company to the shop and basement, and was paid for by the tenant. It was held that the lessee was entitled to recover from the lessor the sum so paid, as being a *rate* within the meaning of the covenant (*Direct Spanish Telegraph Co., Limited* v. *Shepherd* (1884), 13 Q. B. D. 202; 48 J. P. 550; 53 L. J. Q. B. 420; 51 L. T. (N.S.) 124; 32 W. R. 717). This decision was discussed in a subsequent case. There, by a covenant contained in a lease of a warehouse in the city of London, the lessor covenanted with the lessees to pay all rates, taxes, and impositions whatsoever, whether parliamentary, parochial, or imposed by the corporation of the city of London or otherwise howsoever, which then were or thereafter might be rated, charged, or assessed on the said premises or any part thereof, or on the said yearly rent, or on the landlord, owner, or tenants of the said premises in respect thereof. Water having been supplied to the demised premises for domestic purposes by the New River Company under the provisions of the Waterworks Clauses Act, 1847, the lessees paid the water rates due in respect of such supply, and sought to recover the same from the lessor. It was held that such water rates were not rates or impositions imposed on or in respect of the premises within the meaning of the covenant, and, therefore, the lessees were not entitled to recover the same from the lessor (*Badcock* v. *Hunt* (1888), 22 Q. B. D. 145; 53 J. P. 340; 58 L. J. Q. B. 134; 60 L. T. (N.S.) 314; 37 W. R. 205). In a lease of premises within the district supplied with water by the New River Company, the lessor covenanted to pay "all rates, taxes, assessments, water rate, and other outgoings except gas and electric light, now or hereafter to be imposed or assessed upon the said premises, or on the lessor or lessees in respect thereof. It was held that the water rate payable under the covenant was the rate payable for the supply of water to the premises for domestic purposes under the company's private Act, which was calculated at a percentage upon the annual value of the house, and not the rate payable by agreement between the tenant and the company for water supplied for trade purposes (*Floyd* v. *Lyons*,

[1897] 1 Ch. 633; 66 L. J. Ch. 350; 76 L. T. (N.S.) 251; 45 W. R. 435).

The respective liabilities of landlord and tenant in respect of nuisances on the demised premises have been already noticed. See note to s. 4, *ante*, p. 17.

Questions frequently arise as to the ultimate incidence of the cost of the expenses of drainage and paving work done on settled estates. Where trustees have the legal estate in premises, and are entitled for the time being to receive the "rack-rents" thereof, they are "owners" within the meaning of s. 141, *post*. See *In re Barney*, *Harrison* v. *Barney*, [1894] 3 Ch. 562; 63 L. J. Ch. 676; 71 L. T. 180; 43 W. R. 105; 8 R. 459; *In re Lever*, *Cordwell* v. *Lever*, [1897] 1 Ch. 32; 66 L. J. Ch. 66; 75 L. T. 383; 45 W. R. 172. But when trustees are "owners" and have executed works, the question as to who must ultimately bear the expense is not easy to determine. Where trustees who were "owners" incurred expenses for drainage works in respect of houses which were without sufficient drains, they were held to have rightly paid the expenses out of capital, and that as between "the tenant" for life and remainderman the capital moneys so applied must be treated as a charge upon the premises (*In re Barney*, *supra*). *Cf.*, however, *In re Crawley* (1885), 28 Ch. D. 431; 49 J. P. 598; 54 L. J. Ch. 652; 52 L. T. 460; 33 W. R. 611, the decision in which is apparently at variance with the decision in *In re Barney*, *supra*. In another case where sanitary works were executed under the Public Health (London) Act, 1891, upon leasehold houses forming part of a residuary bequest to trustees upon trust for tenant for life and remainderman, it was held that the cost was payable out of the capital of the residuary estate (*In re Lever*, *supra*). A later case would at first sight appear to decide that as between tenant for life and remainderman the cost of complying with a sanitary notice under the Public Health (London) Act, 1891, and the Housing of the Working Classes Act, and a dangerous structure notice under the London Building Act, 1894, was chargeable as against income. See *In re Copland's Settlement*, *Johns* v. *Carden*, [1900] 1 Ch. 326; 69 L. J. Ch. 240; 82 L. T. 194. If, however, the case is carefully examined it will be seen that the only point decided was that there is no distinction in the position of an equitable tenant for life of leaseholds when the property is sublet at a rack-rent and when it is sublet at an improved ground rent. It was admitted that the income would be chargeable had not the property been sublet at an improved ground rent. It will be seen from the judgment that the superior lease made the tenant liable to pay for complying with the notices in question, and this is perhaps what distinguishes the case from *In re Lever*, *supra*. It would appear, however, that where works have been executed under a notice from a sanitary authority, and trustees apply to the court to be indemnified out of the estate, it is competent to the court to determine how the expense shall be borne (*In re Farnham's Settlement*, [1904] 2 Ch. 561; 73 L. J. Ch.

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667 ; 91 L. T. 781 ; and see *In re Thomas, Weatherall* v. *Thomas*, [1900] 1 Ch. 319 ; 69 L. J. Ch. 198 ; 48 W. R. 409 ; *In re Partington, Reigh* v. *Kane*, [1902] 1 Ch. 711 ; 71 L. J. Ch. 472 ; 86 L. T. 194 ; 50 W. R. 388 ; 18 T. L. R. 387).

When a person is legal tenant for life, or an equitable tenant for life in possession, he would appear to be the "owner" (*Re Smith's Settled Estates*, [1901] 1 Ch. 689 ; 70 L. J. Ch. 273) ; and, if such a tenant for life pays expenses which have been incurred by a local authority, and which constitute a charge upon property by virtue of s. 257 of the Public Health Act, 1875, he is entitled to keep the charge alive as an incumbrance on the settled land, and to raise money under s. 11 of the Settled Land Act, 1890, by mortgage of the estate for the purpose of discharging it (*ibid.*). See also *In re Pizzi, Scrivener and Others* v. *Aldridge and Others*, [1907] 1 Ch. 67 ; 71 J. P. 58 ; 76 L. J. Ch. 87 ; 95 L. T. 722 ; 5 L. G. R. 86, a case decided under the Private Street Works Act, 1892. In another case expenses incurred by a local authority in sewering, paving, and flagging new streets on settled land were charged on the land and made payable, with interest thereon, by instalments. It was held that the expenses so charged were payable out of capital moneys under s. 21 (ii) of the Settled Land Act, 1882 ; and that the tenant for life was entitled to repayment of instalments already paid by him so far as they represented capital, and that the trustees ought to pay the corresponding portion of the unpaid instalments (*In re Leigh's Settled Estate*, [1902] 2 Ch. 274 ; 66 J. P. 600 ; 71 L. J. Ch. 768 ; 86 L. T. 884 ; 50 W. R. 570). When an equitable tenant for life, by arrangement with the trustees, executes sanitary works, he is entitled by subrogation to the rights of the trustees (*In re Farnham's Settlement*, *supra*).

Justice to act though member of sanitary authority or liable to contribute.

122. A judge or justice of the peace shall not be incapable of acting in cases arising under this Act by reason of his being a member of any sanitary authority, or by reason of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to or to be benefited by any rate or fund, out of which any expenses incurred by a sanitary authority are to be defrayed.

This section is taken from 29 & 30 Vict. c. 41, s. 2, which was substituted for 23 & 24 Vict. c. 77, s. 16 (both now repealed). It is similar to s. 258 of the Public Health Act, 1875.

The section merely removes the disqualification of a justice by reason of his being a member of a sanitary authority, or of his being interested as a ratepayer or the like. It does not enable him to act in cases where he has a pecuniary interest, or where he has, as a member of the sanitary authority, set the law in motion.

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A disqualification of a justice may arise either from pecuniary interest or from interest other than pecuniary if it is such as to create a real possibility of bias in him. As to what amounts to pecuniary interest, see *R.* v. *Hammond* (1863), 27 J. P. 793 ; 9 L. T. (N.S.) 423 ; *R.* v. *Mackenzie*, [1892] 2 Q. B. 519 ; 56 J. P. 712 ; 61 L. J. M. C. 181 ; 67 L. T. (N.S.) 201 ; 41 W. R. 144 ; 17 Cox C. C. 542 ; 5 R. 10 ; *R.* v. *Burton*, *infra*. The disqualification on the ground of bias, which would otherwise arise from membership of a local authority, party to the proceedings, is removed by this section, which also removes the disqualification arising from pecuniary interest to the extent therein appearing. It does not, however, enable a justice to act in cases where he has, as a member of the local authority, taken part in setting the law in motion. This will appear from the following cases :

Interested justices.

H., the owner of a farm in the parish of Edmonton, bounded by the river Lee, entered into an agreement with the Enfield Local Board, under which he received the sewage of the Enfield district, and disposed of it over his farm. After a few months disagreements arose, and the Enfield board took proceedings against H. to enforce the agreement. While these were still pending, H., after notice given to the board, diverted the sewage from his farm through a pipe into the old open channel or watercourse in the parish of Edmonton, through which the sewage had been used to flow into the river Lee. On this the Edmonton Local Board threatened proceedings against the Enfield board for the nuisance ; and the Lee Conservancy took out summonses under their Act against H. for having opened the pipe into the channel, etc., and for continuing the use of it. On the summonses coming on for hearing, M., who was chairman of the Enfield board, and had taken an active part in its proceedings, sat with three other justices on the bench. H. objected to M. sitting as a justice, but he remained, and H. was convicted in penalties. A rule for a *certiorari* was then obtained for the purpose of quashing the conviction, on the ground that M. was an interested justice. On showing cause M. made affidavit that, though he sat on the bench, he took no part until the other justices had unanimously determined to convict, when he proposed a mitigation of the penalties, and that he did not sign the conviction :—*Held*, that M. had such an interest as might give him a real bias in the matter ; consequently, he ought not to have sat as a justice, and it was immaterial what part he really took in the matter ; and the court made the rule absolute with costs against M. (*R.* v. *Meyer* or *Harrison* (1875), 1 Q. B. D. 173 ; 40 J. P. 645 ; 34 L. T. (N.S.) 247 ; 24 W. R. 392). See also *R.* v. *Lancashire JJ.* (1906), 70 J. P. 337 ; 75 L. J. K. B. 198 ; 94 L. T. (N.S.) 481, where it was held that the mere presence on the bench of disqualified justices, even though they took no part in the proceedings, rendered the proceedings of a court of quarter sessions irregular, and the appeal was directed to be reheard.

Complaint having been made to the Local Government Board of a nuisance upon premises belonging to B., in the borough of

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W., the Board communicated with the town council of W., as the urban sanitary authority, and required them to abate the nuisance. The council having made inquiries, passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two justices who were present were members of the town council when the resolution was passed :— *Held*, that the councillors who were justices had such an interest as might give them a bias in the matter ; that, consequently, they ought not to have sat as justices on the hearing of the summons, and that the rule for the *certiorari* to quash the order must be made absolute (*R.* v. *Milledge and Others*, *Weymouth JJ.* (1879), 4 Q. B. D. 332 ; 43 J. P. 606, 650 ; 48 L. J. M. C. 139 ; 40 L. T. (N.S.) 748 ; 27 W. R. 659). But where justices who were members of a town council, and as such had taken an active part in the making of an order under the Dogs Act, 1871 (34 & 35 Vict. c. 56), sat to hear a complaint of non-observance of the order, it was held they had no such interest in the subject-matter of the complaint as to oust their jurisdiction (*R.* v. *Huntingdon JJ.* (1879), 4 Q. B. D. 522 ; 43 J. P. 767). It will be observed that in this case the justices had not taken any part in the ordering of the prosecution. Upon this ground the decision in *Harring* v. *Stockton* (*Mayor of*) (1867), 31 J. P. 420, may be supported.

By a local Act for the improvement of a borough, the corporation was made the authority for the execution of the Act, with power to direct prosecutions for that 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 a member of the corporation, but it came on for hearing before justices none of whom were connected with the corporation. It was held that the justices could not properly proceed with the hearing, as the summons had been issued by one who was virtually a prosecutor (*R.* v. *Gibbon and Another*, *Lancashire JJ.* (1880), 6 Q. B. D. 168 ; 29 W. R. 442). This decision was disapproved of in *R.* v. *Handsley and Others*, *Burnley JJ.* (1881), 8 Q. B. D. 383 ; 46 J. P. 119 ; 51 L. J. M. C. 137 ; 30 W. R. 368. In that case it was laid down that where by statute a member of a town council may act as a justice in matters arising under the Act, in order to disqualify him from acting, it is not sufficient to show 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 a 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. An officer of a corporation appointed to collect the borough rate obtained a summons against a ratepayer in arrear. In so doing he acted in the discharge of his duty, but upon his own responsibility, and without consulting the council. At the hearing the justices dismissed the summons on the ground that one of the sitting magistrates, being a town councillor, was thereby disqualified from adjudicating upon the

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summons. On motion for a *mandamus*, it was held that there was no ground for supposing either substantial interest or likelihood of bias, and consequently no disqualification. Where a justice was a member of a town council, and was present when a prosecution for selling unsound meat was resolved upon, it was held that he was disqualified from sitting to hear the summons (*R.* v. *Lee* (1882), 9 Q. B. D. 394 ; 47 J. P. 118 ; 30 W. R. 750). So also where a justice had been a member of a committee appointed to report upon certain mining pollutions of a stream, and had acted upon such committee, he was held to be disqualified to act at the hearing of a summons for polluting the stream, though he had not actually taken part in ordering the prosecution (*R.* v. *Spalding* or *Spedding* (1885), 49 J. P. 804 ; 2 T. L. R. 163). But in an Irish case where a person was convicted for obstructing a highway on two separate occasions, one of the justices who adjudicated was a member of the finance committee of the county, and also a cesspayer. The complainant was the district surveyor, an officer of the grand jury, having statutory duty of reporting generally on the state of all roads, and the name and description of all persons prosecuted by him for any injury to the road or like offence, and the result of such prosecution, and generally on all matters given to him in charge by the finance committee. The first prosecution was undertaken in obedience to a direction from the finance committee, but the second on his own responsibility, and the justice in question when adjudicating was not aware of the direction above-mentioned :—*Held*, that he was not disqualified either as a member of the committee or as a cesspayer (*R.* v. *Dublin County JJ.*, [1894] 2 I. R. 527).

As to disqualification on grounds other than pecuniary interest, the true question is whether the relation of the impugned member to the inquiry is such that he can be reasonably suspected of bias. This rule was laid down by the Court of Appeal in *Allinson* v. *General Medical Council*, [1894] 1 Q. B. 750 ; 58 J. P. 542 ; 63 L. J. Q. B. 534 ; 70 L. T. (N.S.) 471 ; 42 W. R. 289 ; 9 R. 217). There an inquiry before the General Medical Council whether the plaintiff, a medical practitioner, had been guilty of infamous conduct in a professional respect, so as to entitle the General Medical Council to erase his name from the general medical register, was instituted at the instance of the committee of a society called the Medical Defence Union, whose objects were "to support and protect the character and interests of medical practitioners ; to promote honourable practice ; and to suppress or prosecute unauthorised practitioners." One member of the council who took part in the inquiry had been a member and vice-president of this society, and as vice-president was an *ex officio* member of the committee. He had, however, never attended any of the meetings of the committee, and until after he had been elected a member of the council he did not know that proceedings were being taken against the plaintiff. He had sent his resignation as a member of the society on the same day on which he had been elected a member of the council. By the articles of associa-

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tion of the society any member might withdraw by giving two months' notice of his intention so to do. Before such two months had expired the inquiry was held. And it was held that the member was not disqualified from taking part in the inquiry.

So also in proceedings taken at the instance of the council of the Incorporated Law Society against an unqualified person for acting as a solicitor, it was held that a justice was not disqualified from adjudicating by reason of the fact that he was a member of the society (*R.* v. *Burton*, [1897] 2 Q. B. 468 ; 61 J. P. 727 ; 66 L. J. Q. B. 831 ; 77 L. T. (N.S.) 364 ; 46 W. R. 127).

The Salmon Fishery Act, 1865, s. 61, contains a provision similar to that in the text. A justice who was also a member of the board of conservators of a fishery district was present at a meeting of the board, at which a resolution was unanimously passed to take legal proceedings against a person for violation of certain provisions of the Salmon Fishery Acts. He took no prominent part in the proceedings, but his name appeared as being present at the meeting when the resolution authorising the water bailiff to institute the prosecution was passed. The justice afterwards sat with others to hear the charge, and the alleged offender was convicted. It was held that the disqualification otherwise attaching to the justice by reason of his having acted as a member of the board at which the prosecution was authorised, was not removed by s. 61 of the Salmon Fishery Act, 1865, and that the conviction must, therefore, be quashed (*R.* v. *Henley*, [1892] 1 Q. B. 504 ; 56 J. P. 391 ; 61 L. J. M. C. 135 ; 66 L. T. (N.S.) 675 ; 40 W. R. 383). In a similar case of a prosecution by a fishery committee, of which a justice was a member, and afterwards sat on the bench when the case was heard, the court quashed the conviction, though the justice deposed that he had taken no part in the case, and only retired with his brother magistrates out of curiosity. And the court intimated that in future they might award costs against any justice so offending (*Harvey* v. *Gibb*, Times, May 17th, 1892).

The interest which is sufficient to disqualify need not be a direct interest. Thus, at a special sessions for appeals against poor rates the chairman of the magistrates, who was himself appellant in one of the cases for hearing, took part in the decision of all the cases except his own. When his own case was called on he left the bench, and went to the body of the court and conducted the case himself. On a rule for a *certiorari* to bring up all the orders for the purpose of quashing them :—*Held*, that the chairman, being a litigant in a matter similar to the other matters before the court, was disqualified from acting as a justice, and that the orders were bad (*R.* v. *Great Yarmouth JJ.* (1882), 8 Q. B. D. 525 ; 46 J. P. 148 ; 51 L. J. M. C. 39 ; 30 W. R. 460). *Cf. Ex parte Nantwich Urban District Council*, Times, November 18th, 1899, where a justice who had been himself served with notice to provide a water-closet under s. 36 of the Public Health Act, 1875, protested against it and expressed his intention of sitting on the hearing of a summons against another householder for default in complying with a similar

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notice. On application for a prohibition the court expressed an opinion that he ought not to sit. A member of a nonconformist council which was opposed to the renewal of licences was present at a meeting of that council at which it was resolved to oppose the transfer of a licence ; but he had, it was stated, left the meeting before the resolution was passed. It was held that he was incapable of sitting as a justice at the hearing of the application for the transfer, and the proceedings were quashed (*R.* v. *Fraser* (1893), 9 T. L. R. 613). Upon the hearing of a summons under s. 361 of the Merchant Shipping Act, 1854, a justice who was a qualified pilot belonging to the pilotage district within which the alleged offence was committed was held, by reason of his membership of the class in whose interests the proceedings were taken, to be disqualified from acting as a justice, even though by reason of the peculiar nature of his employment as a pilot he was not actually brought into competition with unqualified pilots (*R.* v. *Huggins*, [1895] 1 Q. B. 563 ; 59 J. P. 104 ; 64 L. J. M. C. 149 ; 72 L. T. (N.S.) 193 ; 43 W. R. 329 ; 11 T. L. R. 205). But the fact that a justice has strong views on the subject appertaining to the offence with which a defendant is charged does not disqualify such justice (*Ex parte Wilder* (1902), 66 J. P. 761).

Where a justice is shown to have taken an active part in defending an appeal against a decision of which he approves, but to which he was no party, he is disqualified on the ground of possibility of bias from taking part in deciding the appeal (*R.* v. *Cumberland JJ.* (1888), 52 J. P. 502 ; 58 L. T. (N.S.) 491). At a vestry meeting, summoned by a district surveyor to consider (*inter alia*) the obstruction of a highway by the defendant, who had deposited and left a heap of earth and manure by the side of a highway, a justice moved a resolution calling upon the defendant to remove the heap. The defendant having failed to remove the heap, a summons was taken out against him by the district surveyor for depositing the heap to the obstruction and annoyance of the highway, and for failing to remove it after notice. The justice who had moved the resolution, and who was a ratepayer of the parish, sat and adjudicated with another justice upon the summons, and made an order directing the heap to be removed and sold, and the proceeds of the sale to be applied to the repair of the highway : —*Held*, that the justice was disqualified from adjudicating upon the summons, for the part taken by him in moving the resolution afforded ground for a reasonable suspicion of bias on his part, though there might not have been bias in fact, and upon the further ground that as a ratepayer he was pecuniarily interested in the result of the summons (*R.* v. *Gaisford*, [1892] 1 Q. B. 381 ; 56 J. P. 247 ; 61 L. J. M. C. 50 ; 66 L. T. (N.S.) 24). The second ground of this decision is, however, open to question, for it appears to lose sight of the provisions of s. 2 of the Justices of the Peace Act, 1867, *post*, p. 263, *infra*. The fact that a *subpœna* to give evidence in a particular case has been served upon a magistrate is not of itself sufficient to disqualify him from hearing and adjudicating upon such case (*R.* v. *Tooke* (1884), 48 J. P. 661 ; 32 W. R.

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753). A justice, who was a surgeon, attended a patient professionally for injury caused by an assault. He endeavoured to induce his patient not to prosecute for the assault, and conveyed to him a message sent by the person who had committed the assault offering an apology and suggesting a settlement. A summons was issued for the assault, the justice was subpœnaed to give evidence for the prosecution, and a prohibition was obtained to prohibit him from sitting at the hearing. The justice moved to set aside the prohibition, and it was held that his acts did not show that he had such a substantial interest in the result as to make it likely that he had a bias, and that the fact of his being subpœnaed did not disqualify him from sitting, and, therefore, the prohibition was set aside (*R.* v. *Farrant* (1887), 20 Q. B. D. 58 ; 52 J. P. 116 ; 57 L. J. M. C. 17 ; 57 L. T. (N.S.) 880 ; 36 W. R. 184). *Cf. Fobbing Commissioners* v. *R.* (1886), 11 App. Cas. 449 ; 51 J. P. 227 ; 56 L. J. M. C. 1 ; 55 L. T. (N.S.) 493 ; 34 W. R. 721).

The mere fact of receipt of a circular sent round to justices particularly requesting their attendance at a certain sessions at which certain business will be taken, without asking them to vote in any particular way, does not disqualify such justices (*R.* v. *London JJ., Ex parte Kerfoot* (1896), 60 J. P. 726 ; 45 W. R. 58).

Certain licensing cases in which the question of bias on the part of justices has been raised may also be referred to. In *R.* v. *Stockport JJ.* (1896), 60 J. P. 552, the corporation of Stockport, who had acquired a licensed house for purposes of improvement, appointed an alderman a member of a committee for the purpose of negotiating for the disposal of the house. The result of these negotiations was an arrangement that application should be made for a licence for other premises, and the sale was effected on the condition that the licence for these "other" premises should be obtained. The alderman had sat on the hearing of the question of the granting of the new licence as a member of the licensing committee, and it was sought to upset the decision on the ground of bias. The Divisional Court thought that there was no real ground on which to quash the decision. That case was soon afterwards expressly overruled by the Court of Appeal in *R.* v. *Sunderland JJ.*, [1901] 2 K. B. 357 ; 65 J. P. 598 ; 70 L. J. K. B. 946 ; 85 L. T. (N.S.) 183, where the facts were similar to those in the *Stockport Case*. A corporation had bought a publichouse for a street improvement, and then entered into an agreement with a firm of brewers, by which the brewers agreed that if they obtained a new licence for a publichouse in another street they would pay the corporation £10,000 on condition that they would thereupon close the licensed house they had purchased. Certain members of the corporation who had taken an active part in negotiating the agreement sat as justices both on the licensing committee and at the confirming meeting when the new licence was granted. In the Divisional Court a rule *nisi* for a *certiorari* was discharged, but the Court of Appeal reversed their decision on the ground that in their opinion there was a real likelihood of bias. In a still more

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recent case the Court of Appeal granted a writ of *certiorari* in a case where it was alleged that upon applications for the renewal of the licences of certain premises the licensing justices had acted pursuant to an arrangement they had previously entered into with the corporation of Leeds, who were the owners of the premises, and did not properly consider objections made to the renewal of the licences. See *R.* v. *Woodhouse, Ex parte Ryder*, [1906] 2 K. B. 501 ; 70 J. P. 485 ; 75 L. J. K. B. 745 ; 95 L. T. (N.S.) 367. On appeal, however, the decision of the Court of Appeal was reversed on the ground that the justices were entitled to act as they had done. See *Leeds Corporation* v. *Ryder*, [1907] A. C. 420 ; 71 J. P. 484 ; 76 L. J. K. B. 1032 ; 97 L. T. (N.S.) 261 ; 23 T. L. R. 721. See also *R.* v. *Ferguson* (1890), 54 J. P. 101 ; *R.* v. *Hain* (1896), 12 T. L. R. 323 ; *R.* v. *Taylor, Ex parte Vogwill* (1898), 14 T. L. R. 185 ; *R.* v. *Gee* (1901), 17 T. L. R. 374 ; *R.* v. *Tempest* (1902), 66 J. P. 472 ; 86 L. T. (N.S.) 585 ; *R.* v. *Howard* or *Farnham JJ.*, [1902] 2 K. B. 363 ; 66 J. P. 579 ; 71 L. J. K. B. 754 ; 86 L. T. (N.S.) 839 ; 51 W. R. 21 ; *R.* v. *Dublin JJ.*, [1904] 2 I. R. 75 ; *R.* v. *Suffolk JJ.*, Estates Gazette, May 19th, 1906. Two recent cases relating to rating appeals, in which attempts to disqualify justices on the ground of possibility of bias failed, might also be noticed : *R.* v. *London JJ.* (1907), 71 J. P. 476 ; 97 L. T. 716 ; 23 T. L. R. 726 ; 5 L. G. R. 1064 ; affirmed (1908), 72 J. P. 137 ; 98 L. T. 519 ; 24 T. L. R. 274 ; 6 L. G. R. 324 ; and *R.* v. *Middlesex JJ.* (1908), 72 J. P. 251 ; 52 Sol. J. 458 ; 6 L. G. R. 739.

There is no restriction here, as in 16 Geo. 2, c. 18, as to the justice acting at quarter sessions.

By the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 115), in order that justices may act in the execution of Acts in some cases in which they would otherwise be incapable of acting, it is provided that a justice shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners or trustees, or any other local authority, by reason only of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go. And see *R.* v. *Bolingbroke*, [1893] 2 Q. B. 347 ; 58 J. P. 118 ; 62 L. J. M. C. 180 ; 69 L. T. (N.S.) 717 ; 42 W. R. 128 ; 5 R. 536 ; *Ex parte Workington Overseers*, [1894] 1 Q. B. 416 ; 58 J. P. 381 ; 70 L. T. (N.S.) 143 ; 42 W. R. 177 ; 9 R. 135.

As to what amounts to acting, see *R.* v. *Surrey JJ.* (1856), 4 W. R. 86 ; 1 Jur. (N.S.) 1138 ; *R.* v. *Hertfordshire JJ.* (1845), 6 Q. B. 753 ; 14 L. J. M. C. 73 ; 9 Jur. 424 ; 1 New Sess. Cas. 490 ; *R.* v. *Suffolk JJ.* (1852), 18 Q. B. 416 ; 21 L. J. M. C. 169 ; 16 Jur. 612 ; *R.* v. *London JJ.* (1852), 18 Q. B. 421 n. ; *R.* v.

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Meyer, supra; R. v. *Budden* (1896), 60 J. P. 166; *R.* v. *Lancashire JJ.* (1906), 70 J. P. 337; 75 L. J. K. B. 198; 94 L. T. (N.S.) 481.

Waiver of objection.

Where a justice is disqualified on the ground of interest, it is open to the parties to the case to waive the objection. If they acquiesce in his acting after knowledge of the disqualification, they cannot afterwards object. See *R.* v. *Richmond JJ.* (1860), 24 J. P. 422; 8 W. R. 562; 8 Cox C. C. 314; *Ex parte Ilchester* (1861), 25 J. P. 56; *R.* v. *Kent JJ.* (1880), 44 J. P. 298; *Wakefield Local Board* v. *West Riding and Grimsby Rail. Co.* (1865), L. R. 1 Q. B. 84; 6 B. & S. 794; 30 J. P. 628; 35 L. J. M. C. 69; 13 L. T. (N.S.) 590; 14 W. R. 100; 12 Jur. (N.S.) 160; *R.* v. *Antrim JJ.*, [1895] 2 I. R. 603.

Appearance of sanitary authority in legal proceedings.

123. The county council or a sanitary authority may appear before any court or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such council or authority; and their clerk, or any officer or member so authorised, shall be at liberty to institute and carry on any proceeding which the county council or sanitary authority are authorised to institute and carry on under this Act.

A similar provision is contained in s. 259 of the Public Health Act, 1875.

What is "appearance."

The appearance mentioned in this section refers to the appearance in court. It does not give the local authority a right to be heard by their clerk where there is a rule of the court that parties are only to be heard by counsel (*R.* v. *London JJ.*, [1896] 1 Q. B. 659; 60 J. P. 420; 65 L. J. M. C. 120; 74 L. T. (N.S.) 523; 44 W. R. 485). The clerk may appear without any authority, but any other officer must have an authority, either given generally or for the special proceeding. Thus the inspector of nuisances may have such general authority, but it should be in writing, containing a copy of the resolution as entered in the minutes. 29 & 30 Vict. c. 90, s. 48 (now repealed), from which this section is taken, extended the provision in 18 & 19 Vict. c. 121, s. 5, which had restricted the appearance of the officer to the particular case in which directions had been given. See *Isle of Wight Ferry Co.* v. *Ryde Commissioners* (1861), 25 J. P. 454. As regards the practice of justices, it must be noticed that where they refused to determine a complaint under 11 & 12 Vict. c. 63, without the attendance of the clerk of the local board, the Court of Queen's Bench refused to interfere (*Ex parte Leamington Local Board* (1862), 5 L. T. (N.S.) 637). It has been held that an inspector of weights and measures does not require a "specific consent" to enable him to prefer an information under the Weights and Measures Act, 1904,

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but that a general resolution of the local authority consenting to his prosecuting any information, etc. arising under the Act, or in discharge of his duties as inspector, is all that is required by s. 14 of that Act (*Tyler* v. *Ferris*, [1896] 1 K. B. 94 ; 70 J. P. 88 ; 75 L. J. K. B. 142 ; 93 L. T. (N.S.) 843 ; 54 W. R. 469 ; 4 L. G. R. 241). It is apparently unnecessary that an officer prosecuting for an authority should be fortified with the resolution appointing him to the office. See *Smith* v. *Hirst* (1871), 35 J. P. 247 ; 23 L. T. (N.S.) 665. If in any case express proof is required it can be supplied by production of the minute book which contains a minute of the appointment. See s. 60 of the Metropolis Management Act, 1855.

"Institution" of proceedings.

A question has been asked upon the word *institute*, whether it applies to notices of nuisances, and of other matters which may or may not be followed by proceedings in court. The better opinion appears to be in the negative. Proceedings are "instituted" by the laying of the information (*Thorpe* v. *Priestnall*, [1897] 1 Q. B. 159 ; 60 J. P. 821 ; 66 L. J. Q. B. 248 ; 45 W. R. 223). In a case decided at Monmouthshire Quarter Sessions the court held to be valid a notice of appeal given by the clerk of a rural district council, it having been subsequently ratified by a resolution of the council under seal approving and confirming the notice and authorising the clerk to enter into the necessary recognizances and to prosecute the appeal (*St. Mellon's Rural District Council* v. *Edwards* (1903), 67 J. P. 396).

Delegation to police.

A local board passed a resolution that the superintendent and sergeants of the county police for the time being acting within the district should be authorised as officers of the board to institute and prosecute all such proceedings as might be necessary under specified clauses of a local Act which embodied the provisions of this section. It was held that the board had no power under this section to delegate prosecutions to the police, who were not their officers nor under their control (*Kyle* v. *Barber* (1888), 52 J. P. 725 ; 58 L. T. (N.S.) 229 ; 4 T. L. R. 206 ; 16 Cox C. C. 378).

Protection of sanitary authority and their officers from personal liability.

124. No matter or thing done, and no contract entered into by the county council or any sanitary authority, and no matter or thing done by any member of such council or authority, or by any officer of such council or authority or other person whomsoever acting under the direction of such council or authority, shall, if the matter or thing were done or the contract were entered into bonâ fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever ; and any expense incurred by the county council or any such authority, member, officer, or other person acting as last aforesaid, shall be borne

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and repaid out of the rate applicable by that council or authority to the purposes of this Act (*a*) :

Provided that nothing in this section shall exempt any member of the county council or of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such council or authority, and which that member authorised or joined in authorising (*b*).

(*a*) This section replaces 18 & 19 Vict. c. 121, s. 42 (now repealed). It is identical in terms with s. 265 of the Public Health Act, 1875.

Before dealing with the cases bearing directly on this section it might be mentioned that the common law provides a drastic remedy where libels are published in relation to the conduct of members of a local authority in the exercise of their duties. In a recent case it was held that the court may in its discretion grant a criminal information to protect a person exercising a public official duty imposed upon him by statute, though he may not be acting in a judicial capacity, from a libel published of him in the exercise of that duty (*R.* v. *Russell and Another* (1905), 69 J. P. 450; 93 L. T. (N.S.) 407 ; 21 T. L. R. 749).

Effect of section.

"The effect of clauses of this sort is not to leave a complaining party remediless, but to oblige him to bring his action against the public board or against the commissioners as a body . . . And any damages that may be recovered will be payable out of the funds at their disposal under the provisions for payment for damages and costs" (Addison on Torts, 5th ed., p. 669). In similar clauses in other Acts, it is provided that the action shall be brought against the clerk. In such a case it has been held that the clerk is not liable personally (*Wormwell* v. *Hailstone* (1830), 8 L. J. (O.S.) C. P. 264 ; 6 Bing. 668 ; 4 Moo. & P. 512 ; and see *Hall* v. *Smith* (1824), 3 L. J. (O.S.) C. P. 263 ; 2 Bing. 156, 267 ; 9 Moore, 226, 477 ; *Emery* v. *Day* (1834), 3 L. J. Ex. 307 ; 1 C. M. & R. 245 ; 4 Tyrw. 695 ; *Cane* v. *Chapman* (1836), 6 L. J. K. B. 49 ; 5 A. & E. 647 ; 2 H. & W. 355 ; 1 Nev. & P. 104). It may be observed, however, that *Wormwell* v. *Hailstone*, *supra*, has been questioned in *Cobbett* v. *Wheeler* (1860), 3 El. & El. 358 ; 30 L. J. Q. B. 64 ; 3 L. T. (N.S.) 554 ; 9 W. R. 140 ; 7 Jur. (N.S.) 260, and *Hall* v. *Smith*, *supra*, has been discussed in *Scott* v. *Mayor, etc. of Manchester* (1857), 26 L. J. Ex. 406 ; 1 H. & N. 59 ; 2 H. & N. 204, and *Mersey Docks Trustees* v. *Gibbs* (1866), L. R. 1 H. L., at p. 115, *per* BLACKBURN, J. The effect of this section is, therefore, to exempt from personal liability everyone who has bonâ fide contracted with the local authority to do some act under their direction, though he may thereby cause damage to another person which the Act itself does not justify or excuse. Thus, where the defendants were contractors acting under the direction

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of the Metropolitan Commissioners of Sewers, and while so acting injured the plaintiff's premises, it was held that they were not liable (*Ward* v. *Lee* (1857), 7 El. & Bl. 426 ; 21 J. P. 179 ; 26 L. J. Q. B. 142 ; 5 W. R. 403 ; 21 Jur. 557). In *Le Feuvre* v. *Miller* (1857), 8 El. & Bl. 321 ; 21 J. P. 436 ; 26 L. J. M. C. 175, a question was raised and argued whether a bailiff who executed a warrant of distress to enforce payment of a rate alleged to be illegal was within this section. The question was not decided, but the court seemed to be of opinion that the case was within the principle of *Ward* v. *Lee ;* and see *Southampton and Itchin Floating Bridge Co.* v. *Southampton Local Board* (1858), 8 El. & Bl. 801 ; 27 L. J. Q. B. 128 ; 3 Jur. (N.S.) 1261. But the effect of the section is not to relieve a contractor from liability for the negligence of himself or his servants. "Where there is no negligence, a party doing an act in obedience to the board of health is not liable—in that case he is very properly absolved, and the superior alone is liable ; but if he is guilty of negligence, in doing the act, and damage ensues, he is personally liable" : *per* Lord CAMPBELL, C.J., in *Arthy* v. *Coleman* (1857), 21 J. P. 771 ; 6 W. R. 34 ; and see *Jones* v. *Bird* (1822), 24 R. R. 579 ; 5 B. & A. 837 ; 1 Dow. & R. 497 ; *Clothier* v. *Webster* (1862), 12 C. B. (N.S.) 790 ; 31 L. J. C. P. 316 ; 6 L. T. (N.S.) 461 ; 10 W. R. 624 ; 9 Jur. (N.S.) 231. But a person who contracts for works under a local board is not liable for injury which arises out of those works long after they are completed ; for example, when after a sewer has been laid in a road by the contractor, there is a subsequent subsidence, it being the duty of the board to look after such occurrences (*Hyams* v. *Webster* (1867), L. R. 2 Q. B. 264 ; 31 J. P. 439 ; 36 L. J. Q. B. 166 ; 16 L. T. (N.S.) 118 ; 15 W. R. 619 ; and see *Smith* v. *West Derby Local Board* (1878), 3 C. P. D. 423 ; 47 L. J. C. P. 607 ; 38 L. T. 716 ; 27 W. R. 137). A surveyor who executed an illegal order of a highway board was held to be personally liable, but not the clerk, who only wrote out the order (*Mill* v. *Hawker* (1867), L. R. 10 Ex. 92 ; 39 J. P. 181 ; 44 L. J. Ex. 49 ; 33 L. T. (N.S.) 177 ; 23 W. R. 348). In *Monks* v. *Dillon* (1883), 12 L. R. Ir. 321, works were executed by the contractor of a drainage board, pursuant to contract with them, and by their authority, under the superintendence of their engineer and his assistants, and according to plans and specifications prepared by the engineer, who directed and instructed the contractor, was frequently present on the ground, and saw the works in progress. Some of the works were admittedly acts of trespass to the lands of the plaintiff, as the board had not obtained an assessment of compensation or paid such compensation before entry. It was held that the engineer was liable for the trespass so committed.

Liability of local authority for negligence.

The effect of the rule, as above stated, is to render the local authority liable to be sued in respect of damages arising out of their negligence in omitting to cause proper precautions to be taken in the exercise of works which they order to be done. This was stated in *Ward* v. *Lee*, *supra*, and held in *Southampton and Itchin Bridge Co.* v. *Southampton Local Board supra ;* and see

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Fairbrother v. *Bury Rural Sanitary Authority* (1889), 37 W. R. 544. In the latter case the local authority were held to be liable to an action for so negligently and improperly constructing a sewer as to cause a nuisance by its discharge and an injury to the plaintiffs. Again, where a local board had ordered a new sewer to be constructed in their district, under a contract and plans which did not provide for a penstock or flap required to prevent the plaintiffs' premises from being flooded by the influx of a river into them through the sewer, and in consequence of such omission they were flooded and greatly damaged, it was held that the local board were liable (*Ruck* v. *Williams* (1858), 22 J. P. 420 ; 27 L. J. Ex. 357 ; 3 H. & N. 308). Where a corporation provided an improper machine in a washhouse, they were held liable for a damage caused thereby (*Cowley* v. *Sunderland* (*Mayor of*) (1861), 25 J. P. 434 ; 30 L. J. Ex. 127, 177 ; 9 W. R. 668 ; 6 H. & N. 565). The negligence must be the effective cause of the damage (*McDowall* v. *Great Western Rail. Co.*, [1903] 2 K. B. 331 ; 72 L. J. K. B. 652). When, however, an injury is primarily caused by the negligence of the authority the contributory negligence or wrong of a mere stranger is no defence (*Engelhart* v. *Farrant*, [1897] 1 Q. B. 240 ; 66 L. J. Q. B. 122 ; *Sullivan* v. *Creed*, [1904] 2 I. R. 317 ; *cf. McDowall* v. *Great Western Rail. Co.*, *supra* ; *Ely Brewery Co.* v. *Pontypridd Urban District Council* (1903), 68 J. P. 3).

A vestry acting as a sewer authority laid down a new sewer, and in so doing a contractor employed by them laid bare a wrought-iron service water-pipe, which was about two and a-half feet below the surface. The surveyor of the vestry knew that the pipe was old and rusty, and likely, therefore, to become leaky. In filling in the trench some clay was put round the pipe, but not in such a quantity or in such a manner as to prevent it from leaking. A few months afterwards the pipe leaked, and the surrounding clay and earth being thereby moistened, gave way under a heavily-laden van which the plaintiff was driving, and the van being overturned the plaintiff was thrown from it to the ground and seriously injured. Upon an action brought to recover damages from the defendants, it was held that the vestry knew or ought to have known the character and condition of the pipe at the time it was laid bare in constructing the new sewer, and consequently were liable for negligence in not having taken special precautions against it leaking thereafter (*Cox* v. *Paddington Vestry* (1891), 64 L. T. (N.S.) 566).

By a general system of drainage made by the defendants in a particular district, various farms in that district were drained by several underground drains, by which the water was carried through all such farms. The defendants let one of these farms to the plaintiff, with the usual covenant for quiet enjoyment against the acts of the lessors or any persons lawfully claiming through or under them. The defendants had previously let another of such farms adjoining, but lying above the plaintiff's farm, to one C., with a right to use the drains through the plaintiff's land, so far as they were adequate to carry the water from

C.'s farm. C., during the plaintiff's tenancy, first, by excessive user of the drainage system, which was properly constructed for the purpose of drainage, caused the water passing down the drains in his farm to escape and overflow into the plaintiff's farm and damage his crops; secondly, by a proper user by C. of the drains passing through the plaintiff's farm, damage was also done to a field in plaintiff's farm by the escape of water; but this arose from one of the drains there having been imperfectly and improperly constructed. It was held that the defendants were liable to the plaintiff for a breach of their covenant for quiet enjoyment in respect of this last damage, as there had been within the meaning of such covenant a substantial interruption by a person who lawfully claimed through the defendants, but that the defendants were not liable for the damage done by the excessive user by C. of the drainage system, which was properly constructed, either under their covenant for quiet enjoyment, or under the law of trespass or nuisance (*Sanderson* v. *Mayor, etc. of Berwick* (1884), 13 Q. B. D. 547; 49 J. P. 6; 53 L. J. Q. B. 559; 51 L. T. (N.S.) 495; 33 W. R. 67). See also *Winslowe* v. *Bushey Urban District Council* (1908), 72 J. P. 64, 259; *Torrance* v. *Ilford Urban District Council* (1908), 72 J. P. 256; 73 J. P. 225; 25 T. L. R. 355; 53 Sol. J. 301; 7 L. G. R. 554; *Stevenson* v. *Glasgow Corporation* (1908), S. C. 1034.

Liability of local authority for contractor.

It has already been observed that when a contractor is employed by a local authority, this section does not free him from the consequences of *his own negligence*, or that of his servants. Where negligence on the part of such contractor is proved, and the local board have not in any way by interference or the like contributed towards the wrongful act of the contractor or his servants, the board are not liable. See *Humphreys* v. *Mears* (1827), 1 M. & Ry. 30; 60 L. J. (O.S.) K. B. 89; *Duncan* v. *Findlater* (1839), 6 Cl. & F. 894; *Steel* v. *South Eastern Rail. Co.* (1855), 16 C. B. 550; *Butler* v. *Hunter* (1862), 31 L. J. Ex. 214; 10 W. R. 214; 7 H. & N. 826; *Bayley* v. *Wolverhampton Waterworks Co.* (1860), 30 L. J. Ex. 57; 6 H. & N. 241; *Foreman* v. *Canterbury* (*Mayor of*) (1871), L. R. 6 Q. B. 214; 35 J. P. 629; 40 L. J. Q. B. 138; 24 L. T. (N.S.) 385; 19 W. R. 719; *Smith* v. *London and South Western Rail. Co.* (1870), L. R. 6 C. P. 14; 40 L. J. C. P. 21; *Hill* v. *New River Co.* (1868), 9 B. & S. 303; 18 L. T. (N.S.) 355; *Daniel* v. *Metropolitan Rail. Co.* (1871), L. R. 5 H. L. 45; 35 J. P. 708. But if the damage arises out of the works themselves, or if the local board are really the parties executing the works, the board are liable. See *Scott* v. *Manchester* (*Corporation of*) (1856), 1 H. & N. 59; *Hole* v. *Sittingbourne Rail. Co.* (1861), 30 L. J. Ex. 81; 3 L. T. (N.S.) 750; 9 W. R. 274; 6 H. & N. 488; *Blake* v. *Thirst* (1863), 32 L. J. Ex. 188; 8 L. T. (N.S.) 251; 11 W. R. 1034; 2 H. & C. 20; *Pitts* v. *Kingsbridge Highway Board* (1871), 25 L. T. (N.S.) 195; 19 W. R. 884. Where a duty is imposed upon a public body they are not excused from omitting to perform it, or from the imperfect or improper performance of the duty, by reason of their having engaged a contractor to do it. See

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Pickard v. *Smith* (1861), 10 C. B. (N.S.) 470 ; 4 L. T. (N.S.) 470 ; *Gray* v. *Pullen* (1864), 5 B. & S. 970 ; 29 J. P. 69 ; 34 L. J. Q. B. 265 ; 11 L. T. (N.S.) 569 ; 13 W. R. 257 ; *Hardaker* v. *Idle Urban District Council*, [1896] 1 Q. B. 335 ; 60 J. P. 196 ; 65 L. J. Q. B. 363 ; 74 L. T. (N.S.) 769 ; 44 W. R. 323 ; 12 T. L. R. 207 ; *Penny* v. *Wimbledon Urban District Council*, [1899] 2 Q. B. 72 ; 63 J. P. 406 ; 68 L. J. Q. B. 704 ; 80 L. T. (N.S.) 615 ; 47 W. R. 565 ; *Hill* v. *Tottenham Urban District Council* (1898), 79 L. T. (N.S.) 495 ; *The Snark*, [1900] P. 105 ; *Maxwell* v. *British Thompson-Houston Co.* (1902), 18 T. L. R. 278 ; *Clements* v. *Tyrone County Council*, [1905] 2 I. R. 542 ; *Jacob* v. *Mayor, etc. of Southend-on-Sea* (1902), 25 M. C. C. 57, 337 ; Times, December 16th, 1902, May 21st, 1903 ; *Sanders* v. *Reid and London County Council* (1904), 68 J. P. N. 557 ; *Mileham* v. *Marylebone Borough Council and Latter*, *infra*. And where work is ordered to be done which is lawful in itself, but from which in the natural course of things injurious consequences are likely to arise, the employer must see that means are adopted to prevent such consequences. He cannot relieve himself of his liability by employing someone else to do what is necessary to prevent the act he had ordered to be done from becoming wrongful (*Bower* v. *Peate* (1876), 1 Q. B. D. 321 ; 40 J. P. 789 ; 45 L. J. Q. B. 446 ; 35 L. T. (N.S.) 321 ; *Dalton* v. *Angus* (1881), 6 App. Cas. 740 ; 46 J. P. 132 ; 50 L. J. Q. B. 689 ; 44 L. T. (N.S.) 844 ; 30 W. R. 191 ; *Hughes* v. *Percival* (1883), 8 App. Cas. 443 ; 47 J. P. 772 ; 52 L. J. Q. B. 719 ; 49 L. T. (N.S.) 189 ; 31 W. R. 725 ; *Black* v. *Christchurch Finance Co.*, [1894] A. C. 48 ; 58 J. P. 332 ; 63 L. J. P. C. 32 ; 70 L. T. (N.S.) 77 ; 6 R. 394 ; *Holliday* v. *National Telephone Co.*, [1899] 2 Q. B. 392 ; 68 L. J. Q. B. 1016 ; 81 L. T. (N.S.) 252 ; 47 W. R. 658 ; *Hewinson* v. *Cheltenham Rural District Council* (1903), 25 M. C. C. 403 ; Times, July 8th, 1903). And when persons are incorporated by statute for a particular purpose, and have full powers given them to effect that purpose, if the effecting of it may occasion (not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards) inconvenience or injury to others, they may be treated as under an obligation to take, from time to time, measures to prevent the occurrence of such inconvenience and injury (*Geddes* v. *Bann Reservoir* (*Proprietors of*) (1878), 3 App. Cas. 430 ; *Bligh* v. *Rathangan River Drainage District Board*, [1898] 2 I. R. 205).

Non-liability for negligence outside employment.

A public board is not answerable for damage which results from the negligence of the party injured, or of some other person independent of the public body, or acting contrary to or beyond their directions (see *Holden* v. *Liverpool New Gas Co.* (1846), 3 C. B. 1 ; 15 L. J. C. P. 301 ; 10 Jur. 883) ; nor for the act of their officer or agent done without their knowledge and beyond the scope of his employment (*Bolingbroke* v. *Swindon Local Board* (1874), L. R. 9 C. P. 575 ; 43 L. J. C. P. 287 ; 30 L. T. (N.S.) 723 ; 23 W. R. 47). In that case a local board, being in occupation of a sewage farm, had given to B. plenary powers for the management of such farm in the most beneficial manner. A

ditch ran between the farm and the land of the plaintiff. With a view to rendering such ditch more capable of carrying off the drainage from the farm B. wrongfully went upon the plaintiff's land and pared away his side of the ditch, and cut down so much of the brushwood and underwood on the plaintiff's side as impeded the flow of drainage along the ditch :—*Held*, that the acts so done by B. were not within the scope of his employment, and consequently that the local board were not liable for them at the suit of the plaintiff, there being no implied authority from the board to do them. And see *Charlestown* v. *London Tramways Co.* (1888), 36 W. R. 367.

Negligence of driver supplied by contractor.

D. contracted with the defendants, an urban authority, to supply by the day a driver and horse to drive and draw a watering cart belonging to the defendants. The driver was employed and paid by D., and was not under the defendants' direction and control otherwise than that the defendants' inspector directed him what streets to water. In an action to recover damages for injuries caused by the negligent conduct of the driver whilst in charge of his cart, it was held (following *Quarman* v. *Burnett* (1840), 6 M. & W. 499, and distinguishing *Rourke* v. *White Moss Colliery Co.* (1877), 2 C. P. D. 205) that the defendants were not liable (*Jones* v. *Corporation of Liverpool* (1885), 14 Q. B. D. 890 ; 49 J. P. 311 ; 54 L. J. Q. B. 345 ; 33 W. R. 551).

A plaintiff sustained injury to his person and damage to his cab by reason of the vehicle colliding with an upright key left standing in a cock situate on the roadway, by a driver of one of the water-carts of the defendant council. The defendant Latter was under agreement to supply the council for a period of three years with horses, harness and drivers on certain terms and conditions, amongst which was one placing the drivers under the orders of the council's surveyor in respect of the particular work to be done on each day. The driver referred to was supplied under the agreement. At the trial of the action brought against both defendants the jury found that the driver was negligent, and that he was the servant of Latter, but that at the time of the accident he was acting under the control of the defendant council in the act of filling his cart. It was held, following *Penny* v. *Wimbledon*, *supra*, that judgment should be entered against the council, and that on the construction of the agreement, and on the authority of *Jones* v. *Corporation of Liverpool*, *supra*, judgment should also be entered against the defendant Latter (*Mileham* v. *Marylebone Borough Council and Latter* (1903), 67 J. P. 110 ; 1 L. G. R. 412).

Non-liability for extra-ordinary accidents.

Neither are a local authority responsible for accidents arising out of extraordinary causes where all reasonable care has been taken to prevent such as would arise from ordinary causes. See *Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Ex. (H. & G.) 781 ; 20 J. P. 247 ; 25 L. J. Ex. 212 ; 26 L. T. (o.s.) 261 ; 2 Jur. (N.S.) 333 ; and see *Ridley, Whitley & Co., Limited* v. *Metropolitan Water Board* (1905), 27 M. C. C. 300 ; Times, June 7th ; *East Ham Corporation* v. *Ilford Gas Co.* (1905), 27 M. C. C. 389 ; Times, July 13th ;

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Ocean Accident and Guarantee Corporation v. *Ilford Gas Co.* (1905), 27 M. C. C. 389; Times, July 29th. As to the precautions which public bodies are required by law to take to prevent injury from the exercise of their powers, reference may be made to *Great Western Railway of Canada* v. *Braid* (1863), 1 Moo. P. C. C. (N.S.) 101; *Biscoe* v. *Great Eastern Rail. Co.* (1873), L. R. 16 Eq. 636; 21 W. R. 902.

The police authorities of a town in Scotland had opened the manhole of a sewer in the middle of a thoroughfare to clean the sewer. They had set up a winch over the hole, and had protected three sides of it. Two men were at work. A boy of nine years running along the street, and looking over his shoulder, fell into the hole. It was held that the police authorities were not liable, as they were doing an ordinary act in a proper way with sufficient precautions (*Adams* v. *Aberdeen Magistrates* (1884), 11 Ct. of Sess. Cas. (4th ser.) 852; and see *McClelland* v. *Johnstone* (1902), 4 F. 459).

Liabilities in respect of injuries to servants.

As to the liability of a local authority for the death of a man in their employ from suffocation by sewer gas whilst cleansing a sewer belonging to the local authority, see *Digby* v. *East Ham Urban District Council* (1898), 15 T. L. R. 11; and see the Times, May 25th, 1897. See also as to the liability of a local authority to see that a contractor or person employed by him has a safe article to work upon, *Giles* v. *Aldershot Urban District Council* (1902), 66 J. P. 441; and see now, as to the wide liability of a local authority to compensate their workmen and the workmen of contractors employed by them for injuries sustained in the course of their employment, the Workmen's Compensation Act, 1906. See also *Broderick* v. *London County Council*, [1908] 2 K. B. 807; 77 L. J. K. B. 1127; 99 L. T. 569; 24 T. L. R. 822.

Liability of local authority charging tolls.

Where a public board let the navigation of a river and omitted to give notice to the lessee to repair a lock, and in consequence of such want of repair a barge owner sustained loss, the board were held not to be liable, as the loss did not necessarily result from the omission (*Walker* v. *Goe* (1859), 28 L. J. Ex. 184; 7 W. R. 289; 5 Jur. (N.S.) 737; 4 H. & N. 350). And where a corporation were empowered to improve the navigation of a river, and for that purpose erected staunches, and the result of these, combined with the accumulation of filth and the growth of weeds, was that the river overflowed and damaged the lands adjoining, it was held that the riparian owner had no ground of action against the corporation, though he might have a remedy by applying for compensation under a section of the Act (*Cracknell* v. *Thetford* (*Mayor of*) (1869), L. R. 4 C. P. 629; 38 L. J. C. P. 353).

The principle on which a private person or company is liable for damages occasioned by the neglect of servants applies to a corporation which has been entrusted by statute to perform certain works and to receive tolls for the use of those works, although the tolls, unlike the tolls received by the private person or company, are not applicable to the use of the individual corporators

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or to that of the corporation, but are devoted to the maintenance of the works (*Mersey Docks and Harbour Trustees* v. *Gibbs* (1866), L. R. 1 H. L. 93 ; 30 J. P. 467 ; 35 L. J. Ex. 225 ; 14 W. R. 872). Therefore, conservators of a river having in part constructed and in part acquired a towing path, and having taken tolls for the use of it, were held liable for damages caused by its defective condition (*Winch* v. *Thames* (*Conservators of*) (1874), L. R. 9 C. P. 378 ; 36 J. P. 646 ; 43 L. J. C. P. 167 ; 31 L. T. (N.S.) 128 ; 22 W. R. 879).

When public commissioners are guilty of negligence in the management of their works, and certain persons, to avert or remove damage which would result from such negligence to themselves, do an act which damages a third person, he has a right of action against the commissioners whose negligence was the primary cause of the damage (*Collins* v. *Middle Level Commissioners* (1869), L. R. 4 C. P. 279 ; 38 L. J. C. P. 236 ; 20 L. T. (N.S.) 442 ; 17 W. R. 929). See also *Harrison* v. *Great Northern Rail. Co.* (1864), 33 L. J. Ex. 266 ; 10 L. T. (N.S.) 621 ; 12 W. R. 1081 ; 10 Jur. (N.S.) 932 ; 3 H. & C. 231 ; *Burrows* v. *March Gas Co.* (1872), L. R. 7 Ex. 96 ; 36 J. P. 517 ; 41 L. J. Ex. 46.

General liability for civil injuries.

It is right here to observe that a local authority will be liable for breaches of contract and for civil injuries to the same extent as any other corporate body. Hence in *Higgs* v. *Godwin* (1858), 27 L. J. Q. B. 421 ; 31 L. T. (O.S.) 196, an action was brought against a local board for infringing a patent.

In order to maintain an action against a local authority for payment of claims upon them payable out of particular funds, it must be shown that they are in possession of those funds, and that they are available for payment of the claims. See *Pardoe* v. *Price* (1847), 16 L. J. Ex. 192 ; 16 M. & W. 451 ; *Lloyd* v. *Burrup* (1868), L. R. 4 Ex. 63 ; 38 L. J. Ex. 25 ; 19 L. T. (N.S.) 696. But in a case where a local board, in default of owners executing works, contracted with a third person to execute them, and the contract contained a provision to pay him when the money was collected from the owners, it was held that he was entitled to recover for the work done by him, though the money could not be recovered from the owners by reason of a defect in the notices (*Worthington* v. *Sudlow* (1862), 26 J. P. 453 ; 31 L. J. Q. B. 131).

Where a vestry took possession of highways in respect of which a rent was payable to the representative of a former owner of the land, they were held liable to an action for non-payment of the rent (*Sansom* v. *Shoreditch* (*Vestry of*) (1869), L. R. 4 C. P. 654 ; 38 L. J. C. P. 286).

Where a municipal corporation was sued for a debt owing by them in that character, it was held that they could set off a debt due to them as a local board (*Pedder* v. *Preston* (*Corporation of*) (1862), 6 L. T. (N.S.) 540 ; 12 C. B. (N.S.) 535).

An action for malicious prosecution will lie against a corporation (*Cornford* v. *Carlton Bank*, [1899] 1 Q. B. 392 ; 68 L. J. Q. B. 196 ; 80 L. T. (N.S.) 121 ; affirmed on other grounds, [1900]

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1 Q. B. 22 ; 81 L. T. (N.S.) 415 ; and see *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423 ; 73 L. J. P. C. 102 ; 90 L. T. 739 ; 53 W. R. 176 ; 20 T. L. R. 497).

An action for damages will not lie against a local authority for maliciously refusing to approve building plans (*Davis* v. *Bromley Borough Council* (1907), 71 J. P. 513 ; 24 T. L. R. 11 ; 5 L. G. R. 1229).

Enforcing judgment against local authority.

It becomes necessary to consider how the judgment recovered against a local authority can be enforced. Where a judgment was recovered against the clerk of certain commissioners under an Improvement Act, and the sheriff had on a *fi. fa.* seized certain goods of the commissioners vested in them for public purposes, the Court of Exchequer refused to set aside the writ of *fi. fa.* and subsequent proceedings, but left the parties to bring an action of trespass, or to take such other remedy as they might think proper (*Saunders* v. *Slack* (1864), 11 L. T. (N.S.) 484). This case was approved of in *Worral Waterworks Co.* v. *Lloyd* (1866), L. R. 1 C. P. 719. There land, which had been conveyed to a local board for the purposes of the Public Health Acts, was used as a reservoir for the supply of water to the district of the local board. A judgment having been obtained against the local board in the name of their clerk, it was held that the land was liable to be taken under a writ of *elegit*. WILLES, J., said : "We have been anticipated by the Exchequer in *Saunders* v. *Slack*, and by the decision of the House of Lords in the case of *Mersey Docks Trustees* v. *Gibbs*, *supra*. It has been said that the House of Lords only referred to the right of the plaintiff to judgment, and not to the execution ; but the principle upon which their decision rests is equally applicable to the right to execution as to judgment, and it was so understood in *Coe* v. *Wise* (1866), L. R. 1 Q. B. 711." If there be no property of the local board available to satisfy the debt, the proper remedy is by *mandamus* to the authority to pay or satisfy the judgment out of moneys in their hands or rates which they can make. A local authority has an implied power to make a rate to pay damages for injuries caused by the negligence of their servants in the exercise of their statutory powers (*R.* v. *Selby Dam Drainage Commissioners*, [1892] 1 Q. B. 348 ; 56 J. P. 356 ; 66 L. T. (N.S.) 17 ; 8 T. L. R. 198 ; *Parker* v. *Carrigrohane Drainage Board*, [1902] 2 I. R. 138). See *South Metropolitan Gas Co.* v. *Bermondsey Borough Council* (1901), 23 M. C. C. 277 ; Times, May 18th. In *Webb* v. *Herne Bay Commissioners* (1870), L. R. 5 Q. B. 642 ; 39 L. J. Q. B. 221, it was held that an action for a *mandamus* might be maintained to compel the board to pay the amount due out of moneys in their hands without making a rate for the purpose ; and see *Bush* v. *Beavan* (1862), 1 H. & C. 500 ; 32 L. J. Ex. 54, where a *mandamus* was refused to enforce payment of a debt against commissioners, the debt not being a charge on the local rate, but due from the commissioners personally. The *mandamus* may be claimed in the same action as that to establish the debt (*Ward* v. *Lowndes* (1859), 1 El. & El. 940 ; 22 L. J. Q. B. 40 ; 1 L. T. (N.S.) 268 ; 6 Jur. (N.S.) 247).

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See also *Croydon Corporation* v. *Croydon Rural District Council*, [1908] 1 Ch. 222 ; 72 J. P. 13 ; 77 L. J. Ch. 138 ; 98 L. T. 182 ; 24 T. L. R. 91 ; 6 L. G. R. 316.

In 1885 the plaintiff obtained judgment with costs against the defendants in an action to restrain them from discharging sewage into a watercourse on his property. In 1890 the costs were taxed, and the plaintiff obtained a garnishee order *nisi* attaching all the money belonging to the defendants in the hands of their treasurer. This order was discharged by VAUGHAN WILLIAMS, J., on motion in vacation, on the ground (following *Waddington* v. *City of London Union* (1858), El. B. & E. 370) that the funds attached were raised by rates to meet expenses of the current year and not for past liabilities. The plaintiff then issued a writ of *elegit* against the lands of the defendants, and the defendants moved to discharge it on the ground that execution ought not to issue against their lands to satisfy a debt which they could not legally pay. The sheriff had not made his return to the writ, and there was no evidence to show whether the defendants had any lands which could be lawfully applied in payment of the debt. It was held that the motion was premature and must be dismissed (*Jersey* (*Lord*) v. *Uxbridge Rural Sanitary Authority* (No. 1), W. N. (1891), p. 31 ; 55 J. P. 165 ; 7 T. L. R. 294). Afterwards the sheriff delivered under the writ land acquired for a sewage farm on behalf of a contributory place. It was held that such land could not be taken in execution to satisfy a debt payable out of general expenses, having been purchased out of a loan borrowed on the credit of the separate rates on the contributory place, and all proceedings under the writ and inquisition were ordered to be stayed (*Jersey* (*Lord*) v. *Uxbridge Rural Sanitary Authority* (No. 2), [1891] 3 Ch. 183 ; 60 L. J. Ch. 833 ; 64 L. T. (N.S.) 858 ; 7 T. L. R. 568).

When the local authority enter into any contract, they will be liable to the contractor in an action on the contract if it is broken by them, and he will not be compelled to proceed in equity, or by *mandamus*, in the first place, or in an action on the case for not paying money which the defendants may have in their hands (*Nowell* v. *Worcester* (*Mayor of*) (1854), 9 Exch. 457; 23 L. J. Ex. 139 ; 2 C. L. R. 981 ; 18 Jur. 64 ; *Payne* v. *Brecon* (*Mayor of*) (1858), 22 J. P. 690 ; 27 L. J. Ex. 495 ; 3 H. & N. 572). A judgment, if given against a municipal corporation, will not, however, operate as a charge upon the real estate belonging to it, unless [the Local Government Board (51 & 52 Vict. c. 41, s. 72)] order this to be done (*Arnold* v. *Gravesend* (*Mayor of*) (1856), 25 L. J. Ch. 777 ; 2 Jur. (N.S.) 703 ; 2 Kay & J. 574), nor, as it seems, upon other property of the corporation, according to *Pallister* v. *Gravesend* (*Mayor of*) (1850), 9 C. B. 774 ; *Arnold* v. *Ridge* (1853), 22 L. J. C. P. 235 ; 17 Jur. 896 ; 13 C. B. 745 ; 1 C. L. R. 309. But see *Worral Waterworks Co.* v. *Lloyd*, *supra*.

Where a local authority enter into a contract *ultra vires*, and cannot pay the contractor out of their funds, the individual members of the board are not personally liable on that contract

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(*Bailey* v. *Cuckson* (1858), 32 L. T. (O.S.) 124 ; 7 W. R. 16). Whether they can be made liable as on a personal guarantee may be a question ; but according to *Mount Stephen* v. *Lakeman* (1870), L. R. 5 Q. B. 613, no action would be maintainable unless there was a written document in conformity with the Statute of Frauds. This decision was reversed in error upon a different view of the facts taken by the Court of Error : (1871), L. R. 7 Q. B. 196 ; 41 L. J. Q. B. 67 ; and the House of Lords confirmed the judgment of the Court of Error, holding that there was a personal pledge of credit : (1874), L. R. 7 H. L. 17 ; 43 L. J. Q. B. 188 ; 30 L. T. (N.S.) 437 ; 22 W. R. 617. As to the liability of individual members of a board for an illegal act committed by their officer, but by their direction, see *Mill* v. *Hawker*, *supra*. In a more recent case a metropolitan vestry had passed resolutions authorising certain illegal expenditure out of the rates. An action was brought by the Attorney-General at the relation of a ratepayer, and by the ratepayer as plaintiff, against the vestry and six of the vestrymen who had voted for the resolution, to restrain the proposed application out of the rates. It was not alleged that any of the rates had been applied as proposed ; it was merely alleged that the vestry intended so to apply the rates. It was held that the individual defendants were not properly made parties for the purpose of obtaining costs from them, and that the action must be dismissed as against them (*Att.-Gen.* v. *Bermondsey* (*Vestry of*) (1883), 23 Ch. D. 60 ; 47 J. P. 453 ; 52 L. J. Ch. 567 ; 48 L. T. (N.S.) 445 ; 31 W. R. 463). It would seem from this case that if the money had in fact been paid for the illegal purpose, the individual members might have been compelled to recoup the money and pay the costs, according to *Att.-Gen.* v. *Compton* (1842), 1 Y. & C. 417.

It will be remembered that under 29 & 30 Vict. c. 90, s. 46, re-enacted in s. 7 of the Public Health Act, 1875, every local board was incorporated and rendered competent to sue and be sued in the corporate name. But under 11 & 12 Vict. c. 63, s. 138, local boards in non-corporate districts were to sue and be sued in the name of their clerk. Where proceedings were taken in the name of the clerk after the passing of the Act which incorporated the board, the court allowed them to be amended by substituting the local board for the clerk. See *Deeks* v. *Bailey* (1869), 21 L. T. (N.S.) 581 ; *Bolingbroke* (*Lord*) v. *Townsend* (1873), L. R. 8 C. P. 645 ; 37 J. P. 7 ; *Mills* v. *Scott* (1873), L. R. 8 Q. B. 496 ; 37 J. P. 807 ; *Prior* v. *West Ham Local Board* (1866), 15 L. T. (N.S.) 250.

Where a local board were defendants in a suit in Chancery, and no answer was put in to the bill, all the members of the board having resigned, the Vice-Chancellor allowed the plaintiff to take a decree in the terms of the petition (*Hardinge* v. *Southborough Local Board* (1875), 32 L. T. (N.S.) 250).

If a local authority and their contractor are sued on a joint tort and the contractor pays into court with a denial of liability a sum

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sufficient to satisfy the plaintiff's claim, such payment does not disentitle the plaintiff to judgment for costs against the local authority (*Penny* v. *Wimbledon Urban District Council*, *ante*, p. 270).

Separate and distinct causes of action cannot be joined in one action against a local authority and another tort feasor, though both torts result in but one injury (*Thompson* v. *London County Council*, [1899] 1 Q. B. 840 ; 68 L. J. Q. B. 625 ; 80 L. T. (N.S.) 512 ; 47 W. R. 433).

Remedies of local authority.

As the local authority are liable to proceedings in the courts of law, so they are entitled to the remedies of other suitors. Thus, where a local board had contracted with a sewage company for the latter to execute works for the removal of sewage, and the company so improperly carried on the works that they drove back large quantities of the sewage into the district, it was held that the local board might maintain a bill for an injunction, and that it was not required that the Attorney-General should file an information (*Nuneaton Local Board* v. *General Sewage Co.* (1875), L. R. 20 Eq. 127 ; 44 L. J. Ch. 561). The reason why the intervention of the Attorney-General was held not to be necessary in the last-mentioned case was that the action was based on contract and there was an interference with the property of the plaintiffs. See *Wallasey Local Board* v. *Gracey* (1887), 36 Ch. D. 593 ; 51 J. P. 740 ; 56 L. J. Ch. 739 ; 57 L. T. (N.S.) 51 ; 35 W. R. 694 : *per* STIRLING, J.

See the R. S. C., Order XXXI., r. 5, as to the interrogatories in actions by or against local authorities.

(*b*) It is provided by s. 13 of the London Government Act, 1899, that the accounts of the council of every metropolitan borough, etc., and of their officers are to be made up and audited in like manner and subject to the same provisions as the accounts of the London County Council, viz., by the district auditors appointed by the Local Government Board, in like manner as accounts of an urban authority and their officers under ss. 247 and 250 of the Public Health Act, 1875.

Appeal.

Appeal to quarter sessions.

125. Any person who deems himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act may, save as otherwise provided in this Act, appeal therefrom to a court of quarter sessions.

In general an appeal lies to quarter sessions against any conviction or order of a court of summary jurisdiction under this Act. But to this there are some exceptions. Thus, there is no appeal against a nuisance order unless it is or includes a prohibition or closing order, or requires the execution of structural works. See s. 6 (2), *ante*, p. 29.

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It should be borne in mind that when the proceedings are criminal—that is, when they are instituted to procure the punishment of a person for an offence by fine or imprisonment, and the summons is dismissed, there is no appeal under this section (*R.* v. *Middlesex JJ.* (1881), 45 J. P. 420; *R.* v. *London JJ.* (1890), 25 Q. B. D. 357; 55 J. P. 56).

Provision as to appeals to county council. 18 & 19 Vict. c. 120.

126. Any appeal to the county council against a notice or act of a sanitary authority under this Act shall be conducted in accordance with sections two hundred and eleven and two hundred and twelve of the Metropolis Management Act, 1855, which sections, as modified by the Local Government Act, 1888, are set out in the First Schedule to this Act.

See the First Schedule, *post*.

There is no appeal to the county council from the common council of the city. The powers and duties of the Commissioners of Sewers are now transferred to the common council of the city by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii). See s. 133, *post*.

Notices.

Authentication of notices, etc.

127.—(1) Notices, orders, and other such documents under this Act shall be in writing; and notices and documents other than orders, when issued by the county council or a sanitary authority, shall be sufficiently authenticated if signed by their clerk or by the officer by whom the same are given or served.

(2) Orders shall be under the seal of the council or authority duly authenticated.

This section does not enable the clerk or other officer to give any notice, etc. without authority. It only provides that a notice given by direction of the sanitary authority may be authenticated by the signature of the clerk or other officer. Unless his signature is admitted it will have to be proved in any legal proceedings founded upon the notice or other document.

A notice will apparently be sufficiently signed to satisfy this section if it is impressed by a rubber stamp. See *Osgood* v. *Nelson* (1872), L. R. 5 H. L. 648; 41 L. J. Q. B. 329; *Blades* v. *Lawrence* (1874), L. R. 9 Q. B. 374; 43 L. J. Q. B. 133; 30 L. T. (N.S.) 378; 22 W. R. 643. In some cases the printed name of the clerk may be a sufficient signature. See *Brydges* v. *Dix* (1891), 7 T. L. R. 215; and compare *R.* v. *Cowper* (1890), 24 Q. B. D. 533.

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It is doubtful whether signature by a clerk in the name of the clerk to the local authority would be sufficient. See *Francis* v. *Dutton*, [1891], 2 Q. B. 208 ; 60 L. J. Q. B. 488 ; 64 L. T. (N.S.) 793 ; 39 W. R. 716.

Service of notices.

128.—(1) Any notice, order, or other document (*a*) required or authorised to be served under this Act may be served by delivering the same or a true copy thereof either to or at the usual or last known residence (*b*) in England of the person to whom it is addressed, or, where addressed to the owner (*c*) or occupier of premises (*c*), then to some person on the premises, or, if there is no person on the premises who can be so served, then by fixing the same or a true copy thereof on some conspicuous part of the premises ; it may also be served by sending the same or a true copy thereof by post addressed to a person at such residence or premises as above mentioned.

(2) Any notice required or authorised for the purposes of this Act to be served on a sanitary authority or on the county council shall be deemed to be duly served if in writing delivered at, or sent by post to, the office of the authority or council, addressed to such authority or council, or their clerk (*d*).

(3) Any notice by this Act required to be given to or served on the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given or served, without further name or description (*e*).

(*a*) A summons issued in respect of a nuisance upon complaint of the sanitary inspector of a district, under this Act, comes within the words "any notice, order, or other document" of this section. Such a summons may, therefore, be served in any of the modes mentioned in this section, and may be addressed to the "owner" of the premises without any further description (*R.* v. *Mead*, [1894] 2 Q. B. 124 ; 58 J. P. 448 ; 63 L. J. M. C. 128 ; 70 L. T. 766 ; 42 W. R. 442).

(*b*) This word appears to signify the place of abode, but it is not free from ambiguity in its application. In *Blackwell* v. *England* (1858), 27 L. J. Q. B. 124, the court said that the meaning of the

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word "residence" had to be determined with reference to the purpose of the statute in which it was used. Therefore, although for the purpose of the Poor Law Acts it meant the place where a person lived with his family, yet for the purposes of a Bill of Sale Act, which required the residence of an attesting witness to be stated, a business address was a sufficient statement of the residence. And see *Mason* v. *Bibby*, *infra*. And a person may have more than one residence; thus, he may have houses in different places, each of which may be called his residence (*Walcot* v. *Boyfield* (1854), 1 Kay, 534; 18 Jur. 570).

(*c*) The expressions "owner" and "premises" are defined in s. 141, *post*.

The 11 & 12 Vict. c. 63, s. 150, provided that in all cases in which any notice was required to be given to the owner or occupier of any premises, it should be sufficient to address the notice to them by the description of the "owner" or "occupier" of the premises, and that the notice should be served either personally or by delivering the same to some inmate of the owner or occupier's place of abode. It was held that service of a notice by delivering it to the clerk of an owner at his place of business was sufficient, the section being merely in aid of service of notices; and *per* MARTIN, B., that the service was good under the section, a place of business being a place of abode and the clerk an inmate thereof (*Mason* v. *Bibby* (1864), 28 J. P. 121; 33 L. J. M. C. 105; 9 L. T. (N.S.) 692; 12 W. R. 382; 10 Jur. (N.S.) 519; 2 H. & C. 881).

A similar service was held sufficient under s. 267 of the Public Health Act, 1875, in *Newport* (*Mayor, etc. of*) v. *Lang* (1892), 57 J. P. 199. If by reasonable and ordinary inquiry the owner or occupier can be discovered, service ought to be effected preferably in some other way than by affixing it to the premises, which ought only to be done in the last resort. See *R.* v. *Mead*, [1898] 1 Q. B. 110; 61 J. P. 753; 66 L. J. Q. B. 874; 77 L. T. (N.S.) 462; 46 W. R. 61. But in *Woodford Urban District Council* v. *Henwood* (1899), 64 J. P. 148, the court held service by affixing notice on the premises was good, although the residence of the owner was well known to the council.

The name and address of the owner of a strip of land being unknown to the clerk who had charge of the service of notices (although known to the local authority's surveyor), a notice to "the owner" of a strip of land requiring the street on which the strip abutted to be sewered, etc. was served under s. 267 of the Public Health Act, 1875, by posting same on a conspicuous part of the said strip of land:—*Held*, that the notice was properly served (*Sharpley* v. *Bear* (1903), 67 J. P. 442). See *R.* v. *Mead*, [1898] 1 Q. B. 110; 61 J. P. 753; 66 L. J. Q. B. 874; 77 L. T. (N.S.) 462; 46 W. R. 61; *Wealdstone Urban District Council* v. *Evershed* (1905), 69 J. P. 258; 3 L. G. R. 722.

Service of a summons upon a limited joint stock company for an offence punishable summarily must be effected at their registered

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office in accordance with the terms of s. 62 of the Companies Act, 1862 (*Pearks* v. *Richardson*, [1902] 1 K. B. 91 ; 66 J. P. 119 ; 71 L. J. K. B. 18 ; 85 L. T. 616 ; 50 W. R. 286). See now s. 62 of the Companies (Consolidation) Act, 1908.

(*d*) This is a new and useful provision.

Section 267 of the Public Health Act, 1875, provides for the service of notices thereunder "by post by a prepaid letter." An affidavit by the sender of a particular notice by letter stating that he wrote and addressed the letter and put it into the post himself, but omitting to say that it was a "prepaid letter," is, therefore, not sufficient evidence of service under the Act (*Walthamstow Urban District Council* v. *Henwood*, [1897] 1 Ch. 41 ; 61 J. P. 23 ; 66 L. J. Ch. 31 ; 75 L. T. 375 ; 45 W. R. 124).

(*e*) A similar provision occurs in s. 267 of the Public Health Act, 1875.

It is worthy of notice that there is no provision for service on one of several joint owners : but perhaps this is unnecessary, having regard to s. 120, *ante*, p. 228.

It will be found in general to be most expedient to ascertain, if possible, the names of the owners and occupiers so as to avoid the embarrassment which may arise in dealing with unknown persons.

If the address is on the outside it may be that the omission to repeat it in the body of the notice would be regarded as immaterial (*Linforth* v. *Butler*, [1899] 1 Q. B. 116 ; 68 L. J. Q. B. 3 ; 79 L. T. (N.S.) 498 ; 47 W. R. 141).

Miscellaneous Provisions.

Inquiries by Local Government Board. 38 & 39 Vict. c. 55.

129. Sections two hundred and ninety-three to two hundred and ninety-six of the Public Health Act, 1875, which are set forth in the First Schedule to this Act, shall apply to all inquiries which the Local Government Board may make in pursuance of or for the purposes of this Act.

See these sections and the notes thereto, Schedule 1, *post*.

Forms. 42 & 43 Vict. c. 49.

130. The forms in the Third Schedule to this Act, or forms to the like effect, varied as circumstances may require, may, unless other forms are prescribed under the Summary Jurisdiction Act, 1879, be used and shall be sufficient for all purposes.

The forms in the schedule are few in number. They are for the most part adaptations of the forms contained in the Public Health Act, 1875. With regard to such of them as relate to proceedings before a court of summary jurisdiction, no attempt has been made to adapt them to the new procedure under the

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Provision for apportionment of certain expenses between hamlet of Penge and remainder of Lewisham district.

131. Where the whole or any part of any expense incurred by the Lewisham District Board of Works, in pursuance of the epidemic regulations, may, under this Act, be repaid to that board out of the Metropolitan Common Poor Fund, the amount to be so repaid when ascertained shall be apportioned between the hamlet of Penge and the remainder of the Lewisham district in proportion to the rateable value of such hamlet and remainder, according to the valuation lists in force at the date of the apportionment, and the amount apportioned to the hamlet of Penge shall be repaid to the district board by the board of guardians for the Croydon Union out of the common fund of the union, in pursuance of a precept of the Local Government Board to be issued after the like proceedings and in the like manner as in the case of a repayment from the Metropolitan Common Poor Fund; and the amount apportioned to the remainder of the Lewisham district shall be repaid to the district board out of the Metropolitan Common Poor Fund.

The expenses above referred to as payable out of the Metropolitan Common Poor Fund are payable under s. 87, *ante*, p. 175.

Under the provisions of s. 20 of the London Government Act, 1899, the parish of Penge, which formed part of the area of the Lewisham Board of Works, became an urban district of itself in the county of Kent. The provisions of the Public Health (London) Act, 1891, do not apply to that area.

Penge is in the Croydon Union, and does not contribute to the Metropolitan Common Poor Fund. The necessity for the above provision no longer exists.

Extent of Act.

132. This Act shall (save as otherwise expressly provided) extend only to London:

Provided that this Act shall extend to places elsewhere so far as is necessary for giving effect to any provisions

thereof in their application to London and to any places to which such provisions are expressly applied. Sect. 132.

London means the administrative county of London. See s. 141, *post*. See also note (*b*) to s. 99, *ante*, p. 199.

The proviso has reference to such cases as those dealt with in s. 14, *ante*, p. 40, where a nuisance in a sanitary district is caused by some act committed outside the district, and possibly outside London. See also s. 21 (4), *ante*, p. 56, and the sections extending the provisions of the Act to the port of London.

City of London.

Application of Act to city.

133. In the application of this Act to the city of London the following modifications shall be made :

(a) There shall be no appeal under this Act from the Commissioners of Sewers to the county council :

(b) The byelaws made by the county council under this Act shall not extend to the city :

(c) The county council shall not have power under this Act to require the Commissioners of Sewers to provide and maintain a building for post-mortem examinations :

(d) The powers of the county council under this Act to proceed in case of default of a sanitary authority shall not extend to the Commissioners of Sewers.

The powers and duties of the Commissioners of Sewers are now transferred to the common council of the city by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii).

Appeal lies to the county council from the sanitary authority under ss. 37, 41, 43).

Byelaws may be made by the county council under ss. 16, 19, 28, 39.

The county council may require a sanitary authority to provide a room for holding *post-mortem* examinations under s. 90.

The power of the county council to proceed in default of a sanitary authority is given by s. 100. See the next section.

Power of city police to proceed in certain cases against nuisances.

134. Where it is proved to the satisfaction of the Local Government Board that the Commissioners of Sewers have made default in doing their duty in relation to

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nuisances under this Act, the Board may authorise any officer of police of the city of London to institute any proceeding which the commissioners might institute with regard to such nuisances, and that officer may recover from the commissioners in a summary manner or in the county court or High Court any expenses incurred by him, and not paid by the person proceeded against. Such officer of police shall not for the purpose of this section be at liberty to enter any house or part of a house used as the dwelling of any person without either such person's consent, or the warrant of a justice.

This section is taken from 29 & 30 Vict. c. 90, s. 16 (now repealed), and 37 & 38 Vict. c. 89, s. 19 (now repealed), but is now limited to the city of London.

The powers and duties of the Commissioners of Sewers are now transferred to the common council of the city by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii).

"In a summary manner" means in manner provided by the Summary Jurisdiction Act (42 & 43 Vict. c. 49), s. 41 (3).

The expression "house" is defined by s. 141, *post*. A warrant will not, apparently, be necessary to enable the officer to enter premises as provided by this Act, except when the premises are a house or part of a house used as a dwelling.

No such action as is contemplated by this section has been taken by the Local Government Board.

Proceedings on complaint to Local Government Board of default of Commissioners of Sewers.

135.—(1) Where complaint is made to the Local Government Board that the Commissioners of Sewers have made default in executing or enforcing any provisions of this Act, the Local Government Board, if satisfied, after due inquiry, that those commissioners have been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If the duty is not performed by the time limited in the order, the order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform the duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending the performance, and amounting to a

sum specified in the order, together with the costs of the proceedings, shall be paid by the Commissioners of Sewers, and any order made for the payment of such expenses and costs may be removed into the High Court, and enforced as an order of that court (*a*).

(2) Any person so appointed shall, in the performance and for the purposes of the said duty, be invested with all the powers of the Commissioners of Sewers other than (save as hereinafter provided) the powers of levying rates; and the Local Government Board may by order change any person so appointed (*b*).

(3) Any sum specified in an order of the Local Government Board for payment of the expenses of performing the duty of the Commissioners of Sewers, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by those commissioners, and to be a debt due from them, and payable out of any moneys in their hands or the hands of their officers, or out of any rate applicable to the payment of any expenses properly incurred by the commissioners (which rate is in this section referred to as "the local rate"). If the commissioners refuse to pay any such debt for a period of fourteen days after demand, the Local Government Board may by order empower any person to levy, by and out of the local rate, such sum (to be specified in the order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt, and all expenses incurred in consequence of the non-payment thereof (*c*).

(4) Any person so empowered shall have the same powers of levying the local rate, and requiring all officers of the Commissioners of Sewers to pay over any money in their hands, as the commissioners would have in the case of expenses legally payable out of a local rate to be raised by them; and the said person, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any (the amount to be ascertained by the Local Government Board), to or to the order of the Commissioners of Sewers (*d*).

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(5) The Local Government Board may certify the amount of expenses incurred, or an estimate of the expenses about to be incurred, by any person appointed by the Board under this section to perform the duty of the commissioners ; also the amount of any loan required to defray any expenses so incurred, or estimated as about to be incurred ; and the certificate of the Board shall be conclusive as to all matters to which it relates (*e*).

(6) Whenever the Local Government Board so certifies a loan to be required, that Board, or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of the loan, and every such charge shall have the same effect as if the Commissioners of Sewers were empowered to raise the loan on the security of the local rate, and had duly executed an instrument charging the same on that rate (*f*).

(7) Any principal money or interest for the time being due in respect of a loan under this section shall be a debt due from the Commissioners of Sewers, and, in addition to any other remedies, may be recovered in the manner in which a debt due from those commissioners may be recovered in pursuance of this section (*g*).

(8) The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the Commissioners of Sewers (*h*).

(9) "Expenses," for the purposes of this section, shall include all sums payable under this section by or by the order of the Local Government Board, or the person appointed by that Board (*i*).

The powers and duties of the Commissioners of Sewers are now transferred to the common council of the city by the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii).

(*a*) This section makes provision for defaults made by the Commissioners of Sewers in the execution of the Act within the city of London. It differs from the corresponding provision in s. 101, chiefly in this respect, that a person other than the county council

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is to be appointed to perform the duty in respect of which default has been made.

As to local inquiries by the Local Government Board, see s. 129, *ante*.

An order of the High Court is enforceable like a judgment ; an order against a corporation may be enforced by sequestration or attachment of the officers thereof (R. S. C., Order XLII., rr. 24, 31).

(*b*) As to the power to levy rates, see sub-s. (4).

(*c*) The rates applicable to the payment of expenses under this Act in the city of London are the sewers rate and the consolidated rate. See s. 103, *ante*.

(*d*) The local rate is defined by sub-s. (3), *supra*.

The Local Government Board may give a certificate of the expenses incurred under sub-s. (4), and their certificate will be conclusive.

(*e*) The raising of a loan when required is provided for by sub-s. (6).

(*f*) The local rate is defined by sub-s. (3), *supra*. The person appointed will have the same power to raise a loan and charge it on the rates as the commissioners would themselves have under their Acts. See the notes to s. 103, *ante*, p. 204.

(*g*) This seems to refer to sub-s. (3), *supra*, under which the sums due are payable out of moneys in the hands of the commissioners or their officers, or out of the sewers rate or consolidated rate. The ordinary remedy for non-payment of an instalment or interest of a loan is by appointment of a receiver. Under the provision in the text the debt will be recoverable by action.

(*h*) The surplus of the loan is the amount left after payment of the expenses of performing the duties in respect of which default has been made. It may apparently be used by the commissioners for current expenses ; at least, there is no restriction as to its application. It may, however, be set aside to repay the loan *pro tanto*.

(*i*) The expression "expenses," therefore, includes the remuneration of the person appointed, and costs of such proceedings as are mentioned in sub-s. (3), *supra*. No such action as is contemplated by this section has been taken by the Local Government Board.

Saving Clauses.

Saving for water rights.

136. Nothing in this Act shall be construed to authorise any sanitary authority to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any river or

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canal ; or to injuriously affect any reservoir, canal, river, or stream, or the feeders thereof, or the supply, quality, or fall of water, contained in any reservoir, canal, river, stream, or in the feeders thereof, in cases where any person would, if this Act had not been passed, have been entitled by law to prevent or be relieved against the injuriously affecting of such reservoir, canal, river, stream, feeders, or such supply, quality, or fall of water, unless the sanitary authority first obtain the consent in writing of the person so entitled as aforesaid.

This section replaces 18 & 19 Vict. c. 121, ss. 44 and 45 (now repealed), and corresponds to s. 332 of the Public Health Act, 1875.

By altering the flow of water in a stream, although it is not diminished but only regulated, a local authority "injuriously affects" the rights of riparian proprietors, and will be restrained from doing so although there is no proof of sensible damage (*Roberts* v. *Gwyrfai Rural District Council*, [1899] 2 Ch. 608 ; 64 J. P. 52 ; 68 L. J. Ch. 757 ; 81 L. T. (N.S.) 465 ; 48 W. R. 51 ; 16 T. L. R. 2).

For a case in which a district council intercepted percolating water which otherwise would have fed a stream, see *Kibble* v. *Chipping Norton Urban District Council*, Times, February 27th, 1901 ; 23 M. C. C. 96.

An action will lie for an injunction and for damages at the suit of any person aggrieved by an infringement of this section (*R.* v. *Darlington Local Board* (1865), 6 B. & S. 562 ; 29 J. P. 419 ; 33 L. J. Q. B. 305 ; 13 W. R. 789 ; and see *Ripon* (*Earl of*) v. *Hobart* (1834), 3 L. J. Ch. 145 ; 3 My. & K. 169 ; 41 R. R. 40).

The application of this section in London must necessarily be very limited.

Saving for Thames Conservators. 33 & 34 Vict. c. cxlix.

137. Nothing in this Act shall affect any power of the conservators of the Thames under the Thames Navigation Act, 1870 (*a*), or otherwise.

(*a*) This Act was repealed by the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii), which contains substituted provisions.

Powers of Act to be cumulative.

138. All powers, rights, and remedies given by this Act shall be in addition to and not in derogation of any other powers, rights, and remedies conferred by any Act of Parliament, law, or custom, and all such other powers,

rights, and remedies may be exercised and put in force in the same manner and by the same authority as if this Act had not passed. Sect. 138.

This section replaces 18 & 19 Vict. c. 121, s. 43, and 29 & 30 Vict. c. 90, s. 55, both now repealed. Similar provisions are contained in ss. 111, 341, of the Public Health Act, 1875; and as to the effect of these, see *Lea* v. *Facey* (1886), 17 Q. B. D. 139; 50 J. P. 295; 55 L. J. Q. B. 371.

The fact that a sanitary authority under this Act have power or a duty to themselves abate a nuisance, or to take proceedings to procure its abatement, does not, having regard to ss. 13 and 138, prevent them from obtaining, in an action brought by them as relators with the Attorney-General, an injunction to prevent the continuance of the nuisance. The principles laid down in *R.* v. *Watts* (1703), 1 Salk. 357, and *R.* v. *Bradford Navigation Co.* (1865), 6 B. & S. 631; 34 L. J. Q. B. 191, applied (*Att.-Gen.* v. *Tod-Heatley*, [1897] 1 Ch. 560; 66 L. J. Ch. 275; 76 L. T. 174; 45 W. R. 394).

Temporary Provisions.

Existing officers.

139.—(1) In the case of any medical officer of health or inspector of nuisances who holds office under an appointment made before the commencement of this Act (in this section referred to as an existing officer), the provisions of this Act with respect to his salary and tenure of office shall be qualified as follows; that is to say,—

(a) Where a portion of his salary is paid by the county council out of the Exchequer Contribution Account, the Local Government Board shall have the same powers as they have in the case of a district medical officer of a poor law union with regard to the qualification, appointment, duties, salary, and tenure of office of such officer:

(b) In any other case the Local Government Board may prescribe the qualification and duties of a medical officer of health:

(c) Subject to the said powers of the Local Government Board, the sanitary authority may make such payments as they think fit on account of

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the remuneration and expenses of such officer, and every such officer shall be removable by the sanitary authority at their pleasure :

(d) Every such inspector of nuisances shall be called a sanitary inspector (*a*).

(2) The requirements of this Act with respect to the qualification of medical officers shall not apply to medical officers appointed before the first day of January one thousand eight hundred and ninety-two ; and this Act shall not prevent any person who at the commencement of this Act is both a district medical officer of a union and a medical officer of health from continuing to hold those appointments in like manner as if this Act had not been passed (*b*).

(*a*) The provisions of the Act as to the salary and tenure of office of a medical officer of health and inspector of nuisances are contained in s. 108, *ante*, p. 210. The effect of the saving is, that where part of the officer's salary is paid by the county council (see note (*a*) to s. 108), his qualification, etc. will be prescribed by the order of the Local Government Board. Where no part of the salary is so paid, the Local Government Board may, in the case of a medical officer, prescribe his qualification and duties, while his salary will be fixed by the sanitary authority, and he will hold office at pleasure ; in the case of a sanitary inspector, the Local Government Board will have no powers of any kind, and he also will hold office at the pleasure of the sanitary authority.

(*b*) The requirements of the Act with respect to the qualification of medical officers of health are contained in s. 108, *ante*, p. 210.

The Act itself does not forbid a person holding both the offices of district medical officer of a union and medical officer of health.

Term of office of existing members of Woolwich Board.

140. *Those members of the Woolwich Local Board whose term of office, if this Act had not been passed, would have expired in the month of August in any year, shall go out of office on the fifteenth day of April in the same year.*

This alteration in the date was rendered necessary by the application to the Woolwich Local Board of the Second Schedule to the Public Health Act, 1875, by s. 102 of this Act, but s. 102, *ante*, the above s. 140, and the Second Schedule are repealed by the

London Government Act, 1899, which, in effect, provides for the creation of a borough consisting of or comprising Woolwich, which will now for all purposes form part of the metropolis. Sect. 140. NOTE.

Interpretation.

141. In this Act, unless the context otherwise requires,— Interpretation of terms

The expression "London" means the administrative county of London (*a*) :

The expression "county council" means the London County Council :

The expression "the Metropolitan Asylum Managers" means the Managers of the Metropolitan Asylum district (*b*) :

The expression "street" includes any highway, and any public bridge, and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, and whether or not there are houses in such street (*c*) :

The expression "premises" includes messuages, buildings, lands, easements, and hereditaments of any tenure, whether open or enclosed, whether built on or not, and whether public or private, and whether maintained or not under statutory authority (*d*) :

The expression "house" includes schools, also factories and other buildings in which persons are employed (*e*) :

The expressions "building" and "house" respectively include the curtilage of a building or house, and include a building or house wholly or partly erected under statutory authority (*f*) :

The expression "bakehouse" means any place in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived :

The expression "vessel" includes a boat and every description of vessel used in navigation :

The expression "hospital" means any premises or vessels for the reception of the sick, whether permanently or temporarily applied for that purpose,

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and includes an asylum of the Metropolitan Asylum Managers :

The expression "master" means in the case of a building or part of a building, a person in occupation of or having the charge, management, or control of the building, or part of the building, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, includes the person receiving the rent payable by the tenants or lodgers either on his own account or as the agent of another person, and in the case of a vessel means the master or other person in charge thereof (*g*) :

The expression "house refuse" means ashes, cinders, breeze, rubbish, night-soil, and filth, but does not include trade refuse (*h*) :

The expression "trade refuse" means the refuse of any trade, manufacture, or business, or of any building materials (*h*) :

The expression "street refuse" means dust, dirt, rubbish, mud, road-scrapings, ice, snow, and filth (*h*) :

The expression "owner" means the person for the time being receiving the rack-rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rack-rent (*i*) :

The expression "rack-rent" means rent which is not less than two-thirds of the full annual value of the premises out of which the rent arises ; and the full annual value shall be taken to be the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for the premises, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and if the landlord undertook to bear the cost of the repairs, and insurance, and the other expenses (if any) necessary to maintain the premises in a state to command such rent (*j*) :

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The expression "slaughterer of cattle or horses" means a person whose business it is to kill any description of cattle, or horses, asses, or mules, for the purpose of the flesh being used as butcher's meat; and the expression "slaughter-house" means any building or place used for the purpose of such business (*k*):

The expression "knacker" means a person whose business it is to kill any horse, ass, mule, or cattle which is not killed for the purpose of the flesh being used as butcher's meat; and the expression "knacker's yard" means any building or place used for the purpose of such business (*k*):

The expression "cattle" includes sheep, goats, and swine (*k*):

The expression "source of water supply" means any stream, reservoir, aqueduct, pond, well, tank, cistern, pump, fountain, or other work or means for the supply of water, whether actually used or capable of being used for the supply of water or not (*l*):

The expression "sanitary convenience" includes urinals, water-closets, earth-closets, privies, and any similar conveniences (*m*):

The expression "day" means the period between six o'clock in the morning and the succeeding nine o'clock in the evening (*n*):

The expression "ashpit" means any ashpit, dust-bin, ash-tub, or other receptacle for the deposit of ashes or refuse matter (*o*):

The expression "cistern" includes a water-butt:

The expression "dairy" includes any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale:

The expression "dairyman" includes any cowkeeper, purveyor of milk, or occupier of a dairy (*p*).

(*a*) The administrative county of London is the area under the jurisdiction of the London County Council. It includes the city of London and the parishes and places mentioned in Scheds. A., B., and C., to the 18 & 19 Vict. c. 120, as amended by subsequent

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Acts. See the Local Government Act, 1888, ss. 40, 100. See also the notes to s. 99, *ante*, p. 196.

(*b*) See the note to s. 79, *ante*, p. 168.

(*c*) The concluding words of this definition are new. They do not occur in 18 & 19 Vict. c. 120, s. 250, nor in the Public Health Act, 1875, s. 4. They are obviously inserted with the view of avoiding the many difficulties which have arisen in determining whether a place is a street where there are no buildings or only a limited number. But the definition does not really remove the difficulty, for the question has always been whether the word had the extended meaning assigned to it by the interpretation clause or only its ordinary meaning of a roadway with houses. This difficulty may still arise under the present Act, as the cases decided with reference to the Public Health Act, 1875, and other statutes will serve to show. In *Robinson* v. *Barton Eccles Local Board* (1883), 8 App. Cas. 798 ; 48 J. P. 276 ; 53 L. J. Ch. 226 ; 50 L. T. (N.S.) 57 ; 32 W. R. 249, Lord SELBORNE said : "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable ; but to enable the word as used in this Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more nor less than this : that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that, that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in ; and in the natural and popular sense of the word *street*, or the words *new street*, I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous), and by *new street*, a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it." From this it will appear that the definition in the text does not invariably govern the meaning of the word *street* throughout the Public Health Acts, and it is important to distinguish the various meanings which have been assigned to the term in different sections.

In *Taylor* v. *Corporation of Oldham* (1876), 4 Ch. D. 395 ; 46 L. J. Ch. 105 ; 35 L. T. (N.S.) 696 ; 25 W. R. 178, JESSEL, M.R., held that the word *street* as used in s. 16 of the Public Health Act, 1875, included private streets and roads ; in fact, he decided that the word must be interpreted according to the extended meaning assigned to it by the above definition.

The decision of JESSEL, M.R., was followed with approval in *Hill* v. *Wallasey Local Board*, [1894] 1 Ch. 133 ; 63 L. J. Ch. 1 ; 69 L. T. 641 ; 42 W. R. 81. The same meaning must evidently

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be given to the word as used in s. 32 of that Act. In s. 26 of the same Act the word "street" is used to mean the roadway, as distinguished from the roadway with the houses, and it is probably used in the sense assigned to it by the definition. The same remark applies to ss. 42, 57, 72, 126 of that Act.

It has been expressly decided that *street* in s. 149 of the Act of 1875 includes a country lane of which the herbage may be let. It is, therefore, used in its extended sense as here defined (*Coverdale* v. *Charlton* (1878), 4 Q. B. D. 104; 43 J. P. 268; 48 L. J. Q. B. 128; 40 L. T. (N.S.) 88; 26 W. R. 687). And see to the same effect, *Nutter* v. *Accrington Local Board* (1878), 4 Q. B. D. 375; 45 J. P. 635; 48 L. J. Q. B. 487; 40 L. T. (N.S.) 802, decided on the corresponding section of 11 & 12 Vict. c. 63. In *Robinson* v. *Barton Eccles Local Board*, *supra*, Lord SELBORNE said: "In s. 149 of this Act, and the sections which follow it, the word *street* manifestly has the same sense as when we speak of a man going out of his house into the street, or carriages passing along the street. There the public highway, whether footway or carriageway, is alone intended, and the houses on either side are certainly not included in that case in the street. And I should be inclined myself to say that this would primâ facie be the sense of the word *street* when it is used in a context which contains no indication of anything more."

Section 150 of the same Act is the complement of s. 149, and it would seem that the word "street" as therein used has the same meaning. That the word means the roadway as distinguished from the road with the houses is clear, and the dictum of Lord SELBORNE, already quoted, applies to s. 150 as well as to s. 149. The cases have not consistently decided whether the word is used in its natural and ordinary sense of a roadway with houses on both sides, or in the wider meaning assigned to it by the definition. *Maude* v. *Baildon Local Board* (1883), 10 Q. B. D. 394; 47 J. P. 644; 48 L. T. (N.S.) 874, apparently decides that the word "street" is used in s. 150 in its natural sense as distinguished from its extended meaning. But in *Portsmouth* (*Mayor, etc. of*) v. *Smith* (1883), 13 Q. B. D. 184; 48 J. P. 404; 53 L. J. Q. B. 92; 53 L. T. (N.S.) 308, the MASTER OF THE ROLLS questioned that decision, pointing out that it had proceeded upon a mistaken view of *R.* v. *Dayman*, *infra*. And the court decided that the word "street" as used in s. 53 of the Towns Improvement Clauses Act, 1847 (which corresponds to s. 150 of the 1875 Act), had to be interpreted according to the definition, and, therefore, included a highway, which was not a street in the ordinary sense. And in the case of *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405; 55 L. J. M. C. 99; 55 L. T. (N.S.) 482; 34 W. R. 524, the court assumed that in s. 150 the word "street" was used as there defined. But all doubt on the subject is now removed by the decision of the Court of Appeal in *Jowett* v. *Idle Local Board*, W. N. (1888) 87; 57 L. T. (N.S.) 928; 36 W. R. 34, followed in *Richards* v. *Kessick* (1888), 52 J. P. 756; 57 L. J. M. C. 48;

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59 L. T. (N.S.) 318 ; *Fenwick* v. *Croydon Rural Sanitary Authority*, [1891] 2 Q. B. 216 ; 55 J. P. 470 ; 60 L. J. M. C. 161 ; 65 L. T. (N.S.) 645 ; 40 W. R. 124 ; 7 T. L. R. 594, and *Walthamstow Urban District Council* v. *Sandell* (1904), 68 J. P. 509 ; 2 L. G. R. 835. These cases decide that the word "street," as used in s. 150, means a street as defined by s. 4, and not merely a street in the ordinary sense. Where a local Act provided that every new street should be laid out at least thirty-six feet wide, a new road, eighteen feet wide, which had been sanctioned in the expectation that the adjoining owner would widen it to the full width, was held to be a street within the meaning of a section corresponding to s. 150 (*West Hartlepool* (*Mayor, etc. of*) v. *Robinson* (1897), 62 J. P. 35 ; 77 L. T. (N.S.) 387 ; 46 W. R. 218). A path in Epping Forest was held to be a street which, with the consent of the Epping Forest Conservators, might be made up under the Private Street Works Act, 1892 (*Woodford Urban District Council* v. *Henwood* (1899), 64 J. P. 148). A "street" may be formed by adding, and dedicating to the public, a longitudinal strip of land alongside of a highway. See *Richards* v. *Kessick*, *supra* ; *White* v. *Fulham Vestry* (1896), 60 J. P. 327 ; 74 L. T. (N.S.) 425 ; 12 T. L. R. 328 ; *Property Exchange, Limited* v. *Wandsworth Board of Works*, [1902] 2 K. B. 61 ; 66 J. P. 435 ; 71 L. J. K. B. 515 ; 86 L. T. (N.S.) 481 ; 18 T. L. R. 464 ; *Portsmouth Corporation* v. *Hall* (1907), 71 J. P. 564 ; 98 L. T. 513 ; 24 T. L. R. 76 ; 6 L. G. R. 16.

The word *street* in s. 156 of the Public Health Act, 1875, is used in its ordinary sense, viz., a road with houses on each side. This was so held upon the corresponding words of 24 & 25 Vict. c. 61, s. 28 (*R.* v. *Fulford* (1864), 28 J. P. 357 ; 33 L. J. M. C. 122 ; 10 L. T. (N.S.) 346 ; 10 Jur. (N.S.) 522 ; 12 W. R. 715). And see *Thomas* v. *Roberts* (1878), 43 J. P. 574, and *R.* v. *Platts* (1880), 28 W. R. 915, decided with reference to s. 66 of the Towns Improvement Clauses Act, 1847. But s. 156 has been repealed by 51 & 52 Vict. c. 52, and in that Act the word "street" would appear to have the meaning assigned to it by the definition.

The word *street* in s. 157 of the Public Health Act, 1875, is used with reference to *new streets*, and was held to mean not only the roadway, but the roadway with the houses. In *Baker* v. *Mayor, etc. of Portsmouth* (1877), 3 Ex. D. 4 ; 37 L. T. (N.S.) 381 ; 25 W. R. 677 ; affirmed in the Court of Appeal (1878), 3 Ex. D. 157 ; 42 J. P. 278 ; 47 L. J. Ex. 223 ; 37 L. T. (N.S.) 822 ; 26 W. R. 303, BRAMWELL, L.J., said : "I have come to the conclusion that the words of sub-s. (1) 'with respect to the level, width, and construction of new streets,' include the construction of the buildings, and the buildings themselves and front gardens, or whatever else is at the side of the roadway. I have come to this conclusion, not upon any authority, for I cannot see that any authority has any bearing upon the matter, except to show that the word *street* may have such a meaning, but because it is the right meaning of the words." A similar interpretation had been put upon the term as used in the local Act in *Galloway* v. *Corporation of London* (1866), L. R. 1 H. L. 34 ; 30 J. P. 580 ;

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35 L. J. Ch. 476 ; 14 L. T. (N.S.) 865 ; 12 Jur. (N.S.) 747, though it was said in another case, decided upon a different section of the same Act, that this was not the primâ facie meaning of the word, and it was accordingly held that the word as used in the last-mentioned section did not include the houses (*London, Chatham, and Dover Rail. Co.* v. *Mayor, etc. of London* (1868), 19 L. T. (N.S.) 250). An urban authority made a byelaw under the Public Health Act, 1875, directing that all new streets should be of a width of not less than ten feet. Certain ways existed communicating with the backs of houses, and used by the urban authority, who did the scavenging of the town, for the purpose of obtaining access to privies and ashpits in order to remove the contents thereof. Plans were submitted for approval to the urban authority, showing ways such as above described of the width of six feet, and the urban authority, acting under the byelaw, refused to approve such plans. It was held, discharging a rule for a *mandamus* to compel the approval of the plans, that the ways in question were "passages" within the meaning of the definition, and, therefore, streets (*R.* v. *Goole Local Board*, [1891] 2 Q. B. 212 ; 55 J. P. 535 ; 60 L. J. Q. B. 617 ; 64 L. T. (N.S.) 595 ; 30 W. R. 608). In this connection may be mentioned cases decided upon such words as "houses within the street" (*Baddeley* v. *Gingell* (1847), 1 Ex. 319 ; 11 J. P. 838) ; "houses forming the street" (*London School Board* v. *St. Mary, Islington* (1875), 1 Q. B. D. 65 ; 40 J. P. 310 ; 45 L. J. M. C. 1 ; 33 L. T. (N.S.) 504 ; 24 W. R. 137). The case of *Baker* v. *Mayor, etc. of Portsmouth, supra*, was approved by the House of Lords in *Robinson* v. *Barton Eccles Local Board* (1883), 8 App. Cas. 798 ; 48 J. P. 276 ; 53 L. J. Ch. 226 ; 50 L. T. (N.S.) 57 ; 32 W. R. 249, where it was held that a country lane which had long been a *street* within the meaning of the definition might become a *new street* when houses came to be built by the side of it. This had already been decided under the Metropolis Management Acts in *Pound* v. *Plumstead Board of Works* (1871), L. R. 7 Q. B. 183 ; 36 J. P. 468 ; 41 L. J. M. C. 51 ; 25 L. T. (N.S.) 461 ; 20 W. R. 117 ; *Dryden* v. *Overseers of Putney* (1876), 1 Ex. D. 223 : 40 J. P. 263 ; 34 L. T. (N.S.) 69. And see *Att.-Gen.* v. *Rufford*, [1899] 1 Ch. 537 ; 63 J. P. 232 ; 68 L. J. Ch. 179 ; 80 L. T. (N.S.) 17 ; 47 W. R. 405 ; *Clerkenwell Vestry* v. *Edmondson*, [1902] 1 K. B. 336 ; 71 L. J. K. B. 198 ; 86 L. T. 137 ; 50 W. R. 345 ; 18 T. L. R. 248 ; *Att.-Gen.* v. *Gibb*, [1909] 2 Ch. 265 ; 73 J. P. 343 ; 78 L. J. Ch. 521 ; 101 L. T. 16 ; 7 L. G. R. 454.

"Street" when a question of fact.

It has been stated that the question whether a place is a street is a question of fact only after it has been determined in what sense the word "street" is used in the particular case under consideration. See *Eccles* v. *Wirral Rural Sanitary Authority* (1886), 17 Q. B. D. 107 ; 50 J. P. 596 ; 55 L. J. M. C. 106 ; 34 W. R. 412. But it is always a question of fact whether a place already a street as above defined has become a new street (*R.* v. *Dayman* (1857), 7 El. & Bl. 672 ; 22 J. P. 39 ; 26 L. J. M. C. 128 ; 3 Jur. (N.S.) 744 ; *R.* v. *Fulford, supra ; R.* v. *St. Mary, Islington* (1858), El. B. & E. 743 ; 22 J. P. 383 ; *St. Mary, Islington* v. *Barrett*

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(1874), L. R. 9 Q. B. 278 ; 38 J. P. 198 ; 43 L. J. M. C. 85 ; 30 L. T. (N.S.) 11 ; *Dodd* v. *Vestry of St. Pancras* (1869), 34 J. P. 517 ; *Bowles* v. *St. Mary, Islington* (1875), 39 J. P. 757 ; *R.* v. *Shiel* (1884), 50 L. T. (N.S.) 590 ; *Wilson* v. *St. Giles, Camberwell (Vestry of)*, [1892] 1 Q. B. 1 ; 56 J. P. 167 ; 61 L. J. M. C. 3 ; 65 L. T. (N.S.) 790 ; 40 W. R. 41 ; 8 T. L. R. 20 ; *St. Giles, Camberwell (Vestry of)* v. *Crystal Palace Co.*, [1892] 2 Q. B. 33 ; 57 J. P. 5 ; 61 L. J. Q. B. 802 ; 66 L. T. (N.S.) 840 ; 40 W. R. 648 ; 8 T. L. R. 233 ; *White* v. *Fulham Vestry* (1896), 60 J. P. 327 ; 74 L. T. (N.S.) 425 ; 12 T. L. R. 328 ; *St. Mary, Battersea (Vestry of)* v. *Palmer* (1896), 60 J. P. 774 ; 66 L. J. Q. B. 77 ; 75 L. T. (N.S.) 362 ; 45 W. R. 110 ; *Arter* v. *Hammersmith (Vestry of)*, [1897] 1 Q. B. 646 ; 61 J. P. 279 ; 66 L. J. Q. B. 460 ; 76 L. T. (N.S.) 390 ; 45 W. R. 398 ; *Crosse* v. *Wandsworth (Vestry of)* (1898), 62 J. P. 807 ; 79 L. T. (N.S.) 351 ; *Allen* v. *Fulham (Vestry of)*, [1899] 1 Q. B. 681 ; 63 J. P. 212 ; 68 L. J. Q. B. 450 ; 80 L. T. (N.S.) 253 ; 47 W. R. 428 ; *Simmonds* v. *Fulham (Vestry of)*, [1900] 2 Q. B. 188 ; 64 J. P. 548 ; 69 L. J. Q. B. 560 ; 82 L. T. (N.S.) 497 ; 48 W. R. 574 ; *Property Exchange, Limited* v. *Wandsworth Board of Works*, [1902] 2 K. B. 61 ; 66 J. P. 435 ; 71 L. J. K. B. 515 ; 86 L. T. (N.S.) 481 ; 18 T. L. R. 464 ; *Devonport Corporation* v. *Tozer*, [1903] 1 Ch. 759 ; 67 J. P. 269 ; 72 L. J. Ch. 411 ; 88 L. T. (N.S.) 113 ; 52 W. R. 6 ; 1 L. G. R. 421 ; *Fellowes* v. *Sedgley Urban District Council* (1906), 70 J. P. 412 ; 4 L. G. R. 970). And see also *North London Rail. Co.* v. *St. Mary, Islington* (1872), 37 J. P. 341 ; 27 L. T. (N.S.) 672 ; 21 W. R. 226 ; *Robinson* v. *Barton Eccles Local Board*, *supra*, and other cases. It is to be observed, however, that the court will inquire whether there has been *any* evidence to justify the finding of the justices (*Williams* v. *Powning* (1883), 47 J. P. 486 ; 48 L. T. (N.S.) 672 ; *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30 ; 50 J. P. 405 ; 55 L. J. M. C. 99 ; 54 L. T. (N.S.) 482 ; 34 W. R. 524).

"Street" in incorporated enactments.

The word *street* as used in the statutes incorporated by the Public Health Act, 1875, must in general be interpreted with reference to the definition of the term contained in those Acts respectively (*per* Lord BLACKBURN, in *Mayor, etc. of Portsmouth* v. *Smith* (1885), 10 App. Cas. 364 ; 49 J. P. 676 ; 54 L. J. Q. B. 473 ; 53 L. T. (N.S.) 394). And see *Curtis* v. *Embery* (1872), L. R. 7 Ex. 369 ; 42 L. J. M. C. 39 ; 21 W. R. 143 ; *Maddock* v. *Wallasey Local Board* (1886), 50 J. P. 404 ; 55 L. J. Q. B. 267 ; *Att.-Gen.* v. *Rufford*, *supra*. In *Maddock* v. *Wallasey Local Board*, the definition of a street in 10 & 11 Vict. c. 15, was held not to include an open tract of land above mean high water mark which belonged to the owner of enclosed land fronting the shore. It appeared that the inhabitants had been accustomed to pass and repass along this shore, and at high tide had been in the habit of going upon this tract of land in question, but had not crossed in any defined track. The shore itself is not a highway and presumably not a street. See *Llandudno Urban District Council* v. *Woods*, [1899] 2 Ch. 705 ; 63 J. P. 775 ; 68 L. J. Ch. 623 ; 81 L. T. (N.S.) 170 ; 48 W. R. 43.

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NOTE. Street in metropolis.

Newman v. *Baker* (1860), 8 C. B. (N.S.) 200, decided upon the Metropolitan Building Act, 1855, may be referred to, but it throws little, if any, light on the construction of the text.

The *Metropolitan Board of Works* v. *Nathan* (1885), 50 J. P. 502 ; 54 L. T. (N.S.) 423 ; 34 W. R. 164 ; 2 T. L. R. 112, decided with reference to the same Act, shows that there may be a place with houses on both sides, which is, nevertheless, not laid out as a street within the meaning of that Act. In that case artizans' dwellings had been erected opening into an approach one hundred feet long and sixteen feet wide, entered from a public street through a gateway ten feet wide, over which one of the buildings was carried. A roadway had previously existed on the site, with warehouses abutting thereon, and the gateway included the site of a former gateway which had been pulled down and altered to a greater width. The approach did not afford communication with any other public street, and was for the sole use and convenience of the tenants of the dwelling, to the exclusion of the public, no right of way having ever been dedicated to the public. It was held that the approach had not been laid out "as a street for foot traffic only." See also *Daw* v. *London County Council* (1890), 54 J. P. 502 ; 59 L. J. M. C. 112 ; 62 L. T. (N.S.) 937 ; 6 T. L. R. 289 ; *London County Council* v. *Davis* (1895), 59 J. P. 583 ; 64 L. J. M. C. 212 ; 43 W. R. 574. All these decisions were considered, and *Wood* v. *London County Council* (1895), 59 J. P. 615 ; 64 L. J. M. C. 276 ; 73 L. T. (N.S.) 313 ; 44 W. R. 144, was overruled, in *Armstrong* v. *London County Council*, [1900] 1 Q. B. 416 ; 64 J. P. 197 ; 69 L. J. Q. B. 267 ; 81 L. T. (N.S.) 638 ; 48 W. R. 367. In that case the appellant commenced to erect buildings on a piece of land belonging to him. According to the plan the buildings were to consist of blocks of flats erected in a quadrangle form with an ornamental garden in the centre of the quadrangle formed by the blocks. The approach was to be by means of a carriageway running round the garden. Upon each side of the carriageway blocks were to be erected. Each of the blocks was to have a separate entrance from the carriageway. The appellant did not propose to dedicate any public right of way over the land to the use of the public, but intended to erect gates at the entrance to the approach, and to keep a porter there to open the gates when necessary to allow persons going to and from the flats to pass, and the carriageway was to be for the use of the tenants of the flats and of persons visiting them. It was held that the appellant had commenced to lay out or form a *street* within the meaning of the similar definition in the London Building Act, 1894. The decision in *Armstrong* v. *London County Council*, *supra*, was followed and applied in *London County Council* v. *Davis* (1904), 68 J. P. 520 ; 91 L. T. 555 ; 2 L. G. R. 1065.

The word *street* as used in the Metropolis Management Acts is defined in words similar to those in s. 4 of the Public Health Act, 1875. For a case in which the term was interpreted with reference to the definition, see *Hampstead Vestry* v. *Hoopel* (1885), 15 Q. B. D. 652 ; 49 J. P. 741 ; 54 L. J. M. C. 147 ; 33 W. R. 903 ; and see

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Hampstead Vestry v. *Cotton* (1886), 12 App. Cas. 1 ; 51 J. P. 340 ; 56 L. J. Q. B. 225 ; 56 L. T. (N.S.) 1 ; 35 W. R. 505.

A space of ground from thirty-three to fifty-eight feet wide between the footway and the carriageway, which had always been used by the inhabitants of the houses facing it for placing carriages on and the like, paying a small rent for such user to the owner of the soil, but which had always been used by the public for passage, subject only to the user by the inhabitants of the houses, was held not to be part of a street, having been only partially dedicated to the public (*Le Neve* v. *Vestry of Mile End Old Town* (1858), 8 El. & Bl. 1054 ; 22 J. P. 657 ; 27 L. J. Q. B. 208 ; 22 Jur. 660).

Cul-de-sac.

A *cul-de-sac* may be a street and public highway (*South* v. *East London Rail. Co.* (1873), L. R. 16 Eq. 108 ; 37 J. P. 644 ; 42 L. J. Ch. 477 ; 21 W. R. 590 ; *Att.-Gen.* v. *Richmond Corporation* (1903), 68 J. P. 73 ; 89 L. T. 700 ; 2 L. G. R. 628). In *Att.-Gen.* v. *Antrobus*, [1905] 2 Ch. 188 ; 69 J. P. 141 ; 74 L. J. Ch. 599 ; 92 L. T. 790 ; 21 T. L. R. 471 ; 3 L. G. R. 1071, FARWELL, J., said that in no case has mere user by the public been held sufficient to constitute a dedication to the public of a *cul-de-sac*, and this dictum was cited with approval by KEKEWICH, J., in *Whitehouse* v. *Hugh*, [1906] 1 Ch. 253 ; 75 L. J. Ch. 154 ; 54 W. R. 294 ; 22 T. L. R. 89 ; affirmed, [1906] 2 Ch. 283 ; 75 L. J. Ch. 677 ; 95 L. T. 175 ; 22 T. L. R. 679. So also a highway, one end of which has been legally stopped, may still be a highway (*R.* v. *Burney* (1875), 39 J. P. 599). But a way ceases to be a public highway when the access to it at either end has become impossible by reason of the legal stopping up of ways leading to it (*Bailey* v. *Jamieson* (1876), 1 C. P. D. 329 ; 40 J. P. 486 ; 34 L. T. (N.S.) 62 ; 24 W. R. 456).

Bridges.

See *Arnell* v. *Regent's Canal Co.* (1852—1854), 12 C. B. 697 ; 14 C. B. 564, as to how far a canal bridge was brought within the terms of a local Paving Act. When a street passes over a canal by a bridge, the bridge may, for some purposes, be deemed to be a street (*per* WIGHTMAN, J., in *Beaver* v. *Mayor, etc. of Manchester* (1857), 26 L. J. Q. B. 311). When a street is carried over a railway by means of a bridge, it is only the street, and not the bridge itself, which vests in the local authority under s. 149 of the Public Health Act, 1875 (*Great Eastern Rail. Co.* v. *Hackney District Board of Works* (*per* Lord WATSON) (1883), 8 App. Cas. 687 ; 48 J. P. 52 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509 ; 31 W. R. 769).

A county bridge is one the duty of repairing which is cast by law on the inhabitants of the county at large. This duty extends to every public bridge erected before 1803, unless it is transferred to some persons or person or corporation by custom, prescription, or tenure of land. See hereon *Att.-Gen.* v. *West Riding County Council* (1903), 67 J. P. 173. Bridges built since 1803 are not repairable by the county unless they have been erected in compliance with 43 Geo. 3, c. 59, s. 5, or have been declared to be so repairable pursuant to 41 & 42 Vict. c. 77, s. 21.

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The Act expressly calls places streets whether they are public property or private property, and whether the public have any rights over them or not (*per* JESSEL, M.R., in *Taylor* v. *Corporation of Oldham* (1876), 4 Ch. D., at p. 407 ; 46 L. J. Ch. 105 ; 35 L. T. 696 ; 25 W. R. 303). And see *Midland Rail. Co.* v. *Watton, supra ; Hill* v. *Wallasey Local Board, supra ; Armstrong* v. *London County Council, supra.*

(*d*) The Interpretation Act, 1889, provides that in every Act passed after the year 1850, the expression "land" shall, unless the contrary intention appears, include messuages, tenements and hereditaments, houses and buildings of any tenure.

The above definition of premises is wider than in any previous Act. Compare, for example, the definition in the Public Health Act, 1875.

It is not clear whether the term "premises" will include a church. See *Angell* v. *Paddington* (*Vestry of*) (1868), L. R. 3 Q. B. 714 ; 9 B. & S. 496; 32 J. P. 742 ; 37 L. J. M. C. 171 ; *Wright* v. *Ingle* (1885), 16 Q. B. D. 379 ; 55 L. J. M. C. 17 ; 34 W. R. 221.

In *Metropolitan Water Board* v. *Paine*, [1907] 1 K. B. 285 ; 71 J. P. 63 ; 76 L. J. K. B. 151 ; 96 L. T. 63 ; 23 T. L. R. 55 ; 5 L. G. R. 227, the meaning of the word "premises," as used in a local Act, was discussed.

(*e*) The extension of the meaning of the word "house" does not apply to every case in which the expression is used throughout the Act. Thus, it does not apply for purposes of the definition of "house refuse" (*post*) (*London and Provincial Laundry Co.* v. *Willesden Local Board*, [1892] 2 Q. B. 271 ; 56 J. P. 696 ; 67 L. T. (N.S.) 499 ; 40 W. R. 557).

"House" generally.

There is no definition of a "house" here, but only an extension of the term. Reference, therefore, may be made to the cases upon the parliamentary and municipal franchises, and upon settlement under the Poor Law, for illustration of the word "house." Primâ facie a house means a dwelling-house (*Surman* v. *Darley* (1845), 14 M. & W. 181) ; or a building calculated to be used as such (*Nunn* v. *Denton* (1845), 8 Scott N. R. 794 ; *Daniel* v. *Coulsting*, *ib.* 949) ; but the above interpretation extends the signification, and it is presumed that the term would signify any building in which persons are employed. It has recently been decided that it is a question of fact whether particular premises are a "house" within s. 62 of the Public Health Act, 1875. See *Wootten* v. *Bishop* (1907), 71 J. P. 384.

Business premises.

Buildings used as places of business, in which no one slept, and which were originally occupied as dwelling-houses and had been converted into business premises, and which were capable, with slight internal alterations, of being fitted for use as dwelling-houses, were held to be "houses" within the meaning of a local Act (*Lewin and Others* v. *End*, [1906] A. C. 299 ; 70 J. P. 268 ;

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75 L. J. K. B. 473 ; 94 L. T. 649 ; 54 W. R. 606 ; 22 T. L. R. 504 ; 4 L. G. R. 618 ; see also *Lewin* v. *Newnes* (1904), 68 J. P. 164 ; 90 L. T. 160 ; 20 T. L. R. 206).

Day schools.

A day school where there were no boarders and where none of the members of the staff resided, and in which only two maid-servants dwelt, was held to be a house within s. 91 (5) of the Public Health Act, 1875 (*Wimbledon Urban District Council* v. *Hastings* (1902), 67 J. P. 45 ; 87 L. T. 118).

Churches and chapels.

A *church* was held not to be a house in *Angell* v. *Paddington Vestry* (1868), L. R. 3 Q. B. 714 ; 9 B. & S. 496 ; 32 J. P. 742 ; 37 L. J. M. C. 171. But this case had reference to the section of the Metropolis Management Act, 1862, which renders the owner of a house liable for the expenses of paving, etc. A church may be a house within the meaning of a byelaw or order prescribing a building line (*per* MALINS, V.-C., in *Corporation of Folkestone* v. *Woodward* (1872), L. R. 15 Eq. 159 ; 42 L. J. Ch. 782 ; 27 L. T. (N.S.) 574 ; 21 W. R. 97). A dissenting chapel was held to be a house within the meaning of the Metropolis Management Acts (*Caiger* v. *Vestry of St. Mary, Islington* (1881), 45 J. P. 570 ; 50 L. J. M. C. 59 ; 44 L. T. (N.S.) 605 ; 29 W. R. 538). The ground of this decision was that the chapel had not been consecrated, and thus dedicated to permanent and unalterable uses. This decision was followed in *Wright* v. *Ingle* (1885), 16 Q. B. D. 379 ; 50 J. P. 436 ; 55 L. J. M. C. 17 ; 54 L. T. (N.S.) 511 ; 34 W. R. 221. There it was held that the word "house" includes every building which is capable of being used as a human habitation. If a building, which is physically capable of being so used, is prevented, either by common law or by statute, from ever being put to such a use, it is exempted from the liability to contribute to the expense of paving a street in the metropolis. Thus, a consecrated church of the Established Church of England is exempted, because, by reason of its consecration, it becomes, by the common law, for ever incapable of being used as a habitation for man. But a leasehold chapel, vested in trustees, in trust to permit it to be used as a place of religious worship for Wesleyans, is a house, because, by the consent of the landlord, the trustees, and the *cestuis qui trustent*, the trust may at any moment be put an end to. And see the note to the definition of the expression "owner," *post*.

Toll-house.

The word "house" under the Public Health Act, 1848 (11 & 12 Vict. c. 63), was held to apply to a toll-house on a turnpike road (*Tunstall Turnpike Roads* (*Trustees of*) v. *Lowndes* (1856), 20 J. P. 374).

House and curtilage.

In *Hole* v. *Commissioners of Milton* (1867), 31 J. P. 804, it was held that buildings and yards used for purposes of business did not come within the description of "house" (for the purposes of a rate made under a local Improvement Act), unless they were also within the curtilage of the house ; but that gardens or orchards, subordinate to the occupation of the house as a residence, and occupied with the house as ancillary thereto, were so included within the word "house." Therefore, a mill which opened into

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a yard adjoining a house, and which had internal communication with the outbuilding and house, was held to be part of the house and properly included in the rates.

A publichouse was bounded on one side by a street, and in front by a vacant piece of ground not fenced off from the street, and separated from the house only by a narrow foot pavement also without fence, which was ordinarily used by the public as a thoroughfare, though sometimes closed. The piece of land had been treated as passing to the lessee by every demise of the publichouse since 1802 ; it was used by customers of the publichouse, and it furnished the only means of approach for vehicles to the front of the house. It was held that the piece of land came within the definition of a curtilage, and was part of the house within the meaning of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 92 (*Marson* v. *London, Chatham and Dover Rail. Co.* (1868), L. R. 6 Eq. 101, following *Lord Robert Grosvenor* v. *Hampstead Junction Rail. Co.* (1857), 1 De. G. & J. 446). See also, as to the meaning of the word curtilage, *Asquith* v. *Griffin* (1884), 48 J. P. 724 ; *Pilbrow* v. *St. Leonard's, Shoreditch (Vestry of)*, [1895] 1 Q. B. 433 ; 59 J. P. 68 ; 64 L. J. M. C. 130 ; 72 L. T. (N.S.) 135 ; 43 W. R. 342 ; 11 T. L. R. 178. See also *St. Martin's (Vestry of)* v. *Bird*, [1895] 1 Q. B. 428 ; 60 J. P. 52 ; 64 L. J. Q. B. 230 ; 71 L. T. (N.S.) 868 ; 43 W. R. 194.

In *Wright* v. *Wallasey Local Board* (1887), 18 Q. B. D. 783 ; 52 J. P. 4 ; 56 L. J. Q. B. 259 ; 3 T. L. R. 525, it was held that the word "house" in s. 10 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), did not include the curtilage.

In *R.* v. *JJ. of Warwickshire* (1851), 17 L. T. (O.S.) 183, a coach-house and stables adjoining, and occupied with a dwelling-house, and forming part of the same premises, were held to be part of the "house" within the meaning of a local Paving Act.

Dwelling-house.

As to what constitutes a dwelling-house, see *Lawson* v. *Fraser* (1881), 8 L. R. Ir. 55, where premises used as a corn store and kiln, part of which had formerly been used as a dwelling-place, and in which the respondent occasionally slept, were held to be a dwelling-house. A public building in the nature of an hotel for poor men (Rowton House) was held not to be a "dwelling-house to be inhabited, or adapted to be inhabited, by persons of the working class" (*London County Council* v. *Davis*, and *London County Council* v. *Rowton Houses, Limited* (1897), 62 J. P. 68 ; 77 L. T. (N.S.) 693). See also *Chester Waterworks Co.* v. *Chester Union* (1907), 71 J. P. 133 ; 96 L. T. 566 ; 23 T. L. R. 245 ; 5 L. G. R. 215, where upon the construction of a local Waterworks Act and the Waterworks Clauses Acts, a workhouse was held to be a dwelling-house. The decision of the King's Bench Division was affirmed on appeal on this point. See (1908), 72 J. P. 121 ; 98 L. T. 701 ; 24 T. L. R. 301 ; 6 L. G. R. 446 ; and *Frederick* v. *Bognor Water Co.*, [1909] 1 Ch. 149 ; 72 J. P. 501 ; 78 L. J. Ch. 40 ; 25 T. L. R. 31 ; 53 Sol. J. 31.

"Building" generally.

(*f*) "Building" is a word of wider signification than "house." See *per* TURNER, L.J., in *Grosvenor* v. *Hampstead Junction Rail. Co.*, *supra*.

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Shops.

In *R.* v. *Gregory* (1833), 3 L. J. M. C. 25, an open shop roofed in, connecting the shop front with a newly-built house, was held to be a building within the meaning of an Act which prohibited the erection of buildings within a given distance from a roadway.

An erection made of wood, 30 feet long and 13 feet wide, was brought along the streets on wheels and put at the corner of a new street. It had spouts and a down corner, had a supply of gas, and was used as a butcher's shop :—*Held*, that it was a new building (*Richardson* v. *Brown* (1885), 49 J. P. 661).

Element of permanency.

In *Stevens* v. *Gourlay* (1859), 7 C. B. (N.S.) 99 ; 1 F. & F. 498 ; 29 L. J. C. P. 1 ; 1 L. T. (N.S.) 33 ; 8 W. R. 85 ; 6 Jur. (N.S.) 147, a wooden structure, intended to be used as a shop, of considerable size and likely to last for some time, resting on joists, but having no fastenings or foundations in masonry, and capable of being lifted from the ground, was held to be a *building* within 18 & 19 Vict. c. 122. In *Poplar Board of Works* v. *Knight* (1858), El. B. & E. 408 ; 28 L. J. M. C. 37 ; 5 Jur. (N.S.) 196, it was held that a house simply built on the surface of the ground, without any foundations in the ordinary sense, was nevertheless a building within 18 & 19 Vict. c. 120, s. 204, which prohibited the erection of *buildings* over sewers. In *Morish* v. *Harris* (1865), L. R. 1 C. P. 155 ; 35 L. J. C. P. 101 ; 13 L. T. (N.S.) 762 ; 14 W. R. 479 ; 12 Jur. (N.S.) 627, a structure built of stone, having four walls and a door, which was used by the tenant for keeping guano and other manures, which he used on adjoining land, was held to be a building within the Reform Act, 1832 (2 & 3 Will. 4, c. 45), s. 27 ; but the term, as used in that Act, does not include everything which can be called a building ; "it ought to be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of building" (*per* ERLE, C.J., in *Powell* v. *Boraston* (1865), 18 C. B. (N.S.) 175 ; 29 J. P. 550 ; 34 L. J. C. P. 73 ; 11 L. T. (N.S.) 734 ; 13 W. R. 465 ; 11 Jur. (N.S.) 160). In *Watson* v. *Cotton* (1847), 5 C. B. 51 ; 17 L. J. C. P. 68 ; 11 Jur. 1106 ; 2 Lut. R. C. 53, decided with reference to the same Act, a shed described as standing against a wooden paling, but not fastened thereto, and consisting of six posts put into the ground supporting a tarpaulin, which formed the roof, one side being boarded up with boards nailed to the posts, the structure being used to put barrows and posts into, was held to be a building.

Where a bedroom had been erected in place of a conservatory, the external wall of the house having been raised for the purpose, and the justices upon a summons for making an addition to an existing building without complying with certain byelaws, held that there was no addition to an existing building on the ground that the bedroom occupied no more space than the conservatory did, the court sent back the case to the justices, holding that this fact was not, *per se*, conclusive (*Meadows* v. *Taylor* (1890), 24 Q. B. D. 717 ; 54 J. P. 757 ; 59 L. J. M. C. 99 ; 62 L. T. (N.S.) 658).

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In *Bowes* v. *Low* (1870), L. R. 9 Eq. 636, a vinery attached to a wall was held to be a building. But a conservatory, 15 feet long by 9 feet deep, constructed of wood and glass without any heating apparatus and built against the side of a house, was held not to be a building within the meaning of a byelaw requiring buildings to be erected of stone, brick, etc. (*Hibbert* v. *Acton Local Board* (1889), 5 T. L. R. 274). A greenhouse is a building within the meaning of the Prescription Act, 1832 (*Clifford* v. *Holt*, [1899] 1 Ch. 698 ; 63 J. P. 22 ; 68 L. J. Ch. 332 ; 80 L. T. (N.S.) 48). Conservatory.

Whether a high wall is a building, *quære*. It was considered by Lord HATHERLEY, in *Child* v. *Douglas* (1854), Kay, 560 ; 5 De G. M. & G. 739, that a dwarf wall forming a fence was not. See *Weston* v. *Arnold* (1873), L. R. 8 Ch. 1084 ; 43 L. J. Ch. 123 ; 22 W. R. 284, in reference to a party-wall. A local Act prohibited the erection of all houses "and every other building whatever," within 30 feet of the centre of a road :—*Held*, by the Court of Session in Scotland (Lord YOUNG *diss.*) that this prohibition did not apply to a parapet wall 1 foot in height surrounded by a railing 5 feet 3 inches in height (*Partick* (*Commissioners of*) v. *Great Western Steam Laundry* (1886), 13 Ct. of Sess. Cas. (4th ser.) 500). As to whether fence walls of a canal being erected in a public place constituted a *public building*, see *Arnell* v. *Regent's Canal Co.* (1852—1854), 12 C. B. 697 ; 14 C. B. 564. In *Ellis* v. *Plumstead Board of Works* (1893), 57 J. P. 359 ; 68 L. T. (N.S.) 291 ; 41 W. R. 496 ; 5 R. 237, it was held that a wall, 9 inches thick and 7 feet 8 inches high above the level of the ground, and 14 inches thick below that level and 20 feet long, was a building, structure, or erection within s. 75 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), not being merely required as a boundary wall or fence. But the question depends on the height of the wall and the purpose for which it is built. The forecourt of a house in a street had for many years been bounded on the side nearest the street by a dwarf wall between 2 and 3 feet high. The owner pulled down the dwarf wall and built on its site a wall 11 feet high, which was used as a screen to exhibit advertisements, and also to serve as a boundary to the forecourt. It was held that the dwarf wall was not, but that the substituted wall was, a "building, structure, or erection" within the meaning of the same section (*Lavy* v. *London County Council*, [1895] 2 Q. B. 577 ; 59 J. P. 630 ; 64 L. J. M. C. 262 ; 73 L. T. (N.S.) 106 ; 43 W. R. 677). Walls

Movable seating consisting of tiers of platforms capable of accommodating about three thousand persons, erected from time to time as required for exhibitions in the Agricultural Hall, was held not to be a "building, structure or work" within s. 145 of the London Building Act, 1894 (*Venner* v. *McDonnell*, [1897] 1 Q. B. 421 ; 61 J. P. 181 ; 66 L. J. Q. B. 273 ; 76 L. T. (N.S.) 152 ; 45 W. R. 267 ; followed in *Handover* v. *Meeson* (1903), 67 J. P. 313). Platforms.

The erection of hoardings for advertisements was held to be a breach of a covenant not to erect or make any building or erection on certain demised premises (*Pocock* v. *Gilham* (1883), 1 C. & E. 104). Hoardings.

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But see *Foster* v. *Fraser*, [1893] 3 Ch. 158 ; 57 J. P. 646 ; 63 L. J. Ch. 91 ; 69 L. T. (N.S.) 136 ; 42 W. R. 11 ; 9 T. L. R. 502 ; 3 R. 635. In *Wood* v. *Cooper*, [1894] 3 Ch. 671 ; 63 L. J. Ch. 845 ; 71 L. T. (N.S.) 222 ; 43 W. R. 201, the erection of a substantial trellis-work screen, intended to be permanent, was held to be a breach of a similar covenant. An advertising company surrounded on three of its sides a piece of ground with boarded walls or hoardings raised to a height of from 13 to 19 feet. These hoardings were stayed, fastened and tied together and strengthened on the inner side. The space enclosed was used for the preparation of wood for other hoardings. It was held that the structure was not a new building within the byelaws (*Slaughter* v. *Sunderland* (*Mayor, etc. of*) (1891), 55 J. P. 519 ; 60 L. J. M. C. 91 ; 65 L. T. (N.S.) 250 ; 7 T. L. R. 296). In *Boyce* v. *Paddington Borough Council*, [1903] 1 Ch. 109 ; 67 J. P. 23 ; 72 L. J. Ch. 28 ; 87 L. T. 564 ; 51 W. R. 109, BUCKLEY, J., held that a screen proposed to be put up upon a disused churchyard managed as an open space, for the purpose of preventing an adjoining landowner from acquiring by prescription a right to access of light to windows of his houses overlooking the churchyard, would not be a building within s. 5 of the Metropolitan Open Spaces Act, 1881, and s. 3 of the Disused Burial Grounds Act, 1884. The Court of Appeal reversed this decision (see [1903] 2 Ch. 557 ; 68 J. P. 49 ; 72 L. J. Ch. 695 ; 89 L. T. 383) on the ground that in erecting the screen the council would be holding and administering the ground otherwise than for the purpose of its enjoyment by the public in an open condition and for no other purpose, as prescribed by s. 5 of the Metropolitan Open Spaces Act, 1881. The House of Lords reversed the decision of the Court of Appeal and restored that of BUCKLEY, J. (*Paddington Borough Council* v. *Att.-Gen.*, [1906] A. C. 1 ; 70 J. P. 41 ; 75 L. J. Ch. 4 ; 93 L. T. 673 ; 54 W. R. 117 ; 4 L. G. R. 19).

Temporary structures.

Three caravans, a shooting gallery and a steam roundabout were held not to be "structures or erections of a movable or temporary character" within the meaning of 45 Vict. c. 14, s. 13 (*Hall* v. *Smallpiece* (1890), 54 J. P. 710 ; 59 L. J. M. C. 97). So, also, a builder's pay office constructed of wood and roofed with zinc and placed upon iron wheels for the purpose of enabling it to be wheeled about to any place where building operations were being carried on (*London County Council* v. *Pearce*, [1892] 2 Q. B. 109 ; 56 J. P. 790 ; 66 L. T. (N.S.) 685 ; 40 W. R. 543 ; 8 T. L. R. 531) ; and a bungalow constructed of wood and corrugated iron and erected on a piece of land for the purpose only of exhibition and sale and not for occupation (*London County Council* v. *Humphreys*, [1894] 2 Q. B. 755 ; 58 J. P. 734 ; 63 L. J. M. C. 215 ; 71 L. T. (N.S.) 201 ; 43 W. R. 13 ; 10 T. L. R. 594 ; 10 R. 533).

Temporary structures, intended to be used for storing workmen's tools, and for the purpose of a brick kiln, were held not to be buildings within the meaning of byelaws of a local board (*Fielding* v. *Rhyl Improvement Commissioners* (1878), 3 C. P. D. 272 ; 42 J. P. 311). So, also, a wooden weighing machine house open for the use of the public during the summer months, erected

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on an esplanade at the seaside as a shelter for a weighing machine, and containing also a table and two chairs, was held not to be a new building within the meaning of byelaws under s. 157 of the Public Health Act, 1875, and a movable wooden refreshment stall open during the summer months in the same locality was likewise held not to be a new building (*Southend-on-Sea Corporation* v. *Archer*; *Same* v. *Romanis* (1901), 65 J. P. 292; 73 L. J. K. B. 328; 84 L. T. (N.S.) 264; 17 T. L. R. 15; and see *Dublin Corporation* v. *Irish Church Missions*, [1901] 2 I. R. 387). Again, a portable theatre constructed of wood, and erected for a short period only, where the intention of the proprietor was to move to another locality within a short time, was held not to be a "building" within the meaning of the Public Health Act, 1875, s. 157, or of byelaws framed in pursuance of that section (*Newell* v. *Ormskirk Urban District Council* (1907), 71 J. P. 119).

Bay windows

A covenant in a purchase deed provided that buildings should not be erected beyond a given line of frontage. It was held that bay windows projecting beyond the line, and carried from the foundation up to the roof, were buildings within the meaning of the covenant (*Lord Manners* v. *Johnson* (1875), 1 Ch. D. 673).

Subterranean buildings.

The word *building* is not restricted to erections above the surface of a street. Thus, arches over which a roadway was made, and which were used as storehouses, were held to be buildings within s. 7 of the Gasworks Clauses Act, 1847 (*Thompson* v. *Sunderland Gas Co.* (1877), 2 Ex. D. 429; 42 J. P. 198; 46 L. J. Ex. 710; 37 L. T. (N.S.) 30; 25 W. R. 809). So, also, street boxes for electric lighting purposes were held to be buildings, structures or works within s. 145 of the London Building Act, 1894 (*Whitechapel District Board of Works* v. *Crow* (1901), 65 J. P. 549; 84 L. T. (N.S.) 595; *Charing Cross and Strand Electricity Supply Corporation* v. *Woodthorpe* (1903), 67 J. P. 286; 88 L. T. 772).

Two covered storage reservoirs constructed on behalf of the Metropolitan Water Board were held to be structures or buildings to which the duties of the district surveyor extended within the London Building Act, 1894 (*Moran* v. *Marsland*, [1909] 1 K. B. 744; 73 J. P. 114; 78 L. J. K. B. 346; 100 L. T. 374; 25 T. L. R. 235; 7 L. G. R. 493).

Master.

(*g*) This definition is the same as that of an occupier in 52 & 53 Vict. c. 72, s. 16. The word "master" has, in most instances, been substituted for "occupier" throughout this Act.

House refuse; trade refuse; street refuse.

(*h*) These definitions are important for the purposes of the construction of ss. 29—36 of this Act. The following decisions on the earlier Acts may be noticed:

On similar words in 57 Geo. 3, c. 29, ss. 59, 60, it was held that a scavenger was only entitled to remove such things as in the contemplation of the owner were rubbish or refuse, and as he desired to dispose of in that character. Therefore, where brewers, occupying premises in parish A., burnt coals there in the process of brewing, and when they were partially consumed by having passed once through the fires, removed them, intermixed with the

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dust and ashes arising from the same fires, to other premises occupied by them in parish B., where they used them for heating water to cleanse their casks, it was held that the scavenger of A. was not entitled to claim the articles so removed (*Filbey* v. *Combe* (1837), 2 M. & W. 677).

House refuse does not extend to dust and ashes, the exclusive produce of manufactories (*Lyndon* v. *Standbridge* (1857), 26 L. J. Ex. 386 ; 29 L. T. (o.s.) 111 ; 2 H. & N. 45). And see *Law* v. *Dodd* (1848), 17 L. J. M. C. 65 ; 10 L. T. (o.s.) 286, 309 ; 1 Ex. 845. Ashes arising from coals burnt in the furnace of a steam engine used for the purpose of sawing and lifting timber and other materials for carrying on the business of a piano manufacturer, were held not to be house refuse in *Gay* v. *Cadby* (1877), 2 C. P. D. 391 ; 41 J. P. 503 ; 46 L. J. M. C. 260 ; 36 L. T. (N.S.) 410. The local authority under an order of the Local Government Board are bound to remove refuse from a workhouse, even though such workhouse may by a local Act be rated at a less amount than other property in the parish or district (*Guardians of Holborn Union* v. *Vestry of St. Leonard's, Shoreditch* (1876), 2 Q. B. D. 145 ; 40 J. P. 740 ; 46 L. J. Q. B. 36 ; 35 L. T. (N.S.) 400 ; 25 W. R. 40).

The local authority are not bound to remove articles improperly placed in a dust-bin, such as "broken glass, shoes, and other things which it might not be convenient otherwise to get rid of." Where such articles were removed and were afterwards abstracted by the servants of a metropolitan vestry, it was held that the contractor for the removal of the house refuse was not entitled to compensation in respect of them (*Collins* v. *Vestry of Paddington* (1879), 43 J. P. 367 ; 48 L. J. Q. B. 345 ; 40 L. T. (N.S.) 843 ; 27 W. R. 504).

Clinkers produced in the furnaces of boilers belonging to a hotel, used to generate steam for the purpose of supplying power for the electric lighting and for warming and cooking and other purposes of the hotel, are not refuse of a trade manufacture or business, and, therefore, the scavengers, under 18 & 19 Vict. c. 120, s. 125, corresponding to s. 30 of this Act, were held bound to remove them without payment (*St. Martin's (Vestry of)* v. *Gordon*, [1891] 1 Q. B. 61 ; 43 J. P. 373 ; 60 L. J. M. C. 37).

Clinkers produced in the furnaces of boilers belonging to a steam laundry, used to generate steam for the purpose principally of heating the water used in the business, but also for the purpose of warming the laundry, are not "house refuse" within the meaning of s. 44 of the Public Health Act, 1875 (*London and Provincial Laundry Co.* v. *Willesden Local Board*, [1892] 2 Q. B. 271 ; 56 J. P. 696 ; 67 L. T. (N.S.) 499 ; 40 W. R. 557).

A sanitary authority in the metropolis refused to remove from a large hotel the refuse, consisting of ashes from the grates, sawdust strewn on the kitchen floors for the sake of cleanliness, empty bottles and tins of the sauces and various comestibles used in the kitchen, straw packing-cases for bottles, tea leaves, waste paper, egg shells, lemon peel, the general dust from the rooms and staircases, and from time to time small quantities of broken

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crockeryware and glass, on the ground that it was trade refuse. The Divisional Court held that the refuse was "house refuse" within s. 30 of this Act, and that the authority were bound to remove the same without payment (*Westminster Corporation* v. *Gordon Hotels, Limited*, [1906] 2 K. B. 39 ; 70 J. P. 258 ; 75 L. J. K. B. 438 ; 94 L. T. (N.S.) 521 ; 22 T. L. R. 439 ; 4 L. G. R. 438). Affirmed on another ground by Court of Appeal, [1907] 1 K. B. 910 ; 71 J. P. 200 ; 76 L. J. K. B. 482 ; 96 L. T. 535 ; 23 T. L. R. 387 ; 5 L. G. R. 545 ; and in House of Lords, [1908] A. C. 142 ; 72 J. P. 201 ; 77 L. J. K. B. 520 ; 98 L. T. 681 ; 24 T. L. R. 402 ; 6 L. G. R. 520.

The refuse of a restaurant, namely, ashes, clinkers, coffee grounds, egg shells, dust and general dirt, small quantities of broken crockery, tea leaves, potato parings, scrapings from the sink and sweepings from rooms is "house refuse" within s. 30 of this Act and not "trade refuse" within s. 33. If the refuse to be removed is "house refuse" in character, the mere fact that it has been produced in the carrying on of a trade does not make it "trade refuse (*J. Lyons & Co.* v. *Mayor, etc. of London*, [1909] 2 K. B. 588 ; 73 J. P. 372 ; 78 L. J. K. B. 915 ; 101 L. T. 206 ; 25 T. L. R. 636 ; 7 L. G. R. 811).

See the meaning given to the term "house refuse" in the City of London (Public Health) Act, 1902, set out in the Appendix, *post*.

(*i*) This definition is the same as that given by s. 4 of the Public Health Act, 1875. It is also the same as that contained in s. 250 of the Metropolis Management Act, 1855. Owner.

The use of the word *means* here appears to be restrictive, and to imply that what follows is to be the only interpretation of the word *owner*, so that the owner of the fee simple who has let the lands upon a nominal ground rent is not within the definition. See *Evelyn* v. *Wychcord*, *Cook* v. *Montague*, *Caudwell* v. *Hanson*, and *Poplar Board of Works* v. *Love*, *infra*. Effect of "means."

By s. 2 of the Nuisances Removal Act, 1855 (now repealed), the word *owner* included any person receiving the rent of the property in respect of which the word was used from the occupier of such property, on his own account, or as trustee or agent for any other person. A. was lessee for twenty-one years, at a rack-rent, of a house and shop ; he occupied the shop himself, and underlet the upper part of the house to B. as a yearly tenant. The upper part was shut off from the shop, and A. had no access to it. There was a privy in the upper part of the house, which the nuisance authority took proceedings to abate, as a nuisance arising from a defective construction of a structural convenience ; and they proceeded against C., who received the rent from A., as agent for A.'s landlord :—*Held*, that C. was not owner, as he did not receive the rent from B., who was the occupier of the premises on which the nuisance arose, and of which A. was the owner (*Cook* v. *Montague* (1872), L. R. 7 Q. B. 418 ; 37 J. P. 53 ; 41 L. J. M. C. 149). It is to be observed that the words "from the occupier of such property," which occurred in the Nuisances Removal Act, are not in the text. And it appears from the cases cited below that where there are intermediate lessors, and the rent received by each is the same, the person ultimately receiving the rent is the owner ; and Lessee as owner.

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that, on the other hand, a lessor receiving from his lessee more rent than he pays, is the owner within the meaning of this definition. See *Walford* v. *Hackney Board of Works*, *infra*; *Truman, Hanbury, Buxton & Co.* v. *Kerslake*, *infra*. See also *Bowen* v. *James* (1882), 10 L. R. Ir. 26. In *Rice* v. *White*, [1904] 2 I. R. 8, parts of a single tenement were sublet to weekly tenants by one F., who herself occupied the residue of the tenement. The annual value of the premises under the Valuation Acts was £38. F. was lessee for a term of thirty-one years at a yearly rent of £34. The rents received from the sub-tenants amounted in all to £107 a year, and the letting value of the rooms retained by F. was £19 per year. It was held (following and applying *Bowen* v. *James*, *supra*) that F. was the owner of the premises within the meaning of the Public Health (Ireland) Act, 1878, in which the definition of "owner" is practically the same as the definition of "owner" in this Act. See also *Field & Sons* v. *Southwark Borough Council* (1907), 71 J. P. 240, in which case the appellants, who were possessed for a term of years of a house and premises, let them to one J. B., with a covenant by J. B. not to sublet without their consent. J. B., without their consent, sublet each floor to a separate tenant. The water supply of the house would have been sufficient if it had been in the occupation of one tenant, but the only water supply available for the tenant of the top floor was that provided by a tap in the yard. It was held that no order could be made against the appellants as owners under s. 48 of this Act to abate the nuisance of there being an insufficient supply for the top floor, since it could not be treated as an occupied house for the purposes of s. 48, as the words "occupied house" in that section mean a "structure as let," and since even if it could be so treated, the appellants, not being in receipt of the rack-rent, were not owners within the Act.

Occupiers under building agreements.

By s. 250 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), "owner" is defined to mean the person for the time being receiving the rack-rent of the lands or premises in connection with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent. The owner of houses abutting on a new street occupied the land under a building agreement, by which the owner of the land agreed to demise to the owner of the houses, or his nominees, the several pieces of land upon which he was to build, as the houses and buildings respectively became erected and covered, for eighty years, at the rent of a peppercorn for two years, and of sums increasing every year up to £364 in the sixth and following years. He was to be considered as holding the undemised portion on the terms of the leases. There was a power of re-entry upon non-completion of the building covenants. The houses, at the date when the expenses which were the subject of the action were incurred, were in every stage of building progress, and some had been demised to other persons at defendant's nomination :—*Held*, that with the exception of the houses demised to other persons, he was liable as owner of all the premises. *Per* BLACKBURN, J. :

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"He was in actual occupation; his peppercorn rent was to be raised to a ground rent. There could not be a reason for saying that the freeholder was receiving the rack-rent. It may be a substantial rent, but not such as to prevent the defendant from being the owner" (*Poplar Board of Works* v. *Love* (1874), 29 L. T. (N.S.) 915). In *Lady Holland* v. *Vestry of Kensington* (1867), L. R. 2 C. P. 565; 31 J. P. 758; 36 L. J. M. C. 105, A., being owner in fee of certain land, entered into a building agreement with B., whereby B. agreed to build certain houses on part of the land, and lay out the remainder as a garden for the exclusive use of the tenants of the houses, and A. agreed to grant to B. a lease of each house as it was built, and to grant him a lease of the garden with the last house; and it was expressly agreed that B. should have no interest in any house or land until a lease of it was granted. B. built some of the houses, but not all, and laid out the garden, and A. subsequently sold the reversion of the houses which were built to C. The parish in which the land was situated, having paved a road running past the garden, claimed repayment of the expense from A. It was held that A. was the owner, and therefore liable. *Per* WILLES, J.: "If the houses had been all built, and B. had obtained a lease of the garden, he would have been trustee for the inhabitants of the houses under the section. But at present A. is the legal owner, subject only to certain easements possessed by the inhabitants of the houses that have been built, and to the consideration that if and when certain acts are done she will be bound to grant the legal estate to B. It may be that she only holds as trustee for the inhabitants of the houses, but it is not only the beneficial owner, but the owner who holds as trustee for others, that is liable to make the payments under the Acts." This decision was followed in *Driscoll* v. *Battersea Borough Council*, [1903] 1 K. B. 881; 67 J. P. 264; 72 L. J. K. B. 564; 88 L. T. (N.S.) 795; 1 L. G. R. 511, where the facts were as follows: A freeholder entered into an agreement with a builder with respect to a parcel of his land. The agreement, which described the freeholder as the intended lessor, and the builder as the intended lessee, was to the effect that the builder might enter upon and retain possession of the land in question, and should erect thirty-two houses thereon. Until leases had been granted of all the plots on the land the builder was to pay to the freeholder a rent of £200 per annum (which was not in fact a rack-rent), or so much thereof as should not have been reserved by lease actually granted. On the completion of each house, and on payment of all moneys due, the freeholder was to grant a lease to the intended lessee for ninety-nine years. The freeholder had power to distrain for any part of the £200. It was expressly provided that the contract was to operate as an agreement only, and not as an actual demise of the premises, or to give the builder any legal interest therein until the contemplated leases of the completed houses were executed. The £200 was duly paid, but no houses had been erected or buildings commenced. In *Walford* v. *Hackney Board of Works* (1894), 43 W. R. 110; 11 T. L. R. 17; 15 R. 10, H. let premises to W. for a term of years at the rent of £25, subsequently increased to £31, and W.

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sublet the premises again, agreeing to accept the same rent as he himself paid, and paid it over to H. without any deductions, and it was held that W. was not the "owner" of the premises. In *Truman, Hanbury, Buxton & Co.* v. *Kerslake*, [1894] 2 Q. B. 774 ; 58 J. P. 766 ; 63 L. J. M. C. 222 ; 43 W. R. 111 ; 10 T. L. R. 668, it was held that where the lessee of premises not let at a rack-rent has sublet them for his whole term, less a few days, the rent reserved and the covenants and conditions being the same as in the original lease, the sub-lessee, and not the lessee, is the owner of the premises within the meaning of this definition. See also *Rice* v. *White* and *Field & Sons* v. *Southwark Borough Council*, *supra*.

Receipt of rent.

The Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 3 (now repealed and replaced by the London Building Act, 1894 (57 & 58 Vict. c. ccxiii), s. 5 (29), provided that the word *owner* should apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term, or as a tenant at will. It was held that an owner of land in fee simple, who let it on a building lease at a peppercorn rent, was not liable as owner, such a rent not being within the meaning of the section (*Evelyn* v. *Wychcord* (1858), El. B. & E. 126 ; 22 J. P. 658 ; 27 L. J. M. C. 211 ; 31 L. T. (o.s.) 96 ; 6 W. R. 468 ; 4 Jur. (N.S.) 808). In *Cowen* v. *Phillips* (1863), 33 Beav. 18 ; 8 L. T. (N.S.) 622 ; 11 W. R. 706 ; 9 Jur. (N.S.) 657, it was held that a tenant in possession, having an equitable interest only under an agreement for a lease for a term of three years, is in equity an owner under this section. And see *List* v. *Tharp*, [1897] 1 Ch. 260 ; 61 J. P. 248 ; 66 L. J. Ch. 175 ; 76 L. T. (N.S.) 45 ; 45 W. R. 243. In *Hunt* v. *Harris* (1865), 19 C. B. (N.S.) 13 ; 34 L. J. C. P. 249 ; 12 L. T. (N.S.) 421 ; 13 W. R. 742 ; 11 Jur. (N.S.) 485, the lessee of a house for a long term of years who had underlet it in different portions to different tenants, and who was in receipt of the rents from such under-lettings, was held to be the owner of the party-wall of such house within the meaning of the above section, notwithstanding that the underlettings created a greater interest in the under-tenants than that of a yearly tenancy. The last-mentioned case and *Cowen* v. *Phillips*, *supra*, were discussed in *Fillingham* v. *Wood*, [1891] 1 Ch. 51 ; 60 L. J. Ch. 232 ; 64 L. T. (N.S.) 46 ; 39 W. R. 282 ; 7 T. L. R. 66. There it was held that a tenant in possession of part of a house under an agreement for a greater interest than as tenant from year to year was an adjoining owner entitled to be served with a party-wall notice under the Act, and that service on a person in receipt of the whole of the rents of the tenement was not sufficient. In *Mourilyan* v. *Labalmondiere* (1861), 1 El. & El. 533 ; 25 J. P. 340 ; 30 L. J. M. C. 95 ; 3 L. T. (N.S.) 668 ; 7 Jur. (N.S.) 627, the appellants were seised in fee of a building used as a chapel which they had let on lease for twenty-one years. It was held that they were not, but that the lessee was, the owner within the meaning of the section. In *Caudwell* v. *Hanson* (1871), L. R. 7 Q. B. 55 ; 36 J. P. 470 ; 41 L. J. M. C. 8 ; 25 L. T. (N.S.) 525 ; 20 W. R. 202, the appellant, who was seised in fee of certain

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building land, entered into an agreement with L. to grant building leases of ninety-nine years of certain plots of the land, so soon as L. should have erected houses thereon, at a peppercorn rent until June 24th, 1870, and afterwards at £28 a year. L. built houses which were roofed in about September, 1870, and it was held that he was the owner, and that it was immaterial whether his title were legal or equitable only. And see to the same effect *St. Helen's Corporation* v. *Riley* (1883), 47 J. P. 471. In *R.* v. *Lee* (1878), 4 Q. B. D. 75 ; 43 J. P. 302 ; 48 L. J. M. C. 22 ; 39 L. T. (N.S.) 605, it was held that the incumbent of a district church in the metropolis, although the freehold of the church was vested in him, was not the owner within the above section, as he neither received the rents or profits of the church nor was in occupation of it. But in *Folkestone* (*Corporation of*) v. *Woodward* (1872), L. R. 15 Eq. 159 ; 42 L. J. Ch. 782 ; 27 L. T. (N.S.) 574 ; 21 W. R. 97, where it was held that a church was a house within the meaning of a bye-law prescribing a building line, it was held that a perpetual curate, in whom the freehold was vested, was the owner. As to the case where land is devised for a long term on trust to pay debts, etc., see *Mansell* v. *Norton* (1883), 22 Ch. D. 769.

Trustees.

The trustee of a national school is an owner (*Bowditch* v. *Wakefield Local Board* (1871), L. R. 6 Q. B. 567 ; 36 J. P. 197 ; 40 L. J. M. C. 214, and see *Hornsey Urban District Council* v. *Smith*, *infra*. The Ecclesiastical Commissioners, in whom a church not built by them was vested, were held not to be the owners within the 25 & 26 Vict. c. 102 (*Angell* v. *Vestry of Paddington* (1868), L. R. 3 Q. B. 714 ; 9 B. & S. 496 ; 32 J. P. 742 ; 37 L. J. M. C. 171). By 8 & 9 Vict. c. 70 (Church Building Acts Amendment Act, 1845), s. 13, the "freehold of the site of every church" of which the commissioners therein mentioned shall accept a conveyance under the Church Building Acts (as to any church not yet consecrated, when the same shall be consecrated), shall vest in the incumbent. Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site for a church, a church was afterwards erected on a part of the land, and the church and a part only of the land were consecrated :—*Held*, that upon such consecration, the whole of the land so conveyed to the commissioners vested in the incumbent ; that the commissioners ceased to be the owners of it, and were therefore not liable under the Metropolis Management Acts, 1855 and 1862, to contribute in respect of it towards the cost of paving a new street (*Plumstead District Board of Works* v. *Ecclesiastical Commissioners for England*, [1891] 2 Q. B. 361 ; 55 J. P. 791 ; 64 L. T. 830 ; 39 W. R. 700). The position of the incumbent in relation to the poor rate in respect of land acquired as a burial ground under the Church Building Acts was recently discussed in *North Manchester Overseers* v. *Winstanley*, [1907] 1 K. B. 27 ; 71 J. P. 48 ; 76 L. J. K. B. 33 ; 95 L. T. 796 ; 23 T. L. R. 35 ; 5 L. G. R. 7 ; reversed on appeal, [1908] 1 K. B. 642 ; 72 J. P. 172 ; 77 L. J. K. B. 509 ; 98 L. T. 781 ; 24 T. L. R. 388 ; 6 L. G. R. 415. The trustees of a dissenting chapel, registered as a place of religious worship, were held liable as the owners of a house in *Caiger* v. *St. Mary, Islington*

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(*Vestry of*) (1881), 45 J. P. 570; 50 L. J. M. C. 59; 44 L. T. (N.S.) 605; 29 W. R. 538. And a leasehold chapel vested in trustees on trust, to permit it to be used as a place of religious worship by a congregation of Wesleyans, was held to be a house within the meaning of the Metropolis Management Acts, on the ground that by consent of the landlord, the trustees, and the *cestuis que trustent*, the trusts might at any moment be put an end to; it was also held that the trustees were owners of the chapel (*Wright* v. *Ingle* (1885), 16 Q. B. D. 379; 50 J. P. 436; 55 L. J. M. C. 17; 54 L. T. (N.S.) 511; 34 W. R. 221). The principle laid down in the last mentioned case was recently applied by the Court of Appeal in a case, the circumstances of which were as follows: By a special Act it was provided that for the protection of the owners of certain lands taken for sidings, a railway company should leave a strip of land twenty feet wide along the whole length of a certain road, and at their own expense plant and maintain the same with trees to the satisfaction of the owners, and should also fence off the land from the road. The railway company left the strip of land accordingly and planted and fenced it off. The court held that as the burden on the strip of land was imposed for the benefit of individuals who might release it, the land was not incapable for ever of being let at a rack-rent, and that therefore the company were the "owners" thereof within the meaning of s. 250 of the Metropolis Management Act, 1855, and were liable to contribute towards the expenses of paving the road (*Hampstead Corporation* v. *Midland Rail. Co.*, [1905] 1 K. B. 538; 69 J. P. 133; 74 L. J. K. B. 431; 92 L. T. 252; 21 T. L. R. 272; 3 L. G. R. 458). The defendants were the trustees of a chapel consisting of two floors. The upper floor was the chapel itself, and the lower contained a lecture hall and several smaller rooms. The upper floor was exclusively appropriated to public religious worship, and the premises as a whole were registered as a place of religious worship. The lecture hall was used for the purpose of a Sunday school and of an institute, the members of the latter paying a subscription, and lectures and concerts were from time to time given in the hall in connection with the institute, for which tickets were sold to persons who were not members; but the money received did not cover the cost of the entertainments. A bazaar and a sale of work had also been held in the lecture hall, when a charge was made for admission. The money realised from the bazaar was handed to the defendant B. and appropriated by him to the chapel building fund, and the proceeds of the sale of work were devoted to the purchase of a piano for the institute. The defendants, who had no beneficial interest in the chapel, having failed to comply with a notice under s. 150 of the Public Health Act, 1875, requiring them to pave, etc. the portion of the street upon which the chapel abutted, the complainants executed the work themselves, and obtained an order of justices for the repayment by the defendants of the expenses thus incurred:—*Held*, that the defendants were the "owners" of the premises when the works were completed within s. 257 of that Act, and that they did not come within s. 151, which exempts from liability "the incumbent or minister of any church, chapel, or place

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appropriated to public religious worship," and that the order of the justices was therefore rightly made (*Hornsey Local Board* v. *Brewis*, W. N. (1890), 189 ; 55 J. P. 389 ; 60 L. J. M. C. 48 ; 64 L. T. (N.S.) 288 ; 7 T. L. R. 27). The owner of private roads adjoining land belonging to him was held to be an owner within the meaning of the Metropolis Management Act (*Pound and Lord Northbrook* v. *Plumstead Board of Works* (1871), L. R. 7 Q. B. 183 ; 36 J. P. 468 ; 41 L. J. M. C. 51). But a land society which had set out and dedicated certain roads to the public, and sold off the building plots fronting them, was held by the Exchequer Chamber not to be owners of land within the Act, a previous decision of the Court of Queen's Bench being reversed (*Plumstead Board of Works* v. *British Land Company* (1875), L. R. 10 Q. B. 203 ; 39 J. P. 376 ; 44 L. J. Q. B. 38). In that case, Lord COLERIDGE, C.J., distinguished *Pound* v. *Plumstead Board of Works*, *supra*, on the ground that Lord Northbrook had there "for his own purposes determinately reserved his property in the private roads to himself. He might at any time have put an end to the dedication of them to his own tenants, which was all he had ever done. There was no dedication of it to the public, and there was nothing done past recall." The same learned judge, referring to *Angell* v. *Vestry of Paddington*, *supra*, indicates an opinion that when expenses are sought to be recovered under such Acts as the Public Health Acts from persons as owners of land, it is not enough that they should be owners of land or houses, "for real property purposes," but they must be "the owners of land which could be let at a rack-rent within the meaning of the statute." This decision was followed by POLLOCK, B., in *Hampstead Vestry* v. *Cotton* (1885), 16 Q. B. D. 475 ; 50 J. P. 453 ; 55 L. J. Q. B. 213 ; 54 L. T. (N.S.) 441 ; 34 W. R. 244. In *Wright* v. *Ingle*, *supra*, BOWEN, L.J., said : "The section does not confine the term 'owner' to those persons who could receive a rack-rent from the particular premises, or who could let them at a rack-rent ; it includes those persons who would receive the rack-rent if the premises were let at a rack-rent, and I think *Bowditch* v. *Wakefield Local Board*, *supra*, is a conclusive authority, if authority were wanted, to show that a man is not the less the owner of premises because, by the provisions of the deed under which he holds them, they cannot, so long as he holds them, be let at a rack-rent. Whether in the case of premises which were prevented by an Act of Parliament from being let at a rack-rent, there ever could be an owner within the meaning of the section I very much doubt. I am inclined to think that if the incapacity to be let were stamped upon the premises, they never could have an owner within the meaning of the section." Referring to these words, STIRLING, J., in *Re Christchurch Inclosure Act*, *Meyrick* v. *Att.-Gen.*, [1894] 3 Ch. 209 ; 58 J. P. 556 ; 63 L. J. Ch. 657 ; 71 L. T. (N.S.) 122 ; 42 W. R. 614 ; 10 T. L. R. 555, held them inapplicable to the facts of that case. There it was sought to make liable for paving expenses, the lord of a manor as owner of a common which originally formed part of the manor, and was afterwards by an Inclosure Act vested in the lord, subject as regarded the surface of the common to the rights of the occupiers of certain

Owners of private roads.

Premises not lettable at a rack-rent.

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cottages. It was held that the lord of the manor was liable as owner of the common, though it was assumed that the Inclosure Act prevented the lord from letting the common.

Bed of the Thames.

The appellants were a public body having certain jurisdiction and powers over the river Thames, the bed and soil whereof and of the shores within the flux and reflux of the tides were vested in them by statute. The Acts by which their duties were regulated gave them various powers for the improvement of the navigation of the river, but gave them no power of scavenging or removing nuisances, and their power of raising funds, and the application of the funds when raised, were strictly limited by statute, and did not include a power of raising money for the sanitary improvement of the river. It was held that under their Acts of Parliament the appellants were owners of the soil and foreshore of the river for certain specified purposes only, and were not owners thereof, so as to be liable to abate a nuisance thereon (*Thames (Conservators of the River)* v. *London (Port Sanitary Authority of)*, [1894] 1 Q. B. 647 ; 58 J. P. 335 ; 63 L. J. M. C. 121 ; 69 L. T. (N.S.) 803 ; 10 T. L. R. 161).

Cemetery.

The respondents were a cemetery company incorporated by Act of Parliament, whereby it was provided that part of the cemetery should be set apart for the interment of the dead according to the rites of the Church of England, and might be consecrated for that purpose, and when so consecrated should for ever thereafter be set apart and applied exclusively for the uses of Christian burial. Under their Act the company had power to sell the exclusive right of burial in vaults in perpetuity or for a limited period, but were prohibited from selling or disposing of any land which had been consecrated or set apart or used for the burial of the dead. It was held that as the company were owners in fee of the land with the power of letting or selling the land for the purposes of interment, and as, moreover, there was nothing to prevent them from letting it or part of it to another cemetery company at a rack-rent so long as it was used as a cemetery, they were liable as owners to contribute towards the expenses of paving a road which bounded the consecrated part of the cemetery (*St. Giles, Camberwell (Vestry of)* v. *London Cemetery Co.*, [1894] 1 Q. B. 699 ; 58 J. P. 382 ; 63 L. J. M. C. 74 ; 70 L. T. (N.S.) 734 ; 42 W. R. 446).

Site of school.

Under s. 6 of the School Sites Act, 1841, a piece of land was conveyed in the form given in s. 10 to trustees for ever for purposes of the Act, as a site for a National School "and for no other purpose whatever" ; and a National School was afterwards erected upon it. In proceedings against the trustees to recover paving expenses under s. 150 of the Public Health Act, 1875, apportioned upon them in respect of the school, it was held that as under the School Sites Act the premises might in certain events be sold or exchanged, or might be transferred to a School Board at a rent under the Education Acts, the premises were not so incapacitated from ever being let at a rack-rent as to prevent the trustees from being liable as owners (*Hornsey Urban District*

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Council v. *Smith*, [1897] 1 Ch. 843 ; 66 L. J. Ch. 476 ; 76 L. T. (N.S.) 431 ; 45 W. R. 581).

Recreation grounds.

Under a scheme made pursuant to the Metropolitan Commons Act, 1866, and confirmed by the Metropolitan Commons Supplemental Act, 1873, Tooting Beck Common was vested in the Metropolitan Board of Works (predecessors of the London County Council) for the use of the public. The scheme provided that the common should be regulated and managed by the Board, and that no houses or buildings should be erected upon the common except such lodges or other buildings as might be necessary for the management and maintenance of the common. There was a lodge on the common in which an inspector employed by the County Council lived, a deduction being made from his wages in respect of his occupation of the lodge. There was also a refreshment house upon the common which was let to a contractor at a rental of £30 a year, and rights of grazing were also let for about £20 a year. The expenditure in respect of the common always exceeded the receipts therefrom. The Court of Appeal held (overruling *Fulham Vestry* v. *Minter*, *infra*), that the County Council were not "owners" within the meaning of s. 250 of the Metropolis Management Act, 1855 (*London County Council* v. *Wandsworth Borough Council*, [1903] 1 K. B. 797 ; 67 J. P. 215 ; 72 L. J. K. B. 399 ; 88 L. T. 783 ; 1 L. G. R. 462).

In *Fulham Vestry* v. *Minter*, [1901] 1 K. B. 501 ; 65 J. P. 180 ; 70 L. J. K. B. 348 ; 84 L. T. (N.S.) 49 ; 49 W. R. 415 ; 17 T. L. R. 192, a Divisional Court had held that an open space acquired by a local authority under the powers conferred by the Open Spaces Acts, 1877 and 1881, by deed which provided that the land should be maintained for the perpetual use thereof by the public for exercise and recreation, might nevertheless not be land incapable of becoming a source of profit, and that therefore the local authority might be persons who would receive the rent of the land if the same were let at a rack-rent, and so be owners of the open space within the definition. With the decision in the *Tooting Beck Common Case* may be usefully contrasted the decision in *Vestry of St. Mary, Islington* v. *Cobbett*, [1895] 1 Q. B. 369 ; 58 J. P. 716 ; 64 L. J. M. C. 36 ; 71 L. T. (N.S.) 573 ; 43 W. R. 44 ; 15 R. 83. The vestry had in pursuance of s. 5 of the Metropolitan Open Spaces Act, 1881, acquired the residue of a term of twenty-six years in the centre portion of a square, used as a pleasure ground for the occupiers of houses in the square, by an assignment of a lease. Such assignment contained a covenant by the vestry that the land should be held and used for the purposes of a public garden or open space, and, on failure so to use it, to reassign. It was held that the vestry was the "owner" of the open space, within the meaning of the Metropolis Management Acts.

A Divisional Court recently held that a pleasure ground owned by an urban district council was not land *extra commercium*. The land in question had been bought under the Public Health Act,

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1875, for a public pleasure ground, and under the covenants in the conveyance the district council were bound to keep it open as a recreation and pleasure ground for the use of the public for ever (*Herne Bay Urban District Council* v. *Payne and Wood*, [1907] 2 K. B. 130 ; 71 J. P. 282).

Railway.

In *Great Eastern Rail. Co.* v. *Hackney District Board of Works* (1883), 8 App. Cas. 687 ; 48 J. P. 52 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509 ; 31 W. R. 769, the company were sought to be charged as owners of land abutting on a new street. The street was carried over the railway cutting by a bridge, the parapets of which consisted of two walls resting upon arches, which had their foundations outside the lines of the roadway in the company's land. The walls were not used otherwise than as fences for the bridge. It was held that the company were not liable as owners. "The bridge is, by the statute, dedicated to public use, and its fence walls are provided for public protection ; and if the ownership and control of the walls is in the company, it is so for public purposes ; and subject to the obligation of perpetual maintenance, unless and until some other good and sufficient fences shall be provided by the company in their stead for the public protection. The company could not let the walls at a rack-rent ; and if they might use them for any purpose, it must be a use subordinate to the public purposes to which the bridge, as a structure, is in its whole devoted" (Lord FITZGERALD, at p. 702). This case was distinguished in *Williams* v. *Wandsworth District Board of Works* (1884), 13 Q. B. D. 211 ; 48 J. P. 439 ; 53 L. J. M. C. 187 ; 32 W. R. 908. There the appellant was held to be chargeable as owner of a strip of land, four inches wide and 265 feet in length, upon which he had erected a boundary fence along the whole extent of the strip, under a covenant to erect and for ever maintain a fence thereon made with his vendor, who was the owner of the land adjoining the strip (*Cf. Elsdon* v. *Hampstead Corporation*, [1905] 2 Ch. 633 ; 69 J. P. 434 ; 93 L. T. (N.S.) 335 ; 54 W. R. 43 ; 21 T. L. R. 772 ; 3 L. G. R. 1199).

Bank of public navigable river.

The Lee Conservancy Board, who were incorporated for the purpose of improving and maintaining the navigation of the river Lee, were the owners of a strip of land about twenty-six feet wide, which had been acquired by their predecessors for the purpose of strengthening the bank of the river. By various statutes the board were empowered—*inter alia*—to construct locks, docks, wharves, etc. ; to sell or otherwise dispose of any lands vested in them which were not required for the purposes for which they were incorporated, and to charge tolls ; but they were not empowered to make a profit. It was provided that the payment of the expenses incident to all the powers and duties under the Acts should be considered as among the purposes for which income received under those Acts was by law applicable. It would be possible for the board, if they choose to substitute a retaining wall, to dispose of a portion of the land which would then be no longer required. The Court of Appeal held that the nature of the undertaking of the board, and the conditions under which it was carried

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on, did not place the land in question *extra commercium*, or make it incapable of being let at a rack-rent, and that therefore the board were "owners" thereof within the meaning of s. 250 of the Metropolis Management Act, 1855, and liable to contribute to the expenses of making up a new street upon which the land abutted (*Hackney Borough Council* v. *Lee Conservancy Board*, [1904] 2 K. B. 541 ; 68 J. P. 485 ; 73 L. J. K. B. 766 ; 91 L. T. 13 ; 2 L. G. R. 1144).

Rent collector.

Upon a similar definition in a local Act, it was held that an agent employed to collect the rents of property charged with an apportionment of paving expenses was an owner, and liable as such to be called upon to pay, whether he had money of his principal in hand or not, at any time while the sum assessed upon the premises remained unpaid (*St. Helens* (*Mayor, etc. of*) v. *Kirkham* (1885), 16 Q. B. D. 403 ; 50 J. P. 647 ; 34 W. R. 440). And in *Broadbent* v. *Shepherd* (1900), 65 J. P. 70 ; 83 L. T. (N.S.) 504 ; 49 W. R. 205, it was held that a mere rent collector may be served as owner under s. 94, *post*, with a notice to abate a nuisance, although such nuisance arises from structural defects. And he may be ordered under s. 96, *post*, to abate it even though he resigned his post after notice to abate (*Broadbent* v. *Shepherd* (No. 2), [1901] 2 K. B. 274 ; 65 J. P. 499 ; 70 L. J. K. B. 628 ; 84 L. T. (N.S.) 844 ; 49 W. R. 521). In *Cook* v. *Montague*, *supra*, BLACKBURN, J., said : "The object of the legislature seems to have been this, that as the occupier was often poor, and the real owner might be difficult to discover, it was as well to get at the collector of rents, who could always be found out ; and hence the person who receives the rack-rent from the occupier is deemed the owner." But the above definition of "owner" does not include a receiver appointed by the court (*Bacup* (*Corporation of*) v. *Smith* (1890), 44 Ch. D. 395 ; 59 L. J. Ch. 518 ; 63 L. T. (N.S.) 195 ; 38 W. R. 697).

See the provision in s. 24 of the Conveyancing and Law of Property Act, 1881, as to a receiver appointed by a mortgagee under that section being deemed to be the agent of the mortgagor.

Mortgagees and trustees.

A second mortgagee entered into possession of premises and collected the rents, which he applied in paying his outgoings and the interest on the first mortgage, which exhausted all the receipts. It was held that he was the owner and liable as such for paving expenses (*Tottenham Local Board* v. *Williamson* (1893), 57 J. P. 614 ; 62 L. J. Q. B. 322 ; 69 L. T. (N.S.) 51 ; 9 T. L. R. 372). Trustees in receipt of rents are owners though not beneficially interested (*In re Barney*, *Harrison* v. *Barney*, [1894] 3 Ch. 562 ; 63 L. J. Ch. 676 ; 71 L. T. (N.S.) 180 ; 43 W. R. 105 ; 8 R. 459 ; and see *In re Lever*, *Cordwell* v. *Lever*, [1897] 1 Ch. 32 ; 66 L. J. Ch. 66 ; 75 L. T. (N.S.) 383 ; 45 W. R. 172).

When land is mortgaged and the mortgagee has entered into possession, he, and not the mortgagor, is "owner" within the meaning of the Act (*Maguire* v. *Leigh-on-Sea Urban District Council* (1906), 70 J. P. 479).

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(*j*) This definition is not the same as that contained in s. 4 of the Public Health Act, 1875. The definition of "full annual value" in the text is the same as that of gross value or gross estimated rental in the Acts relating to poor rate. See 32 & 33 Vict. c. 67, s. 4.

(*k*) See as to these definitions, ss. 19, 20, *ante*, pp. 47, 53. See the cases cited in the notes to these sections.

By a clause in a local Improvement Act, it was enacted that "no person shall slaughter any cattle or dress any carcase for sale as human food, or food of man, in any place within the limits other than a slaughter-house." It was held that to slaughter cattle on the private premises of an inhabitant of the town, unless *for sale* as human food, was no offence within the clause (*Elias* v. *Nightingale* (1858), 27 L. J. M. C. 151 ; 8 El. & Bl. 698).

In a Scotch case (*Renfrew County Council* v. *Anderson* (1899), 1 F. (J. C.) 48 ; 36 Sc. L. R. 321), it was held that a person did not "use premises as a slaughter-house" merely because he killed two pigs in the garden ground behind the house in which the owner of the pigs resided.

(*l*) This expression is used in s. 52, *ante*, p. 128.

(*m*) This definition is taken from 53 & 54 Vict. c. 59, s. 11 (3).

(*n*) This definition contains a more extended meaning of the daytime than has hitherto been given in the Public Health Acts. See, for example, s. 102 of the Public Health Act, 1875. It is similar to the provision contained in s. 9 (4) of the Housing of the Working Classes Act, 1885.

(*o*) A similar but not identical provision is contained in s. 11 of the Public Health Acts Amendment Act, 1890.

(*p*) See *Umfreville* v. *London County Council*, cited in the notes to s. 20, *ante*, p. 53.

"*Drain*" *and* "*sewer*."—As pointed out in the notes to s. 2, *ante*, p. 3, there is no definition in this Act of the expression "drain," which is frequently used therein, but it appears to have been assumed, and would probably be held, to have the same meaning as in the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120). That Act provides by s. 250 as follows: "The word 'drain' shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board ; and the word 'sewer' shall mean and include sewers and drains of every description, except drains to which the word 'drain,' interpreted as aforesaid, applies." The Metropolis Management Amendment Act, 1862, s. 112, provides that "The word 'drain' shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly recited Act [*i.e.*, the Metropolis

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Management Act, 1855], and also any drain for draining a group or block of houses by a combined operation, laid or constructed before the first day of January, one thousand eight hundred and fifty-six, pursuant to the order or direction or with the sanction or approval of the Metropolitan Commissioners of Sewers."

It is the duty of the sanitary authority to keep in proper condition the sewers vested in them. See s. 69 of the 1855 Act.

The meanings given to the expressions "drain" and "sewer" respectively in the Public Health Act, 1875, are similar to those above-mentioned. See s. 4 of that Act. Many of the cases cited *infra* were determined in relation to the meaning of these expressions in that section.

"Drains" generally.

There may be instances of drains not comprehended within this definition, as where there is a direct communication from a house to a river or canal or the sea itself.

In *Coulton* v. *Ambler* (1844), 13 M. & W. 403; 14 L. J. Ex. 10, a navigable river or cut was held not to be a "public or parish drain" within the meaning of a local drainage Act. The word *drain* in the Lands Drainage Act, 1847, was held to include an underground drain (*Bowes* v. *Watson* (1879), 44 J. P. 364; 42 L. T. (N.S.) 27). A dumb well, *i.e.*, one into which waste water flows through a pipe and thence percolates into the soil, was held not to be a "drain or watercourse" within the meaning of 5 & 6 Will. 4, c. 50, s. 67 (*Croft* v. *Rickmansworth Highway Board* (1888), 39 Ch. D. 272; 58 L. J. Ch. 14; 60 L. T. (N.S.) 34. And see *Croysdale* v. *Sunbury-on-Thames Urban District Council*, [1898] 2 Ch. 515; 62 J. P. 520; 67 L. J. Ch. 585; 79 L. T. (N.S.) 26; 46 W. R. 667). A pipe, running through a bank which divided the defendant's land from a highway, which from a time beyond living memory had been maintained there by a highway authority, and through which water which accumulated upon the highway flowed on the defendant's land, was held to be a "drain" within the meaning of s. 67 of the Highway Act, 1835, notwithstanding the fact that there was no defined channel into which the water coming through such pipe flowed (*Att.-Gen.* v. *Copeland*, [1902] 1 K. B. 690; 66 J. P. 420; 71 L. J. K. B. 472; 86 L. T. 486; 50 W. R. 490).

The effect of the above-mentioned definitions is, roughly, that a drain is that which receives the drainage of one house, while a sewer is that which receives the drainage of two or more. In considering whether a pipe for conveying the drainage from more than one house is a sewer or a drain, the test is whether the houses do in point of fact constitute one building only or more than one (*Hedley* v. *Webb*, [1901] 2 Ch. 126; 65 J. P. 425; 70 L. J. Ch. 663; 84 L. T. (N.S.) 526). Thus two semi-detached houses may constitute one building only, but it is in every case a question of fact whether they are, or are not, one building so as to make the pipe draining them a "drain." The court can lay down no general rule upon the point (*Humphery* v. *Young*, [1903] 1 K. B. 44;

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67 J. P. 34 ; 72 L. J. K. B. 6 ; 87 L. T. 551 ; 51 W. R. 298 ; 1 L. G. R. 142).

NOTE. Premises within same curtilage.

As to what is a curtilage, see the cases cited in the note to "House," *ante*, p. 301.

The drainage of the Lowther Arcade (a passage with a gate at each end, arched over by one roof and containing a range of twenty-five houses and shops) was effected by a construction running down the centre of the passage, and receiving the drainage of all these houses and shops. It was held that the construction was not a drain but a sewer, and that the Arcade was not one building nor premises within the same curtilage (*St. Martin's-in-the-Fields* (*Vestry of*) v. *Bird* (1894), 71 L. T. (N.S.) 432 ; 43 W. R. 8 ; 10 R. 494 ; affirmed in C. A., [1895] 1 Q. B. 428 ; 64 L. J. Q. B. 230 ; 71 L. T. (N.S.) 868 ; 43 W. R. 194). Buildings consisting of forty-six sets of apartments divided into two blocks, which were separated by a causeway 20 feet wide, were erected without any plans being submitted to the local authority. The drainage was by means of twelve branch drains running from each set of apartments into a main drain under the causeway, which communicated with a sewer within 100 feet of the blocks. The causeway opened into a public thoroughfare, and access to one of the blocks was obtained from the causeway and to the other only from the thoroughfare. It was held by MATHEW and CHARLES, JJ., that the two blocks of buildings were premises within the same curtilage, and that the main drain was a drain and not a sewer, and repairable by the owner of the buildings (*Pilbrow* v. *St. Leonard's, Shoreditch* (*Vestry of*), [1895] 1 Q. B. 33 ; affirmed in C. A. (RIGBY, L.J., *diss.*), [1895] 1 Q. B. 433 ; 59 J. P. 68 ; 64 L. J. M. C. 130 ; 72 L. T. (N.S.) 135 ; 43 W. R. 342 ; 11 T. L. R. 178). The decision in *St. Martin's-in-the-Fields* (*Vestry of*) v. *Bird*, *supra*, was followed, and the *Shoreditch Case* distinguished in a case where the circumstances were as follows : The appellants were the owners of eighteen dwelling-houses, Nos. 7 to 25 in No. 1 Court, Eyre Lane, Sheffield. The said houses were back-to-back houses, and Nos. 7 to 13 thereof formed part of a block, and Nos. 14 to 25 thereof were in one block ; the said Nos. 7 to 13 faced the said Nos. 14 to 19, and between them was an open space of ground with a pavement on either side. Nos. 20 to 25 faced the boundary wall on the south-east side of the court, and between them and the said boundary wall was also an open space of ground with a pavement on the side thereof. The main entrance to the court was from a partially enclosed space of ground, to which an entrance was obtained from one of the main thoroughfares, and the court could also be entered by means of two narrow passages made between certain of the houses, Nos. 7 to 13. There were situate in this court two ashpits and thirteen water-closets for the use of the tenants. The slop water from the sink of each house was carried by a separate channel cut in the pavement at right angles to each house into a long channel at the side of the pavement in the court. By means of these channels the drainage was carried into two gullies in the court, and thence into the main

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sewer outside of the court. The court held that the eighteen dwelling-houses were not premises within the same curtilage. See *Harris* v. *Scurfield* (1904), 68 J. P. 516; 91 L. T. 536; 20 T. L. R. 659; 2 L. G. R. 974. In the course of his judgment in the last-mentioned case, ALVERSTONE, L.C.J., said: "There is no definition of a curtilage which would include the case of a number of houses separately occupied by different people, simply because there is a common access and to some extent common accommodation." See also the observations as to the meaning of the words "within the same curtilage," in *Bass* v. *London County Council*, [1904] 2 K. B. 336; 68 J. P. 365; 73 L. J. K. B. 841; 91 L. T. 344; 53 W. R. 27; 2 L. G. R. 809).

Combined drain.

The word "drain" includes any drain for draining any block or group of houses by a combined operation, as above mentioned. The cases cited below were decided with reference to this part of the definition.

The owner of a plot of ground within the metropolitan district, on which he was about to build fifteen contiguous houses, sent to the local board notice of his intention to lay down upon it a pipe drain running parallel to the houses, through which the houses would be drained into the main sewer belonging to the Metropolitan Board. The local board signified their approval in their books, but made no formal order. The owner completed the drain:—*Held*, by NORTH, J., that s. 74 of the Metropolis Management Act, 1855, which enables a district board to order a group or block of contiguous houses to be drained by a "combined operation," is supplemental to s. 73, and like that section applies only to existing houses; that the local board had, therefore, no power to make an order for draining by a "combined operation" a set of houses in course of erection, and, if they had, their approval of a scheme proposed by the owner did not amount to an order that the drain in question was therefore not a "drain for draining any group or block of houses by a combined operation under the order of any vestry or district board," and was a "sewer" and not a "drain" within the meaning of s. 250, and by virtue of s. 68 vested in the local board:—*Held*, on appeal, by COTTON and LINDLEY, L.JJ. (*dissentiente* LOPES, L.J.), that although s. 74 did not give the board power to order drainage by a combined operation except in the case of existing houses, the general words of s. 76 gave them this power in the case of houses about to be built; that their approval of the scheme was an order, and that the drain in question was therefore a "drain" and not a "sewer" within the meaning of s. 250, and did not vest in the local board (*Bateman* v. *Poplar District Board of Works* (1886), 33 Ch. D. 360; 56 L. J. Ch. 149; 55 L. T. (N.S.) 374. See also *Bateman* v. *Poplar District Board* (No. 2), *infra*).

The owner of certain land gave to the sanitary authority notice of his intention to build six houses thereon; attached to the notice was a plan showing the system of drainage he proposed to adopt. The plan was accepted by the sanitary authority subject to the

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condition that not more than two of such houses should use one drain, and that the drainage works should be done under the inspection and to the satisfaction of their surveyor. Their surveyor, however, failed to inspect the construction of the drains, the result being that four or more houses, instead of two, were drained into one drain. The defendant, who was the mortgagee in possession of one of the houses, was summoned for not abating a nuisance caused by a defect in the drain below the point at which the sewage from the other houses emptied into it:—*Held*, that the drain from the point at which the drainage from the other houses emptied into it became a "sewer," and was, therefore, not repairable by the defendant; and that the defendant, not being privy to the wrongful construction in the first instance, was not liable (*Kershaw* v. *Taylor*, [1895] 2 Q. B. 471; 59 J. P. 726; 64 L. J. M. C. 245; 73 L. T. 274; 44 W. R. 28).

A group or block of houses in Lambeth, built in 1839, was, without objection by the then sewer authorities, the Kent and Surrey Commissioners of Sewers, drained by a combined operation, which system of drainage existed, practically as originally constructed, down to 1896:—*Held*, that the system formed a sewer and not a drain within the meaning of the Metropolis Management Acts, and was repairable by the vestry (*Appleyard* v. *Lambeth* (*Vestry of*) (1896), 60 J. P. 807; 66 L. J. Q. B. 27; 45 W. R. 173; 13 T. L. R. 77; affirmed C. A., 66 L. J. Q. B. 347).

The defendant was the owner of four houses in the metropolis, which were drained into one drain by a combined operation under an order of the sanitary authority. The drain passed under the plaintiff's house. Subsequently to the construction of the drain, a pipe which carried off rain water from the roof of the plaintiff's house was connected with the drain without an order of the sanitary authority:—*Held*, that the rain-water pipe was a drain used for the drainage of a building within s. 250 of the Metropolis Management Act, 1855, and that its unauthorised connection with the defendant's drain converted the latter, at the point of junction and onwards, into a sewer (*Holland* v. *Lazarus* (1897), 61 J. P. 262; 66 L. J. Q. B. 285).

A plan of a drain receiving the sewage of four houses was found in the plan book of a local authority, initialled by their surveyor. The drain was in fact constructed in accordance with the plan under the superintendence of the servants of the local authority, but there was no entry relating to it in their minute book. Subsequently, without the knowledge of the local authority or of the owner of the four houses, a drain from another building was constructed and connected with the first drain:—*Held*, first, that there was evidence that the first drain was constructed "by order of the local authority," within the meaning of ss. 74 and 250 of the Metropolis Management Act, 1855:—*Held*, *further*, that when the connection with the second drain was made, the first drain became a "sewer" within the meaning of s. 250, and was repairable

by the local authority (*Geen* v. *Newington Vestry*, [1898] 2 Q. B. 1 ; 62 J. P. 565 ; 67 L. J. Q. B. 557 ; 46 W. R. 624).

After the passing of the Metropolis Management Acts, 1855 and 1862, the owner of a row of houses in London, drained them by laying down a line of pipes which was connected with a sewer belonging to the vestry in an adjoining street. There was no evidence that this was done with the sanction of the local authority :—*Held*, that the pipes so laid down were a "sewer" within s. 250 of the 1855 Act, and that the vestry were liable to repair it (*St Matthew, Bethnal Green (Vestry of)* v. *London School Board*, [1898] A. C. 190 ; 62 J. P. 532 ; 67 L. J. Q. B. 234 ; 77 L. T. 635 ; 46 W. R. 353).

A plan for draining a group of houses by a combined operation, under s. 74 of the Metropolis Management Act, 1855, was sanctioned by the vestry. The course of one of the pipes indicated in the plan which drained more than one of the houses, was in the laying of it altered so as to run within a few feet of the course indicated in the plan :—*Held*, that the pipe was a drain and not a sewer within the meaning of s. 250 of the Metropolis Management Act, 1855, the number of houses draining into it not being added to or interfered with by the deviation from the plan sanctioned (*Greater London Property Co.* v. *Foote*, [1899] 1 Q. B. 972 ; 63 J. P. 420 ; 68 L. J. Q. B. 628 ; 80 L. T. 390 ; 47 W. R. 541).

In 1855, an order of the Metropolitan Commissioners of Sewers was obtained for draining four houses in the metropolis by a combined operation. The work was carried out before January 1st, 1856, but not in accordance with the plan authorised by the commissioners. From the group of four houses one was left out, and two others were added. A nuisance having arisen in regard to the pipe draining the group, and the owner of the houses having been required to abate the nuisance :—*Held*, that the departure from the plan authorised was material, and, there being no evidence that such departure was sanctioned by the commissioners, the pipe was not a drain but a sewer, and that, therefore, the owner was not liable to abate the nuisance (*Bullock* v. *Reeve* (1900), 65 J. P. 164 ; 70 L. J. Q. B. 42 ; 84 L. T. 55 ; 49 W. R. 93).

The respondent applied to the vestry for permission to lay a pipe drain in accordance with a plan. He was told by the surveyor of the vestry, by a letter, that he would be allowed to do so with certain alterations, and that that would be communicated to the vestry, the sanitary authority. This letter was ratified by a resolution of the vestry :—*Held*, that the letter of the surveyor, ratified by the resolution of the vestry, was a good "order" within s. 76 of the Metropolis Management Act, 1855 (*Stokes* v. *Haydon* (1901), 65 J. P. 756 ; 84 L. T. 531 ; 19 Cox C. C. 690).

By order of the local authority in 1853, certain houses had been drained by a combined scheme. In 1899, one of the houses, No. 85, was disconnected from No. 83, and connected with the adjoining house on the other side No. 87. No order was made by

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the local authority as to this alteration, but it was superintended by their officers. In 1900, the owner of No. 85 erected a workshop in the garden in the rear, and the drainage from that, including an additional water-closet, was connected with the drain of No. 87. A plan of this had been approved by the local authority, and though the work was not carried out in accordance with such plan, it was done under the superintendence of the officers of the authority:—*Held*, that the drain of No. 87 had not become a sewer (*Gorringe* v. *Shoreditch Borough Council* (1902), 66 J. P. 565; 86 L. T. 592).

A pipe carrying away sewage and rain water from one house, and rain water only from another, and not constructed as a combined operation under the order of a local authority, is a "sewer" and not a "drain." Where the authority insisted that such a pipe was a drain, and the house owner, under threat of legal proceedings, repaired it:—*Held*, that he could recover the cost of so doing (*Silles* v. *Fulham Borough Council*, [1903] 1 K. B. 829; 67 J. P. 273; 72 L. J. K. B. 397; 88 L. T. 753; 51 W. R. 598; 19 T. L. R. 398; 1 L. G. R. 643).

Six houses were drained by one line of pipes, and the owner of one of the houses was summoned for a nuisance caused by defect in such pipe under his premises. By a resolution dated March 24th, 1859, the district board of works authorised their surveyor to grant applications for house drainage when they were regular, involving no special point for the consideration of the board, the number of such applications to be reported quarterly. On April 9th, 1868, an application by the then owner of the said six houses for permission to drain the said six houses by a combined drain, was sent to the district board of works. Such application was filed in a book kept for the purpose to contain such applications made to the district board, and signed as "approved" by the then surveyor to the board of works. There was no record or any other evidence of approval by the board or any of its committees of the said application:—*Held*, that there was no evidence that the board of works had ever authorised or approved of such application, and that, therefore, the line of pipes draining the said six houses was a sewer and not a drain, and that the local authority were liable for its repair (*High* v. *Billings* (1903), 67 J. P. 388; 89 L. T. 550; 1 L. G. R. 723).

A metropolitan vestry had approved a plan for the drainage of a number of houses which did not show the particular drainage of each house, but authorised the drainage of the houses in pairs by a series of combined operations. In a pair of such houses the drainage was carried off by two pipes, laid one under each house; these pipes joined into one pipe before they reached the sewer. The pipe under house A. took the whole of the drainage of A., together with that from a sink in the back part of house B.; the pipe under B. took the rest of the drainage of B. The connection between the sink in B. and the pipe under A. had been made at the time when the houses and the drains were constructed. The

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trustees of a settlement were owners of both houses ; they derived their title without any purchase for value, from the original owner, by whom the houses and drains were constructed. The court inferred as a fact that the connection of the sink in house B. with the pipe under A. was made by the authority of the surveyor to the vestry :—*Held*, that that connection did not make the pipe under house A. a sewer within the meaning of ss. 101 and 250 of the Metropolis Management Act, 1855 :—*Held*, *further*, that even if the connection had been made without authority, the present plaintiffs, not being purchasers for value, could get no higher rights than the original owner had as against the public ; and the pipe would still remain a drain. A notice under s. 83 of the Metropolis Management Act, 1855, had been served upon the plaintiffs by the defendants :—*Held*, that it had been wrongly served (assuming that the connection had been wrongfully made), because the plaintiffs were not the persons who had made the connection originally (*Heaver and Others* v. *Fulham Borough Council*, [1904] 2 K. B. 383 ; 68 J. P. 278 ; 73 L. J. K. B. 715 ; 91 L. T. 31 ; 20 T. L. R. 383 ; 2 L. G. R. 672).

On July 12th, 1878, a plan was approved by the H. board of works, by which three houses, Nos. 21, 23 and 25, R. Road, were to be drained by a combined operation into E. Road. On March 19th, 1879, a plan was approved by the same local authority sanctioning a combined system of drainage, by which Nos. 27, 29, 31 and 33, R. Road, were to be drained into E. Road. A nuisance having arisen in August, 1905, it was found that Nos. 21, 23, 25 and 27, were drained together by means of a line of pipes passing along the back of such houses and under No. 25, to the public sewer in R. Road, and that Nos. 29, 31 and 33, were drained together by means of a line of pipes passing at the rear of such houses into the public sewer in E. Road :—*Held*, that the line of pipes draining Nos. 21, 23, 25 and 27, R. Road, was a sewer repairable by the local authority, and not a combined drain repairable by the owners of the houses (*Harvey* v. *Busby* (1906), 70 J. P. 301 ; 95 L. T. 91 ; 4 L. G. R. 693).

On September 25th, 1876, an order was made by the Hackney District Board of Works for the drainage of twenty-six houses (numbered 35 to 85, odd numbers only) in Rectory Road, by a combined operation, in accordance with a plan by which the houses were to be put in various groups, one of which, consisting of Nos. 45, 47, 49 and 51, was to be drained by a drain passing under No. 49. In October, 1906, a nuisance was found to exist owing to a defect in a line of pipes passing beneath No. 51, and on examination it was found that the grouping had been altered, and that Nos. 47, 49, 51, 53 and 55 were drained together by means of a drain passing under No. 51 (instead of No. 49 as shown on the above-mentioned plan) :—*Held*, that as the alteration in the system of drainage was a material one, and as there was no evidence that it had been sanctioned by the local authority, the line of pipes passing under No. 51 was a sewer repairable by the

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borough council (*Greater London Property Co.* v. *Foote*, *supra*, applied ; *Harrey* v. *Jaye* (1907), 71 J. P. 473 ; 97 L. T. 543 ; 5 L. G. R. 967).

An unauthorised connection cannot make a "drain" a "sewer" as between an individual and an authority, if it was wrongfully made by him, or by a person through whom he claims otherwise than as a purchaser for value without notice (*Wilson's Music and General Printing Co.* v. *Finsbury Borough Council*, [1908] 1 K. B. 563 ; 72 J. P. 37 ; 77 L. J. K. B. 471 ; 98 L. T. 574 ; 6 L. G. R. 349).

"Sewers" generally.

"The word 'drain' as used in the Metropolis Management Act, 1855, evidently means a passage for sewage from a single house only which may afterwards fall into a cesspool or larger sewer. The word 'sewer' comes from the word to 'sew,' *i.e.*, to drain, and has a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, etc. In the common sense of the term it means a large and generally, though not always, underground passage for fluid and feculent matter from a house or houses to some other locality. But it does not comprise a cesspool for the purpose of retaining the sewage whether as a simple deposit or to be converted into manure or other useful purposes" (*per* KINDERSLEY, V.-C., in *Sutton* v. *Norwich* (*Mayor, etc. of*) (1858), 27 L. J. Ch. 739).

A marsh wall or embankment keeping back the river Thames from inundating the Isle of Dogs at high water and through which sewers pass draining the island at low water, was held to be a sewer within the meaning of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120). "Sewer," in its common sense, may mean the whole apparatus, and in its specific sense, a drain, as part of the apparatus (*per* Lord CAMPBELL, C.J., in *Poplar District Board of Works* v. *Knight* (1858), El. B. & E. 408 ; 22 J. P. 401 ; 28 L. J. M. C. 37 ; 29 L. T. (N.S.) 915 ; 5 Jur. (N.S.) 196). This decision, however, throws very little light upon the meaning of the above definition.

An ancient tidal fleet or watercourse upon which barges floated at high tide, was held not to be a sewer, although it became offensive and injurious to health by reason of the houses in a town discharging sewage into it (*Pentney* v. *Lynn Commissioners* (1865), 12 L. T. (N.S.) 818).

A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three inhabited houses in its passage to the river into which it flows, is not a sewer (*R.* v. *Godmanchester Local Board* (1866), L. R. 1 Q. B. 328 ; 5 B. & S. 936 ; 30 J. P. 164 ; 35 L. J. Q. B. 125 ; 14 L. T. (N.S.) 104). This case may be compared with the later one where the sewage of certain houses drained into a sewer, and, after passing through the sewer was, for a number of years, allowed to fall into an open watercourse which, in its turn, flowed into a brook. It was held that under the circumstances of the case the open watercourse was a sewer (*Wheatcroft* v. *Matlock*

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Local Board (1885), 52 L. T. (N.S.) 356). And a natural watercourse into which for many years a large number of houses had drained, was held to be a sewer in *Falconar* v. *South Shields Corporation* (1895), 11 T. L. R. 223. The last-mentioned case was considered in *West Riding of Yorkshire Rivers Board* v. *Reuben Gaunt & Sons, Limited* (1902), 67 J. P. 183; 19 T. L. R. 140, where the court held that a natural stream, or watercourse, may cease to be a stream, and may become a sewer, into which persons may acquire certain rights of drainage as against the local authority, and that it may do so even although the natural flow of water along its bed has not wholly ceased. But the court further held that the mere fact that for a number of years sewage has been discharged into a watercourse is not of itself sufficient to convert the watercourse into a sewer; nor is the fact that the watercourse has been covered over material, unless it was done by the local authority in order to turn the watercourse into a sewer. The court further held that after the year 1861 a local authority could not convert a watercourse into a sewer merely by the illegal act of discharging sewage into it. The last-mentioned case was discussed and *Falconar* v. *South Shields Corporation*, *supra*, was distinguished in *West Riding of Yorkshire Rivers Board* v. *Preston & Sons* (1904), 69 J. P. 1; 92 L. T. 24; 3 L. G. R. 289, where the facts were as follows: The defendants sent polluting liquids from their factory into a channel. This channel originally carried down water from a well above the factory, but the defendants diverted this water supply above their factory, took it into their mill, and discharged it in a polluted state into the channel close to their factory. The channel ran from the factory past certain cottages; then, joining a stream, fell with the stream into a river. Fifty or sixty cottages emptied their sewage into the channel below the factory until 1892, when a sewage scheme was put into operation for the district. Two cottages still discharged slop water into the channel, and two or three small watercourses fell into it below the factory. A county court judge held that the channel was a "stream" within the meaning of s. 20 of the Rivers Pollution Prevention Act, 1876, and that the defendants had committed an offence under s. 4 of that Act. On appeal the Divisional Court held that a stream within the meaning of the Act may be either a natural or an artificial one; and that the court was not prepared to differ from the conclusion of the county court judge that the channel was a stream, since (apart from the existing watercourses below) pure water would still flow along the course but for the acts of the defendants. In an earlier case a county court judge, in proceedings taken under Part 3 of the Rivers Pollution Prevention Act, 1876, found that the brook in question was a stream within the meaning of s. 20 of that Act; but he did not expressly find that it was not a "sewer" within the meaning of the Public Health Act, 1875, and it was objected that his decision was for that reason ambiguous; but the Divisional Court held that the question was in fact raised before the judge, and was in terms decided by him (*West Riding of Yorkshire Rivers Board* v. *Yorkshire Indigo, Scarlet and Colour*

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Dyers, Limited (1902), 67 J. P. 80). In a Scotch case, it was held that an open stream which flowed through a borough, and was polluted by sewage from outside the borough, but into which no part of the borough sewage was discharged, was not a sewer (*Glasgow, Yoker and Clyde Bank Rail. Co.* v. *Macindoe* (1896), 24 R. 160; 34 Sc. L. R. 127; and see *Newcastle-upon-Tyne* (*Mayor, etc. of*) v. *Houseman*, *post*). But a drain within the district constructed originally by the road authority merely to carry off surface water if allowed to be used for the drainage of buildings within the district becomes a sewer (*Rathmines and Rathgar Improvement Commissioners* v. *South Dublin Guardians*, [1899] 1 I. R. 157).

A drain laid down and intended to be connected with all the houses in an intended street, which require to be connected with it, is a sewer. The word "sewer" should receive the largest possible interpretation, and a drain is a sewer as soon as more than one house has been connected with it (*per* KAY, J., in *Acton Local Board* v. *Batten* (1884), 28 Ch. D. 283; 49 J. P. 357; 54 L. J. Ch. 251; 52 L. T. (N.S.) 17).

An iron pipe temporarily laid down to carry away the effluent water from sewage works is a sewer (*Tottenham Local Board* v. *Button* (1886), 2 T. L. R. 828). Whether, however, an "overflow" sewer is a sewer for all purposes within the meaning of the Act, *quære*. See *Leeds and District Worsted Dyers and Finishers' Association, Limited* v. *West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480. A builder constructed a number of houses. He made a drain and a cesspool, and connected them with the first house, and thence, as he completed successive houses, he continued to drain from one house to the other, carrying the cesspool forward, and finally, when all the houses had been completed, there was a line of pipes connecting them with the cesspool. It was held that the line of pipes was a sewer (*Pinnock* v. *Waterworth* (1887), 51 J. P. 248; 3 T. L. R. 563).

B. received notice from the K. Local Board to abate a nuisance on his property, and for that purpose to have a ditch or drain covered up, and the contents conveyed in suitable pipes. Several houses, and a slaughter-house of the respondent B. drained into a road drain, and the latter into a ditch in B.'s field, where it was a nuisance. The board wanted the ditch to be covered up, but B. contended that it was a sewer, and that it was the duty of the board to cleanse or cover it up. It was held that the ditch was a sewer (*Kirkheaton Local Board* v. *Beaumont* (1888), 52 J. P. 68).

The owner of a building estate deposited plans in accordance with the byelaws of a local authority, made under s. 157 of the Public Health Act, 1875, showing the course of an intended sewer to be constructed of nine-inch pipes along a certain new road. After the plans were approved, the line of pipes or sewer was constructed under the inspection of the local authority, and when completed was passed and authorised to be covered in. No houses were built on the land fronting the new sewer, and

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it was not in use :—*Held*, that the line of pipes, immediately after it was approved and authorised to be covered in, was a sewer which vested in the local authority under s. 13 of the Act, and that they had power under s. 16 to connect it with their other sewers (*Turner* v. *Handsworth Urban District Council*, [1909] 1 Ch. 381 ; 73 J. P. 95 ; 78 L. J. Ch. 202 ; 100 L. T. 194 ; 7 L. G. R. 255).

Point of commencement of sewer.

A drain running under three houses was held to be a sewer under these circumstances. It passed through the basements and received the drainage, first of one, and then of the other two houses, which it conveyed into a sewer (*Travis* v. *Uttley*, [1894] 1 Q. B. 233 ; 58 J. P. 85 ; 63 L. J. M. C. 48 ; 70 L. T. (N.S.) 242 ; 42 W. R. 461). In the course of his judgment in this case, WILLS, J., said : "It is impossible to say that the part which is used for the drainage of one building is a drain, and the rest a sewer. The drain is a sewer from end to end." But in a subsequent case in which the point was raised, the same learned judge recalled this opinion (*Beckenham Urban District Council* v. *Wood* (1896), 60 J. P. 490). In that case, it was decided that a pipe or line of pipes receiving the drainage of more than one building, not being premises within the same curtilage, although a sewer from below the point where it receives the drainage of more than one building, is a drain and not a sewer above that point. In the course of his judgment, CAVE, J., said : "The general rule, as I understand, is that where a drain receives the sewage of two or more houses it is a sewer. Where it receives the sewage of one house only, it may still remain a drain, though not necessarily, because it may be a sewer, whether it takes the sewage of one house only or no house at all. A main sewer may be laid down by the local authority in a new street where no houses are built, but where it is intended houses shall be built Subsequently the buildings may be commenced at the lower end of the street, and when the drains of one house are connected with the main sewer, the connecting pipes will be drains, and not sewers. But the sewer itself will no less continue to be a sewer although it receives only the drainage of that one house, and consequently a sewer without a drain at all will be a sewer." Where a drain of a house ran through the adjoining premises, and a sink and water gully in the latter drained into the pipe, it was held that the pipe from the point of junction was a sewer (*Duncan* v. *Fulham* (*Vestry of*), Times, February 11th, 1899).

Illegal construction of sewer.

In *Bateman* v. *Poplar District Board* (No. 2) (1887), 37 Ch. D. 272 ; 57 L. J. Ch. 579 ; 58 L. T. (N.S.) 720 ; 36 W. R. 501, NORTH, J., expressed a doubt whether the unlawful act of a stranger, done without the consent of the owner of a drain, could affect the ownership of the drain or the liability of the local authority by vesting it in the local authority, and thus throwing the responsibility for it upon them. Again, in *Meader* v. *West Cowes Local Board*, *infra*, it was said that a line of pipes, in order to become a sewer, must have been lawfully laid, and in *Hedley* v. *Webb*, [1901] 2 Ch. 126 ; 65 J. P. 425 ; 70 L. J. Ch. 663 ; 84 L. T. (N.S.) 526, COZENS-HARDY, J., expressed an opinion that a man

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carrying a sewer through a neighbour's land wrongfully, and without his consent, cannot make it a sewer so as to vest in the local authority. In *Pakenham* v. *Ticehurst Rural District Council* (1903), 67 J. P. 448 ; 2 L. G. R. 19, BUCKLEY, J., after referring to *Hedley* v. *Webb*, *supra*, as having decided that if by way of trespass a sewer has been laid down on any land without the knowledge of the landowner, it is competent for the landowner, when he finds out, to say : "This was wrongful against me, this is not a sewer at all, because it was put on my land by way of trespass against me, and it must be taken away," proceeded to say : "I conceive that he can say that, both as against the person who laid it and against the local authority. . . . But if, in point of fact, a system of pipes has been laid by one man in the land of another so as to constitute a sewer with the consent of the latter, or if it had been laid without consent, and subsequently he finds out it has been done, and says, 'I do consent ; I do not complain of the trespass. I am quite content,' then it seems to me that a sewer will have been constituted, and as such the same will vest in the local authority." From other cases it would appear that it is not material how a second house may have had its drainage connected with an existing drain, and that so long as the connection lasts, the drain which is common to the two houses is a sewer, whether the connection was made wrongly or surreptitiously or without the knowledge of the local authority. A builder built four houses which he, contrary to the directions of the sanitary authority, caused to be drained into one drain. He subsequently sold the houses to different purchasers. In a proceeding to compel the purchaser of the premises in which the drain which so received the drainage of the four houses was situate to repair such drain for the purpose of remedying a nuisance caused by its defective condition, it was held that the purchaser was not estopped by the wrongful act of his predecessor in title from alleging that the drain in question was a sewer, and that the duty of repairing it consequently lay, not on him, but on the sanitary authority (*Kershaw* v. *Taylor*, [1895] 2 Q. B. 471 ; 59 J. P. 726 ; 64 L. J. M. C. 245 ; 73 L. T. (N.S.) 274 ; 44 W. R. 28). In the same way, where the connection of more than one house with a drain was made without the consent of the sanitary authority or of the owner of the house to which the drain belonged, it was held that the common drain was a sewer (*Florence* v. *Paddington Vestry* (1895), 12 T. L. R. 30 ; and see *Klett* v. *St. Giles, Camberwell* (*Vestry of*) (1896), 60 J. P. 411). In another case, a drain for the drainage of four houses was constructed under the order of a metropolitan vestry, and became, under the definition of a drain contained in the Metropolis Management Act, 1855, a drain as distinguished from a sewer. A pipe which carried rain water from the roof of a fifth house was, without the sanction of the vestry, turned into and connected with this drain. It was held that the rain-water pipe was a drain, and that its unauthorised connection with the drain belonging to the four houses converted the latter, from the point of junction and onwards, into a sewer

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(*Holland* v. *Lazarus* (1897), 61 J. P. 262 ; 66 L. J. Q. B. 285). In another case, the owner of a block of houses in the metropolis had laid down a pipe to carry off the drainage from them, and connected the pipe with a sewer belonging to the vestry in a neighbouring street. There was no evidence of any notice having been given to the vestry, or of any order having been made by them, or of their sanction, or of the approval of the Metropolitan Board of Works having been obtained. It was held that, although all these requirements were necessary in order to render the original construction of the drain lawful, yet the drain was, in fact, a sewer vested in the vestry and repairable by them (*St. Matthew, Bethnal Green* (*Vestry of*) v. *London School Board*, [1898] A. C. 190 ; 62 J. P. 532 ; 67 L. J. Q. B. 234 ; 77 L. T. (N.S.) 635 ; 46 W. R. 353). These cases were followed in *Geen* v. *St. Mary, Newington* (*Vestry of*), [1898] 2 Q. B. 1 ; 62 J. P. 564 ; 67 L. J. Q. B. 557 ; 46 W. R. 624. With these cases may be compared two others. In one an order of a metropolitan vestry had been obtained for draining a group of eleven houses by a combined operation, so that under the Metropolis Management Acts the drain common to all the houses was a drain as defined by these Acts, and not a sewer. It was subsequently discovered that there had been a deviation in the course of the drain from the plan signed by the surveyor, but there was no evidence that any houses other than those on the plan were drained by the combined operation. It was held that a mere deviation in the course of the drain was not sufficient to convert it into a sewer, and that the vestry was not, therefore, liable for its repair (*Greater London Property Co., Limited* v. *Foote*, [1899] 1 Q. B. 972 ; 63 J. P. 420 ; 68 L. J. Q. B. 628 ; 80 L. T. (N.S.) 390 ; 47 W. R. 541. *Cf. Harvey* v. *Busby* (1906), 70 J. P. 301 ; 95 L. T. (N.S.) 91 ; 4 L. G. R. 693 ; *Harvey* v. *Jaye* (1907), 71 J. P. 473). In the other case a metropolitan vestry had approved a plan for the drainage of a number of houses which did not show the details as to the particular drainage of each house, but authorised the drainage of the houses in pairs by a series of combined operations. In a pair of such houses the drainage was carried off by two pipes, laid one under each house ; these pipes joined into one pipe before they reached the sewer. The pipe under house A. took the whole of the drainage of A., together with that from a sink in the back part of house B. ; the pipe under B. took the rest of the drainage of B. The connection between the sink in B. and the pipe under A. had been made at the time when the houses and drains were constructed. The trustees of a settlement were owners of both houses ; they derived their title, without any purchase for value, from the original owner, by whom the houses and drains were constructed. The court inferred as a fact that the connection of the sink was made by the authority of the surveyor to the vestry, but held that even if it had been made without authority, the present plaintiffs, not being purchasers for value, could get no higher rights than the original owner had as against the public, and that they were estopped from saying that the structure was

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a sewer (*Heaver and Others* v. *Fulham Borough Council*, [1904] 2 K. B. 383 ; 68 J. P. 278 ; 73 L. J. K. B. 715 ; 91 L. T. 31 ; 20 T. L. R. 383). In *Wilson's Music and General Printing Co.* v. *Finsbury Borough Council*, [1908] 1 K. B. 563 ; 72 J. P. 37 ; 77 L. J. K. B. 461 ; 6 L. G. R. 349, CHANNELL, J., held that an unauthorised connection cannot make a "drain" a "sewer" as between an individual and an authority if it was wrongfully made by him, or by a person through whom he claims otherwise than as a purchaser for value.

Cesspool not a sewer.

The definition of a sewer does not include a cesspool, reservoir, or deposit bed for collecting sewage for purposes of disposing of it (*Sutton* v. *Norwich* (*Mayor, etc, of*), *supra*). The plaintiff built some houses having a drain leading into a line of six-inch pipes. The line of pipes was intersected by a pit or cesspool, and from thence the pipes passed under the land of a neighbouring owner. The owner cut off the pipes, causing the sewage to flow back and cause a nuisance. The defendants required the plaintiff to abate the nuisance by cleansing the cesspool, and the plaintiff thereupon commenced an action for an injunction to restrain the defendants from causing a nuisance, contending that the cesspool was part of the sewer, and vested in them under s. 13 of the Public Health Act, 1875. It was held that the action could not be maintained, as the cesspool was not part of the sewer (*Meader* v. *West Cowes Local Board*, [1892] 3 Ch. 18 ; 61 L. J. Ch. 561 ; 40 W.R. 676 ; 8 T.L.R. 643). There are some observations in the judgments in this case from which it might be inferred that the line of pipes leading to the cesspool was not a sewer. But it is doubtful if the court intended so to decide, and if they did, the decision cannot be reconciled with *Pinnock* v. *Waterworth*, *supra* ; and in *Butt* v. *Snow*, *infra*, the Divisional Court appeared to doubt whether the line of pipes leading to the cesspool there in question was a drain and not a sewer. *Meader* v. *West Cowes Local Board* was followed, however, in *Button* v. *Tottenham Urban District Council* (1898), 78 L. T. (N.S.) 470. In that case, the owner of certain houses constructed a series of cesspools for their drainage on his own lands. He then constructed a conduit which conveyed the overflow therefrom to a larger cesspool. He was summoned for constructing these cesspools so as to have an outlet into a sewer, namely, the conduit and the large cesspool, contrary to the local byelaws. It was held that the conduit and the large cesspool did not constitute a sewer. *Meader* v. *West Cowes Local Board* was again followed in *Butt* v. *Snow* (1903), 67 J. P. 454 ; 89 L. T. 302 ; 2 L. G. R. 222, and also in *Pakenham* v. *Ticehurst Rural District Council*, *supra*, a case decided under the Public Health Act, 1875, where BUCKLEY, J., said : "A sewer within this Act of Parliament I conceive must be in some form a line of flow by which sewage or water of some kind, such as would be conveyed through a sewer, should be taken from a point to a point and then discharged. It must have a terminus *a quo* and a terminus *ad quem*." A cesspool may, however, by the construction of a sewer leading out of it, become a mere "catchpit," and so part of the whole sewer.

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NOTE. Manhole giving entrance to sewer forms part of sewer. *Secus*, pumping station erected for forcing sewage along a rising main.

It has been held that a manhole forming a side entrance to a sewer formed part of the sewer, as being necessary to a sewer properly made, and was not a work auxiliary to the use of the sewer (*Swanston* v. *Twickenham Local Board* (1879), 11 Ch. D. 838 ; 48 L. J. Ch. 623 ; 40 L. T. 734 ; 27 W. R, 924). But it was, on the other hand, held that an engine-house with pump and machinery, erected partly above and partly below the ground, for forcing sewage along a rising main to a common outfall for treatment was not a sewer within the meaning of s. 16 of the Public Health Act, 1875, but was a work for the purpose of "receiving or otherwise disposing of sewage" within s. 27 of that Act (*King's College, Cambridge* v. *Uxbridge Rural District Council*, [1901] 2 Ch. 768 ; 70 L. J. Ch. 844 ; 58 L. T. 303).

Conveyance of sewage matter immaterial.

It will be noticed that a sewer need not necessarily convey sewage matter in order to constitute it a sewer. It would be none the less a sewer within the Act if it conveyed only rain or surface water. The draining of rain or surface water collected from different premises by different feeders into one main drain would constitute that main drain a sewer within the meaning of the Act (*per* SMITH, L.J., in *Ferrand* v. *Hallas Land and Building Co.*, [1893] 2 Q. B. 135, 144 ; 57 J. P. 692 ; 62 L. J. Q. B. 479 ; 69 L. T. (N.S.) 8 ; 41 W. R. 580). In a later case it was held that a drain was within the definition of a drain although it only carried off rain water from the roof of a house (*Holland* v. *Lazarus* (1897), 61 J. P. 262 ; 66 L. J. Q. B. 285). The decision in *Holland* v. *Lazarus*, *supra*, was approved by the Court of Appeal in *Silles* v. *Fulham Borough Council*, [1903] 1 K. B. 829 ; 67 J. P. 273 ; 72 L. J. K. B. 397 ; 88 L. T. 753 ; 51 W. R. 598 ; 19 T. L. R. 398, where it was held that a pipe carrying away sewage and rain water from one house and rain water only from another, and not constructed as a combined operation under the order of the local authority, was a "sewer" and not a "drain." The last-mentioned case was decided upon the definition of "sewer" in s. 250 of the Metropolis Management Act, 1855. The facts of the case were peculiar and should be referred to, because they led CHANNELL, J., to observe upon the case in *Heaver* v. *Fulham Borough Council*, [1904] 2 K. B. 383 ; 68 J. P. 278 ; 73 L. J. K. B. 715 ; 91 L. T. 31 ; 20 T. L. R. 383. The plaintiff was the owner of two adjoining houses (A. and B.). An underground pipe or drain carried sewage from A. into the main sewer. A gutter ran along under the eaves at the back of both houses, by which rain water falling on their roofs was carried into a pipe passing down the wall of house A. This down pipe discharged by means of a gully into the above-mentioned underground pipe or drain. From house B. only rain water was carried by this drain. This drain was held to be a sewer. CHANNELL, J., assumed that the Court of Appeal on those facts had held the fall pipe to be a sewer, and said that the Court never intended to decide that proposition ; that all that the court really decided was that the decision in *Holland* v. *Lazarus*, *supra*, was right ; and that in *Holland* v. *Lazarus*, *supra*, the only point argued and decided was as to whether a pipe carrying off rain water only, as distinct from sewage in the ordinary meaning of the word, was a

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drain in the sense that the unauthorised connection of a drain, into which flowed rain water from a stackpipe, with the drain of another house converted the latter into a sewer.

Where a railway company constructed land drains for the purpose of conveying surface water from lands adjoining the railway, and these land drains were, without the knowledge or consent of the company, used by a rural sanitary authority to convey sewage from certain houses within the district of such authority, it was held that the drains were sewers, although, by reason of their coming within one of the exceptions in s. 13 of the Public Health Act, 1875, they did not vest in the local authority (*London and North Western Rail, Co.* v. *Runcorn Rural District Council*, [1898] 1 Ch. 561 ; 62 J. P. 643 ; 67 L. J. Ch. 324 ; 78 L. T. (N.S.) 343 ; 46 W. R. 484). Under a local Act a drain was defined to mean any drain, pipe, channel or gutter made and used for the drainage of one building only, or of buildings or land within the same curtilage ; and a sewer was defined to mean a culvert or channel for the passage of water, sewage or refuse not being a drain as hereinbefore defined. It was held that a tidal stream largely polluted by sewage was a sewer within the meaning of this definition (*Newcastle-upon-Tyne* (*Mayor, etc. of*) v. *Houseman* (1898), 63 J. P. 85). In the course of his judgment, BYRNE, J., said : " I think it is possible to form a sewer without the construction of any artificial work. If, for instance, an old ditch or the bed of a watercourse from which all flow of water has been diverted is utilised for the carriage of sewage matter, such utilisation would be properly described as forming a sewer. I think a sewer may be formed within the meaning of the section either by artificial construction or by the utilisation of natural channels. It is a question of degree, and I should think that none would dispute that, if a body of sewage a hundred times as great as the natural flow of water in a stream were discharged into the channel continuously, a sewer would be formed." A line of pipes laid down by the owner of a field adjoining a highway from a ditch bordering the highway to a disused gravel pit in the field for the purpose of supplying water to the cattle feeding in the field, was held to be a sewer, although by reason of its being made for profit within the meaning of s. 13 of the Public Health Act, 1875, it did not vest in the district council (*Croysdale* v. *Sunbury-on-Thames Urban District Council*, [1898] 2 Ch. 515 ; 62 J. P. 520 ; 67 L. J. Ch. 585 ; 79 L. T. (N.S.) 26 ; 46 W. R. 667). Pipes laid for conveying the surface water from roads into a natural stream were held to be sewers in *Durrant* v. *Branksome Urban District Council*, [1897] 2 Ch. 291 ; 66 L. J. Ch. 653 ; 76 L. T. (N.S.) 739 ; 46 W. R. 134. A drain constructed by the side of a highway to receive the surface water of the highway, which emptied into an open ditch, was held to be a sewer within the meaning of the definition, though it was not a sewer for all purposes so as to entitle the owners of houses adjoining the highway to connect their drains with it (*Kinson Pottery Co., Limited* v. *Poole Corporation*, [1899] 2 Q. B. 41 ; 63 J. P. 580 ; 68 L. J. Q. B. 819 ; 81 L. T. (N.S.) 24 ; 47 W. R. 607. See also *per* BYRNE, J., in *Graham* v. *Wroughton*, [1901] 2 Ch. 451 ; 65 J. P. 710 ; 70 L. J. Ch. 673 ; 84 L. T. 744 ; 49 W. R. 643, and *Leeds and District Worsted Dyers'*

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Association, Limited v. *West Riding of Yorks Rivers Board* (1906), 70 J. P. 480). A drain was made by the owner of a quarry for the purpose of collecting and carrying off surface water coming on to his land, and preventing it from running over the quarry. By means of the drain the quarry could be more economically and conveniently worked than if the water were allowed to spread over it. It was held that the drain was a sewer, although, being one made for profit within the meaning of s. 13 of the Public Health Act, 1875, it did not vest in the district council. It was argued in the course of the case that, if such a drain were a sewer within the meaning of the Act, it would follow that every drain made for agricultural purposes for the drainage of land would also come within the Act, and would vest in the district council and be repairable by them. But the court appeared to be of opinion that mere agricultural drains were not within the meaning of the Act (*Sykes* v. *Sowerby Urban District Council*, [1900] 1 Q. B. 584 ; 64 J. P. 340 ; 69 L. J. Q. B. 464 ; 82 L. T. (N.S.) 177 ; 16 T. L. R. 225).

A channel or gutter at the side of a road which drained the surface water from the roadway, and into which rain-water pipes from the roofs and curtilages of adjoining houses drained, was held to be a "sewer" (*Wilkinson* v. *Llandaff and Dinas Powis Rural District Council*, [1903] 2 Ch. 695 ; 68 J. P. 1 ; 73 L. J. Ch. 8 ; 89 L. T. 462 ; 52 W. R. 50 ; 20 T. L. R. 30). In the last-mentioned case VAUGHAN WILLIAMS, L.J., said that *Kinson Pottery Co., Limited* v. *Poole Corporation*, *supra*, is not a decision that a drain may be a sewer for some of the purposes of the Public Health Act and not for others. It is difficult to reconcile with the decision in *Wilkinson* v. *Llandaff and Dinas Powis Rural District Council*, *supra*, a more recent decision of the Divisional Court—*Williamson* v. *Durham Rural District Council*, [1906] 2 K. B. 65 ; 70 J. P. 352 ; 75 L. J. K. B. 498 ; 95 L. T. 471 ; 54 W. R. 509 ; 4 L. G. R. 1163—where it was held that a pipe (originally put in for conveying away surface water from a road), which in 1894 was vested in or under the control of a highway board, and was consequently not then a sewer within the meaning of s. 4 of the Public Health Act, 1875, did not upon the passing of the Local Government Act, 1894, become a sewer by reason of its becoming vested under s. 25 of that Act in a district council. The report of the case in the Law Reports appears to be somewhat imperfect, but on a reference to the report in the Justice of the Peace it will be seen that the pipe had for many years received sewage and surface water from various premises. The decision in the last-mentioned case was recently followed by a Divisional Court, and attention was called by PHILLIMORE, J., to the fact that in *Wilkinson* v. *Llandaff and Dinas Powis Rural District Council*, *supra*, the point on which the decision in *Williamson* v. *Durham Rural District Council*, *supra*, was decided was not called to the attention of the court (*Irving* v. *Carlisle Rural District Council* (1907), 71 J. P. 212 ; 5 L. G. R. 776). In *Wincanton Rural District Council* v. *Parsons*, [1905] 2 K. B. 34 ; 69 J. P. 242 ; 74 L. J. K. B. 533 ; 93 L. T. 13 ; 3 L. G. R. 771, it was held that a pipe which had been laid down alongside a

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highway by an adjoining owner for the purpose of carrying away from his premises surface water from the highway, and into which pipe the defendant had for some years discharged the sewage from his house, but which had not been repaired by the plaintiffs or treated by them as a sewer, was not a sewer, although it also took surface water from the highway.

Effect of disconnection.

A pipe carrying the sewage of two houses into the main sewer was a sewer within the meaning of a similar definition. Subsequently the owner of one of the houses disconnected his sewage, so that, thereafter, the pipe was used for the drainage of one building only. It was held that the pipe did not, upon such disconnection taking place, become a drain repairable by the owner of the house still served by it, but remained a sewer vested in and repairable by the vestry (*St. Leonard, Shoreditch (Vestry of)* v. *Phelan*, [1896] 1 Q. B. 533 ; 60 J. P. 244 ; 65 L. J. M. C. 111 ; 74 L. T. (N.S.) 285 ; 44 W. R. 427).

And see the cases cited above with reference to a "combined drain," *ante*, pp. 323 *et seq.*

Repeal.

Repeal of enactments in Schedule.

142.—(1) *The Acts specified in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule, and shall be so repealed as from the date in that Schedule mentioned, and where no date is mentioned as from the commencement of this Act :*

(2) Provided that—

(a) *Where any enactment in the said Schedule extends beyond London, such enactment shall not unless otherwise expressed be deemed to be hereby repealed, so far as it applies beyond London :*

(b) All securities given under and all orders, byelaws, rules, regulations, and notices duly made or issued under or having effect in pursuance of any Act hereby repealed shall be of the same validity and effect as if they had been given, made, or issued under this Act, and any penalties recoverable under any such order, byelaw, rule, regulation, or notice may be recovered as if they were imposed by byelaws under this Act.

(3) *Where the county council or a sanitary authority are required by this Act to make byelaws for any purpose for which there are no byelaws of the council or authority in*

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force at the commencement of this Act, the first byelaws made by the county council or sanitary authority for that purpose under this Act shall be submitted to the Local Government Board for sanction not later than six months after the commencement of this Act (*a*).

(4) *Any enactment expressed in the Fourth Schedule to this Act to be repealed as from the coming into operation of any byelaw made for the like object shall, although no such byelaw is made, be repealed on the expiration of twelve months next after the commencement of this Act, or such later day, not exceeding eighteen months from such commencement, as may be fixed by Order in Council* (*b*).

(5) For the removal of doubts it is hereby declared that so much of the Public Health Act, 1875, as re-enacts *sections fifty-one and fifty-two of the Sanitary Act*, 1866, *and* sections thirty-four to thirty-six of the Public Health Act, 1872, extends to London (*c*).

38 & 39 Vict. c. 55.
29 & 30 Vict. c. 90.
35 & 36 Vict. c. 79.

(6) Officers appointed under any enactment hereby repealed shall continue in office in like manner as if they were appointed in pursuance of this Act, subject nevertheless to the provisions of this Act respecting existing officers (*d*).

(7) Where in any enactment or in any Order made by a Secretary of State or by the Local Government Board, and in force at the time of the passing of this Act, or in any document, any Act or any provisions of an Act are mentioned or referred to which relate to London and are repealed by this Act, such enactment, Order, or document shall be read as if this Act or the corresponding provisions of this Act were therein mentioned or referred to instead of such repealed provisions, and as if a sanitary authority under this Act were substituted for any nuisance authority mentioned in such repealed provisions.

Sub-section (1), sub-s. (2) to "beyond London," and sub-ss. (3) and (4) of this section were repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

(*a*) It was, therefore, the duty of these bodies to have submitted byelaws for approval not later than July 1st, 1892.

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The failure on the part of a sanitary authority to make a byelaw under s. 30 did not affect the result in *Borrow* v. *Howland* (1896), 60 J. P. 391 ; 74 L. T. (N.S.) 787.

(*b*) The following is the text of the Order in Council, dated November 26th, 1892, which was issued under the provisions of sub-s. (4) (now repealed) :

AT THE COURT AT WINDSOR.

The 26th day of November, 1892.

Present :

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by the Public Health (London) Act, 1891, the Acts specified in the Fourth Schedule to that Act are to the extent specified in the third column of that Schedule, repealed as from the date in that Schedule mentioned, and where no date is mentioned as from the commencement of the Public Health (London) Act.

And whereas by the last-mentioned Act it is provided that any enactment expressed in the said Schedule to be repealed as from the coming into operation of any byelaw made for the like object shall, although no such byelaw is made, be repealed on the expiration of 12 months next after the commencement of the Act, or such later day, not exceeding 18 months from such commencement, as may be fixed by Order in Council.

And whereas the said Act came into operation on the 1st day of January, 1892.

And whereas it is expedient that a day later than the expiration of 12 months next after the commencement of the said Act should be fixed for the purpose aforesaid.

Now therefore, her Majesty, by and with the advice of her Privy Council, doth order, and it is hereby ordered, that the 30th day of June, 1893, being a day not exceeding 18 months from the commencement of the said Act, shall be fixed as the day upon which any enactment expressed in the Fourth Schedule to the Act to be repealed as from the coming into operation of any byelaw made for the like object, shall, although no such byelaw has been made, be repealed.

This Order may be cited as the Public Health (London) Act, 1891 (Repeal) Order, 1892.

HERBERT M. SUFT.

(*c*) The words in italics were repealed by the Public Health Act, 1896 (59 & 60 Vict. c. 19). See s. 6 and the Schedule to that Act, set out, *post*.

The 35 & 36 Vict. c. 79, was repealed by the Public Health Act, 1875, except in so far as it related to the metropolis, but the sections above mentioned were re-enacted by Sched. 5. The Act is now almost wholly repealed as regards the metropolis, and the provision in the text is in effect to re-enact certain sections of it, which are as follows :

35 & 36 Vict. c. 79, s. 34. As to consent of Local Government Board required in certain cases.

Where in any local Acts the consent, sanction, or confirmation of one of her Majesty's Principal Secretaries of State is required with respect to the borrowing of any money, to the giving effect to any byelaws, or to the appointment of any officer for sanitary purposes, the consent, sanction, or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

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The consent of the Local Government Board, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Washhouses Acts.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

35 & 36 Vict. c. 79, s. 35. Transfer of powers and duties of Board of Trade under Alkali Act, 1863, and Metropolis Water Acts, 1852 and 1871, to Local Government Board.

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same, and under the Metropolis Water Acts, 1852 and 1871, shall be exercisable and performed by the Local Government Board, and "the Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

35 & 36 Vict. c. 79, s. 36. Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to Local Government Board.

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of her Majesty's Principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.

(*d*) The provisions of this Act as to existing officers are contained in s. 139, *ante*, p. 289.

143. *This Act shall come into operation on the first day of January next after the passing thereof.* Commencement of Act.

This section was repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

144. This Act may be cited as the Public Health (London) Act, 1891. Short title.

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS APPLIED.

Section 33 of the Metropolis Water Act, 1871. 34 & 35 Vict. c. 113.

33. The absence in respect of any premises of the prescribed fittings after the prescribed time shall be a nuisance, within section 11 and sections 12—19 (inclusive) of the Nuisances Removal Act for England, 1855, and within all provisions of the same or any other Act applying, amending, or otherwise relating to those sections; and that nuisance, if in any case proved to Absence of proper water fittings in premises to be a nuisance.

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exist, shall be presumed to be such as to render the premises unfit for human habitation within section 13 of the Nuisances Removal Act for England, 1855, unless and until the contrary is shown to the satisfaction of the justices acting under that section.

The absence of water fittings as in the above section mentioned is a nuisance liable to be dealt with summarily (s. 2 (1), *ante*, p. 3). And such absence of water fittings is to be deemed to render the premises unfit for human habitation, unless and until the contrary is shown to the satisfaction of the court (s. 4 (3), *ante*, p. 16). See also, as to houses without a proper water supply, ss. 48, 49, *ante*, p. 120, and s. 78 of the London County Council (General Powers) Act, 1907, *post*.

38 & 39 Vict. c. 55.

Sections 108 *and* 115 *of the Public Health Act*, 1875, *relating to Nuisances out of the District.*

Power to proceed where cause of nuisance arises without district.

108. Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority.

It is provided by s. 14 (2), *ante*, p. 40, that the above section shall continue to apply to London with the substitution of a

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sanitary authority (as defined by s. 99, *ante*, p. 197) for any nuisance authority mentioned in the section, and any reference in the section to a nuisance in the metropolis is to include a nuisance under this Act.

Power to proceed where nuisance arises from offensive trade carried on without district.

115. Where any house, building, manufactory, or place which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated without such district, such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house, building, manufactory, or place were situated within such district ; so, however, that summary proceedings shall not in any case be had otherwise than before a court having jurisdiction in the district where the house, building, manufactory, or place is situated.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act ; or by any urban authority in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority.

It is provided by s. 21 (5), *ante*, p. 56, that the above section shall continue to extend to London, with the substitution of a sanitary authority (as defined by s. 99, *ante*, p. 197) for a nuisance authority, and any reference in the above section to a nuisance in the metropolis, or to any building, manufactory, or place in the metropolis which is injurious to health, shall include any nuisance within the meaning of this Act, and any manufactory, building, or place which is dangerous to health.

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38 & 39 Vict. c. 55.
52 & 53 Vict. c. 64.

Sections 130, 134, 135, *and* 140 *of the Public Health Act*, 1875, *and section* 2 *of the Public Health Act*, 1889, *relating to Regulations and Orders of the Local Government Board with respect to Cholera, or other Epidemic, Endemic, or Infectious Diseases.*

Power of Local Government Board to make regulations.

130. The Local Government Board may from time to time make, alter, and revoke such regulations as to the said Board may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic, endemic, or infectious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed. Regulations so made shall be published in the London Gazette, and such publication shall be for all purposes conclusive evidence of such regulations.

It is provided by s. 82, *ante*, p. 171, that the sanitary authority of any district within which or part of which regulations issued by the Local Government Board in pursuance of the above section are in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters and things as may be necessary for mitigating any disease to which the regulations relate, or for superintending, or aiding in the execution of such regulations, or for executing the same, as the case may require.

It is further provided by s. 113, *ante*, p. 219, that the above section and ss. 134, 135 and 140, of the Public Health Act, 1875 (set out below), and s. 2 of the Public Health Act, 1889, shall extend to London, and shall apply in like manner as if a sanitary authority under this Act were a local authority within the meaning of those sections.

The concluding paragraph of s. 130 as originally enacted is here omitted, having been repealed by the Public Health Act, 1896. The same observation also applies to s. 2 of the Public Health Act, 1889.

See the provisions as to making regulations under this section, and s. 134 of the Public Health Act, 1875, contained in the Public Health Act, 1896, the Public Health Act, 1904, and the Public Health (Regulations as to Food) Act, 1907, set out *post*.

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Power of Local Government Board to make regulations for prevention of diseases.

134. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease, the Local Government Board may make and from time to time alter and revoke regulations for all or any of the following purposes ; (namely),

(1) For the speedy interment of the dead ; and

(2) For house to house visitation ; and

(3) For the provision of medical aid and accommodation, for the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease ;

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned ; and may by any subsequent order abridge or extend such period.

See the note to s. 130, *supra*.

Epidemic diseases are "those which prevail among a large portion of the people of a country, rage for a certain time, and then gradually diminish and disappear, to return again at periods more or less remote. Thus, cholera and influenza lately appeared as epidemic diseases in this country, and the continued fevers called synochus and typhus, and what are termed the eruptive fevers, as scarlet fever, the small-pox, the measles, frequently prevail as epidemics, in different parts of the country. It is essential to the medical notion of an epidemic disease, that it should be dependent on some common and widely extended cause, of a temporary in contra-distinction to a persistent nature."

Endemic diseases are "those peculiar forms of disease which arise spontaneously, as it is termed, in a country, or in particular localities, and which are ordinarily produced by the peculiar climate, soil, air, water, etc. Thus ague is the endemic disease of marshy countries or localities, the swelled throat or bronchocele is endemic in the Alps, and the plica in Poland. The word bears pretty much the same signification in relation to the diseases of a country that the term *indigenous* does to its plants" (Penny Cyclopedia)

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These diseases, however, must be *formidable*, which imply so extensive an existence as to create a very general alarm.

It rests now with the Local Government Board to determine how far the nature of the disease and the extent of its prevalence is such as to require these extraordinary measures to be taken. They have absolute control over the regulations to be prescribed.

See the provisions as to making regulations under this section, and s. 130 of the Public Health Act, 1875, contained in the Public Health Act, 1896, the Public Health Act, 1904, and the Public Health (Regulations as to Food) Act, 1907, set out, *post*.

Publication of regulations and orders.

135. All regulations and orders so made by the Local Government Board shall be published in the London Gazette, and such publication shall be conclusive evidence thereof for all purposes.

That is to say, the production of the Gazette shall be evidence of the making and issuing of the orders. But the copy produced must contain the imprint of the King's printer, and purport to be published by authority. A conviction was quashed where a court of quarter sessions had received in evidence an entire page of the Gazette not containing these requisites (*R.* v. *Lowe* (1883), 47 J. P. 535 ; 52 L. J. M. C. 122 ; 48 L. T. (N.S.) 768).

Penalty for violating or obstructing the execution of regulations.

140. Any person who—

(1) Wilfully violates any regulation so issued by the Local Government Board as aforesaid ; or

(2) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,

shall be liable to a penalty not exceeding five pounds.

As to the recovery of the penalty, see s. 117, *ante*, p. 225.

Section 2 of the Public Health Act, 1889, is here omitted, having been repealed by the Public Health Act, 1896.

38 & 39 Vict. c. 55.

Sections 182—186 *of the Public Health Act*, 1875, *relating to Byelaws.*

Authentication and alteration of byelaws.

182. All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal ; and any such byelaw may be altered or repealed

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by a subsequent byelaw made pursuant to the provisions of this Act: Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

This section and the four following are incorporated by s. 114, *ante*, p. 220, and apply to byelaws made under this Act by the sanitary authority or the county council.

Byelaws are made by the sanitary authority under ss. 16 (1), 39 (2), 50, 66 (3), 88, 94, 95 (2); and by the county council under ss. 16 (2), 19 (4), 28 (2), 39 (1).

The sanitary authority or county council have no power to make byelaws for purposes of this Act except to the extent that the Act expressly empowers them to do so (*R.* v. *Wood* (1855), 5 El. & Bl. 49; 3 C. L. R. 1134; *S. C. sub nom. R.* v. *Rose*, 19 J. P. 676; 24 L. J. M. C. 130; 1 Jur. (N.S.) 802. And see *Byrne* v. *Brown* (1893), 57 J. P. 741).

For a discussion of the general grounds upon which a byelaw will be held void as unreasonable, see *Slattery* v. *Naylor* (1888), 13 App. Cas. 446; 57 L. J. P. C. 73; 59 L. T. (N.S.) 41; 36 W. R. 897; *Toronto Municipal Corporation* v. *Virgo*, [1896] A. C. 88; 65 L J. P. C. 4; 73 L. T. (N.S.) 449; *Walker* v. *Stretton* (1896), 60 J. P. 313; 44 W. R. 525; *Kruse* v. *Johnson*, [1898] 2 Q. B. 91; 62 J. P. 469; 67 L. J. Q. B. 782; 78 L. T. (N.S.) 647; 46 W. R. 630.

Power to impose penalties on breach of byelaws.

183. Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

Penalties for breaches of byelaws made under this Act will be recoverable under s. 117, *ante*, p. 225.

Confirmation of byelaws.

184. Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to, and confirmed by, the Local Government Board, which Board is hereby empowered to allow or

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disallow the same as it may think proper ; nor shall any such byelaws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application ; and

Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

A byelaw required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority.

The object of publishing notice of the intention to make byelaws is to enable persons interested to object before confirmation. In the case of byelaws under s. 19 (6), the Local Government Board are required to consider the objections made by any sanitary authority or person aggrieved, but it may be doubted whether the express provision was necessary.

Reference may be made to a Circular of the Local Government Board, dated July 25th, 1877, relating to the framing of byelaws by urban sanitary authorities.

It should be observed that the confirmation by the Local Government Board gives no validity to a byelaw not warranted by the provisions of the Act (*R.* v. *Wood*, *ante*, p. 347).

Byelaws to be printed, etc.

185. All byelaws made by a local authority under this Act, or for purposes the same as, or similar to, those of this Act under any local Act, shall be printed and hung up in the office of such authority ; and a copy thereof shall be delivered to any ratepayer of the district

to which such byelaws relate, on his application for the same. Sched. 1.

No charge can be made for a copy of the byelaws.

186. A copy of any byelaws made under this Act by a local authority, signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence, until the contrary is proved, in all legal proceedings of the due making, confirmation, and existence of such byelaws without further or other proof. Evidence of byelaws.

It may be necessary to prove the signature of the clerk if he is not present to produce the certified copy. See *Drew* v. *Harlow* (1875), 39 J. P. 420, and *Robinson* v. *Gregory*, [1905] 1 K. B. 534 ; 69 J. P. 161 ; 74 L. J. K. B. 367 ; 92 L. T. (N.S.) 171 ; 20 Cox C. C. 781 ; 3 L. G. R. 108.

Sections 293—296 *of the Public Health Act*, 1875, *relating to Inquiries of the Local Government Board.* 38 & 39 Vict. c. 55.

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act. Power of Board to direct inquiries.

This section and the three following are applied by s. 129, *ante*, p. 281, to all inquiries which the Local Government Board may make in pursuance of or for the pnrposes of this Act.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to, the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne ; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein. Orders as to costs of inquiries.

The orders of the Board are conclusive. See the next section.

A rule is enforced as a judgment. Rules of the Supreme Court, Order XLII., r. 24 ; Order LXXI., r. 1.

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Orders of Board under this Act.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

Powers of inspectors of Local Government Board.

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

The statutes 4 & 5 Will. 4, c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions above referred to with regard to the powers of poor law inspectors. Under these sections an inspector may summon any person to be examined before him, or to produce and verify on oath any books, contracts, agreements, accounts, or copies of the same, and not relating to or involving any question of title to lands (except the property of the local authority). He may examine witnesses on oath or require the party examined to make and subscribe a declaration of the truth of his evidence. Disobedience of any summons, refusing to produce, altering or concealing any books, etc., are misdemeanors, and evidence falsely given before the inspector is perjury.

18 & 19 Vict. c. 120.

Sections 211 *and* 212 *of the Metropolis Management Act*, 1855, *relating to Appeals to London County Council.*

Power to appeal against orders and acts of vestries and district boards in relation to construction of works.

211. Any person who deems himself aggrieved by any order of any vestry or district board in relation to the level of any building, or any order or act of any vestry or district board in relation to the construction, repair, alteration, stopping or filling up, or demolition of any building, sewer, drain, . . . , may, within seven days after notice of any such order to the occupier of the premises affected thereby, or after such act, appeal to the county council against the same ; and all such appeals shall stand referred to the committee appointed by such council for hearing appeals as herein provided ; and such committee shall hear and determine all such appeals,

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and may order any costs of such appeals to be paid to or by the vestry or district board by or to the party appealing, and may, where they see fit, award any compensation in respect of any act done by any such vestry or district board in relation to the matters aforesaid; provided that no such compensation shall be awarded in respect of any such act which may have been done under any of the provisions of this Act on any default to comply with any such order as aforesaid, unless the appeal be lodged within seven days after notice of such order has been given to the occupier of the premises to which the same relates.

This section and the next are incorporated by s. 126, *ante*.

Appeal lies to the county council from a sanitary authority (other than the Commissioners of Sewers (now the Common Council of the City), s. 133, *ante*, p. 283), under ss. 37 (5), 41 (3), 43 (3). The vestries and district boards of the metropolis were superseded by the establishment of metropolitan borough councils under the London Government Act, 1899.

County council to appoint a committee for hearing appeals.

212. The county council shall appoint a committee for the purpose of hearing all such appeals as may be made to the said council as aforesaid, which committee shall have power to hear and decide all such appeals, and the county council shall from time to time fill up any vacancy in such committee, and the chairman of the said council shall, by virtue of his office of chairman, be a member of the said committee in addition to the members appointed by the said council, and shall preside at all meetings of such committee at which he is present; and in case of a vacancy in the office of such chairman, or in his absence, some other member of the committee shall be chosen to preside; and all the powers of such committee may be exercised by any three of them; and any member of such committee may at any time resign his office.

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SECOND SCHEDULE.

[This Schedule contained the provisions of the Public Health Acts, which were extended to Woolwich by s. 102. That section and the whole of this Schedule are now repealed by the London Government Act, 1899, which provides for the creation of a metropolitan borough consisting of or comprising Woolwich.]

THIRD SCHEDULE.

FORMS (*a*).

FORM A. (*b*).

FORM OF NOTICE REQUIRING ABATEMENT OF NUISANCE.

To [*person causing the nuisance, or owner or occupier of the premises at which the nuisance exists, as the case may be*].

Take notice that under the provisions of the Public Health (London) Act, 1891, the [*describe the sanitary authority*], being satisfied of the existence at [*describe premises where the nuisance exists*] of a nuisance being [*describe the nuisance, for instance*, premises in such a state as to be a nuisance or injurious or dangerous to health, *or for further instance*, a ditch or drain so foul as to be a nuisance or injurious or dangerous to health], do hereby require you within [*specify the time*] from the service of this notice to abate the same [and to execute such works and do such things as may be necessary for that purpose, *or* and for that purpose to *specify any works to be executed*] (*c*), [and the said [*authority*] do hereby require you within the said period to do what is necessary for preventing the recurrence of the nuisance, and for that purpose to *etc.*]

Where the nuisance has been abated, but is likely to recur, say, being satisfied that at *etc.* there existed recently, to wit, on or about the day of the following nuisance, namely [*describe nuisance*], and that although the said nuisance has since the last-mentioned day been abated, the same is likely to recur at the said premises, do hereby require you within [*specify time*], to do what is necessary for preventing the recurrence of the nuisance [and for that purpose to *etc.*] (*d*).

If you make default in complying with the requisitions of this notice [or if the said nuisance, though abated, is likely to recur], a summons will be issued requiring your attendance before a petty sessional court, to answer a complaint which will be made for the purpose of enforcing the abatement of the nuisance, or prohibiting the recurrence thereof, or both, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

Signature of officer of sanitary authority

(*a*) The forms in this Schedule may be used with such variations as circumstances require. See s. 130, *ante*, p. 281.

(*b*) This notice is given under s. 4, *ante*, p. 15.

(*c*) The works to be executed need not be specified unless the sanitary authority think it desirable to do so. Section 4 (1), *ante*, p. 15.

(*d*) As to this clause, see s. 4 (2), *ante*, p. 15.

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FORM B.

FORM OF SUMMONS.

Summons.

To A. B., of [*or* to the owner *or* occupier of] [*describe premises*] situated [*insert such description of the situation as may be sufficient to identify the premises*].

County of, etc., to wit. } You are required to appear before [*describe the petty sessional court*], at the court [*or* petty sessions] holden at on the day of next at the hour of in the noon, to answer the complaint this day made to me by that at the premises above mentioned [*or* at certain premises situated at No. in street in the parish of *or insert any other such description or reference as may be sufficient to identify the premises*], in the district of [*describe the sanitary authority*], the following nuisance exists [*describe the nuisance and add, where the person causing the nuisance is summoned*, and that the said nuisance is caused by the act, default, or sufferance of you, A. B.].

Where the nuisance is discontinued, but is likely to be repeated, say, to answer the complaint, *etc.* that at *etc.* there existed recently, to wit, on or about the day of , the following nuisance [*describe the nuisance, and add, where the person causing the nuisance is summoned*, and that the said nuisance was caused, *etc.*], and although the said nuisance has since the said last-mentioned day been abated or discontinued, that the same or the like nuisance is likely to recur at the said premises.

Given under my hand and seal this day of 18 .

J. S. (L.S.)

This summons is issued under s. 5, *ante*, p. 25.

FORM C.

FORM OF NUISANCE ORDER.

To A. B., of [*or* to the owner *or* occupier of] [*describe premises*] situated [*insert such description of the situation as may be sufficient to identify the premises*].

County of, etc., to wit. } WHEREAS the said A. B. [*or* the owner *or* occupier of the said premises within the meaning of the Public Health (London) Act, 1891] has this day appeared before me [*or* us, *describing the court*], to answer the matter of a complaint made by *etc.* that at *etc.* [*follow the words of complaint in summons*] [*or in case the party charged do not appear, say*, Whereas it has been now proved to my [*or* our] satisfaction that a summons has been duly served according to the Public Health (London) Act, 1891, requiring the said A. B. [*or* the owner *or* occupier of the said premises] to appear this day before me [*or* us] to answer the matter of a complaint made by *etc.* that at *etc.*] :

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[*Any of the following orders may be made or a combination of any of them as the case seems to require.*]

Abatement Order.

Now on proof here had before me [*or* us] that the nuisance so complained of does exist at the said premises [*add, where the order is made on the person causing the nuisance*, and that the same is caused by the act, default, or sufferance of A. B.], I [*or* we], in pursuance of the Public Health (London) Act, 1891, do order the said A. B. [*or* the said owner *or* occupier] within [*specify the time*] from the service of this order according to the said Act [*here specify the nuisance to be abated, as, for instance*, to prevent the premises being a nuisance or injurious or dangerous to health, or, *for further instance*, to prevent the ditch or drain being a nuisance or injurious or dangerous to health] [and *state any works to be executed, as, for instance*, to whitewash and disinfect the premises, *or, for further instance*, to clean out the ditch].

Prohibition Order, No. 1.

And I [*or* we] being satisfied that, notwithstanding the said nuisance may be temporarily abated under this order, the same is likely to recur, do therefore prohibit the said A. B. [*or* the said owner *or* occupier] from allowing the recurrence of the said or a like nuisance [and for that purpose I *or* we direct the said A. B. *or* the said owner *or* occupier, *here specify any works to be executed, as, for instance*, to fill up the ditch].

Prohibition Order, No. 2.

Now, on proof here had before me [*or* us] that at or recently before the time of making the said complaint, to wit, on the nuisance so complained of did exist at the said premises, but that the same has since been abated [*add, where the order is made on the person causing the nuisance*, and that the nuisance was caused by the act, default, or sufferance of A. B.], yet, notwithstanding such abatement, I [*or* we] being satisfied that it is likely that the same or the like nuisance will recur at the said premises, do therefore prohibit [*continue as in Prohibition Order, No.* 1].

Closing Order.

Now, on proof here had before me [*or* us] that the nuisance is such as to render the dwelling-house [*describe the house*] situated at [*insert such a description of the situation as may be sufficient to identify the dwelling-house*] unfit in my [*or* our] judgment for human habitation, I [*or* we] in pursuance of the Public Health (London) Act, 1891, do hereby prohibit the use of the said dwelling-house for human habitation.

Given under the hand and seal of me [*or* the hands and seals of us, *describing the court*].

This day of 18 .

J. S. (L.S.)
J. P. (L.S.)

The above order is made under s. 5, *ante*, p. 25.

It must specify the works to be executed if the defendant so requires or if the court considers it desirable. Section 5 (5), *ante*, p. 25.

It makes no provision for costs. Apparently it is contemplated that these will be received separately under s. 11, *ante*, p. 33.

FORM D.

FORM OF NUISANCE ORDER TO BE EXECUTED BY SANITARY AUTHORITY.

To the [*describe the sanitary authority*].

County of, etc., } WHEREAS a complaint has been made by
to wit. } that at certain premises situated at No. in street, in the parish of [*or insert any other description or reference as may be sufficient to identify the premises*] in the district of [*describe the sanitary authority*] the following nuisance exists [*describe the nuisance.*]

And it has been now proved to my [*or* our] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person by whose act, default, or sufferance the nuisance is caused, is known *or* can be found [*as the case may be*] ; Now I [*or* we] in pursuance of the Public Health (London) Act, 1891, do [*continue as in any of the orders in Form C. with the substitution of the name of the sanitary authority for that of* A. B. *or the owner or occupier.*]

Given *etc.* [*as in last form*].

This form is under s. 8, *ante*, p. 31.

FORM E.

WARRANT OF JUSTICE FOR ENTRY TO PREMISES.

WHEREAS A. B. being a person authorised under the Public Health (London) Act, 1891, to enter certain premises [*describe the premises*], has made application to me, C. D., one of her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], to authorise the said A. B. to enter the said premises, and whereas I, C. D., am satisfied by information on oath that there is reasonable ground for such entry, and that there has been a refusal or failure to admit to such premises, and *either* that reasonable notice of the intention to apply to a justice for a warrant has been given, *or* that the giving of notice of the intention to apply to a justice for a warrant would defeat the object of the entry.

[*or* am satisfied by information on oath that there is reasonable cause to believe that there is on the said premises a contravention of the Public Health (London) Act, 1891, or of a byelaw made under that Act, and that an application for admission or notice of an application for a warrant would defeat the object of the entry.]

Now, therefore, I, the said C. D., do hereby authorise the said A. B. to enter the said premises, and if need be by force, with such assistants as he may require, and there execute his duties under the said Act.

Given *etc.* [*as in last form*].

This is the form of warrant to be issued by a justice under s. 115, *ante*, p. 221.

Sched. 4.

FOURTH SCHEDULE.

ENACTMENTS REPEALED (*a*).

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
26 *Geo.* 3, *c.* 71 -	*An Act for regulating houses and other places kept for the purpose of slaughtering horses.*	*The whole Act.*
57 *Geo.* 3, *c. xxix.*	*An Act for better Paving, Improving, and Regulating the Streets of the Metropolis, and Removing and Preventing Nuisances and Obstructions therein.*	*Section fifty-seven so far as it relates to a cesspool; sections fifty-nine to sixty-one; section sixty-three; section sixty-four from "or shall throw" to "either of such pavements" as from the coming into operation of any byelaw made for the like object; sections sixty-seven and sixty-eight; and sections seventy-three and seventy-four as from the coming into operation of any byelaw made for the like object.*
2 & 3 *Vict. c.* 47	*An Act for further improving the Police in and near the Metropolis.*	*Section sixty, from "or cause any offensive matter" to "so as to be a common nuisance," as from the coming into operation of any byelaw made for the like object; and from "every occupier of a house" to "reference to this enactment."*
7 & 8 *Vict. c.* 87	*An Act to amend the Law for regulating Places kept for Slaughtering Horses.*	*The whole Act.*
16 & 17 *Vict. c.* 128.	*An Act to abate the Nuisance arising from the smoke of Furnaces in the Metropolis and from Steam Vessels above London Bridge.*	*The whole Act as respects all places without as well as within London.*

(*a*) See s. 142, *ante*, p. 338.

Sched. 4.

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
18 & 19 *Vict.* c. 116.	*The Diseases Prevention Act*, 1855.	*The whole Act.*
18 & 19 *Vict.* c. 120.	*The Metropolis Management Act*, 1855.	*Section eighty-one; sections eighty-two to eighty-five, except so far as they relate to a drain or sewer, or any work or apparatus connected therewith; section eighty-six down to "defrayed under this Act"; sections eighty-eight, one hundred and three, and one hundred and four; section one hundred and sixteen from "and also to cause" to the end of the section; sections one hundred and seventeen, and one hundred and twenty-five; section one hundred and twenty-six, as from the coming into operation of any byelaw made for the like object; sections one hundred and twenty-seven to one hundred and twenty-nine, one hundred and thirty-two, one hundred and thirty-three, and one hundred and thirty-four; section one hundred and ninety-eight from "and to every such report" to "for their parish or district"; section two hundred and two from "for the emptying" to "disposing of refuse" as from the coming into operation of any byelaw made for the like object; and section two hundred and eleven so far as regards any watercloset, privy, ashpit, or cesspool.*
18 & 19 *Vict.* c. 121.	*The Nuisances Removal Act for England*, 1855.	*The whole Act.*
19 & 20 *Vict.* c. 107.	*An Act to amend the Smoke Nuisance Abatement (Metropolis) Act*, 1853.	*The whole Act as respects all places without as well as within London.*

Sched. 4.

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
23 & 24 *Vict.* c. 77.	*An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.*	*The whole Act.*
25 & 26 *Vict.* c. 102.	*The Metropolis Management Amendment Act*, 1862.	*Sections forty-three and sixty-two; in section sixty-four the word "eighty-first," and the words "and eighty-sixth"; sections sixty-seven, seventy, eighty-nine, ninety-one, ninety-three, ninety-four, and ninety-five, and section one hundred and five, from "and all penalties" to "1855."*
26 & 27 *Vict.* c. 117.	*The Nuisances Removal Act for England (Amendment) Act*, 1863.	*The whole Act.*
29 & 30 *Vict.* c. 41.	*The Nuisances Removal (No. 1) Act*, 1866.	*The whole Act.*
29 & 30 *Vict.* c. 90.	*The Sanitary Act*, 1866	*The whole Act, except section forty-one.*
31 & 32 *Vict.* c. 115.	*The Sanitary Act*, 1868	*The whole Act.*
32 & 33 *Vict.* c. 100.	*The Sanitary Loans Act*, 1869.	*The whole Act.*
33 & 34 *Vict.* c. 53.	*The Sanitary Act*, 1870	*The whole Act.*
35 & 36 *Vict.* c. 79.	*The Public Health Act*, 1872.	*The whole Act.*
37 & 38 *Vict.* c. 67.	*The Slaughter-houses, etc. (Metropolis) Act*, 1874.	*The whole Act.*
37 & 38 *Vict.* c. 89.	*The Sanitary Law Amendment Act*, 1874.	*The whole Act, except so much of sections forty-six and forty-nine as relates to common lodging-houses.*

Sched. 4.

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
38 & 39 *Vict.* c. 55.	*The Public Health Act*, 1875.	*Section one hundred and eight from "In this section" to the end of the section; section one hundred and fifteen from "In this section" to the end of the section.* *Section two hundred and ninety-one, as respects the whole of the Port of London.*
41 & 42 *Vict.* c. 74.	*The Contagious Diseases (Animals) Act*, 1878.	*Section thirty-four.*
42 & 43 *Vict.* c. 54.	*The Poor Law Act*, 1879.	*Sections fifteen and sixteen.*
43 & 44 *Vict.* c. *lix.*	*The Local Government Board's Provisional Orders Confirmation (Amersham Union, etc.) Act*, 1880.	*Section two.*
46 & 47 *Vict.* c. 35.	*The Diseases Prevention (Metropolis) Act*, 1883.	*The whole Act.*
46 & 47 *Vict.* c. 53.	*The Factory and Workshop Act*, 1883.	*Section seventeen, down to "for the district," being the first two sub-sections.*
47 & 48 *Vict.* c. 60.	*The Metropolitan Asylum Board (Borrowing Powers) Act*, 1884.	*The whole Act.*
48 & 49 *Vict.* c. 72.	*The Housing of the Working Classes Act*, 1885.	*Section seven; and section nine from "This section shall apply" to "sanitary authority," being sub-section* (6).
49 & 50 *Vict.* c. 32.	*The Contagious Diseases (Animals) Act*, 1886.	*Section nine.*
51 & 52 *Vict.* c. 41.	*The Local Government Act*, 1888.	*Section forty-five; and section eighty-eight, from "Section one hundred and ninety-one" to the end of the section, being sub-section* (c).

Sched. 4.

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
52 & 53 *Vict.* *c.* 56.	*The Poor Law Act*, 1889.	*Section three, down to "common poor fund," being sub-sections* (1), (2), *and* (3); *and sections six and seven.*
52 & 53 *Vict.* *c.* 64.	*The Public Health Act*, 1889.	*Section one, from "and as regards" to the end of the section; and in section two the words "or of section fifty-two of the Sanitary Act*, 1866."
52 & 53 *Vict.* *c.* 72.	*The Infectious Disease (Notification) Act*, 1889.	*Section two, from "to every London" down to "Act and," being sub-section (a); sections ten and twelve; section sixteen, from "the Commissioners of Sewers" down to "Act*, 1887," *being sub-sections (a) and (b); and from "The expression 'London district'" down to "local authority is elected."*
53 & 54 *Vict.* *c.* 34.	*The Infectious Disease (Prevention) Act*, 1890.	*Section two, from "Local authority" to the end of the section; section three, from "to every London district" to "this Act; and"; and section five, down to "London district, and."*
53 & 54 *Vict.* *c. ccxliii.*	*The London Council (General Powers) Act*, 1890.	*Sections twenty-two and twenty-four.*

This Schedule was repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

APPENDIX.

THE CANAL BOATS ACT, 1877.

(40 & 41 Vict. c. 60.) (*a*)

An Act to provide for the Registration and Regulation of Canal Boats used as Dwellings. [14th August 1877.]

Registration of canal boat as a dwelling.

1. *After the expiration of twelve months after the commencement of this Act, or if the regulations of the Local Government Board hereinafter mentioned have not at that time come into force, then after the expiration of six months from the date at which they have come into force* (*b*), a canal boat shall not be used as a dwelling unless it has been registered in accordance with this Act.

The owner of a canal boat may register that boat with the registration authority hereinafter mentioned (*c*) as a dwelling for such number of persons of the specified age and sex as may be allowed under the provisions of this Act; and the boat shall be used as a dwelling only for the number of persons of the age and sex for which it is registered.

If a canal boat is used as a dwelling in contravention of this Act, the master of the boat, and also the owner of the boat, if he is in fault, shall each be liable to a fine not exceeding twenty shillings for each occasion on which the boat is so used.

(*a*) See the amending Act, the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), *post*. The marginal notes to this Act are as printed in the second edition of the Statutes Revised.

(*b*) The words in italics at the commencement of this section have been repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(*c*) See s. 7, *post*. It will be observed that the owner has the choice of several authorities with whom to register. For the definition of *owner*, see s. 14, *post*.

Appendix.

Local Government Board to make regulations.

2. The Local Government Board shall make regulations (*d*), and may from time to time revoke and vary such regulations—

(1) For the registration of canal boats under this Act, including certificates of registration, and the fees in connection with such registration; and

(2) For lettering, marking, and numbering of such boats; and

(3) For fixing the number age and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat; and

(4) For promoting cleanliness in and providing for the habitable condition of canal boats; and

(5) For preventing the spread of infectious disease by canal boats (*e*).

The registration authority shall register every canal boat which conforms to the conditions of registration provided by the said regulations for the number of persons allowed by those regulations to dwell therein.

Certificate of registry and lettering and numbering of boats.

3. Upon the registry of a boat under this Act, the registration authority shall give to the owner thereof two certificates of registry, identifying the owner and the boat, and stating the place to which the boat is registered as belonging, and the number age and sex of the persons allowed to dwell in the boat, and such other particulars as may be provided by regulations under this Act, or may seem fit to the registration authority, and the master shall have the care of one of such certificates (*f*).

Every canal boat when registered shall be lettered marked and numbered in some conspicuous manner (as directed by the regulations made under this Act), and such lettering marking and numbering shall include the word "registered," and the name of the place to which the boat is registered as belonging, and the registered number (*g*).

(*d*) Regulations, dated March 20th, 1878, have been made under this section. As to default in compliance with these regulations, see the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), s. 2, *post*.

(*e*) See s. 4, *post*.

(*f*) This certificate is made void by structural alterations in the boat. See the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), s. 1, *post*.

(*g*) The name of the school district referred to in s. 7, *post*, need not be painted on the boat.

Any boat not lettered marked and numbered in conformity with this section, or having the letter mark or number altered defaced or obliterated, shall be deemed, for the purpose of this Act, to be an unregistered canal boat (*h*).

Power of sanitary authority for prevention of infectious disease in canal boats.

4. Where any sanitary authority within whose district a canal or any part of a canal is situate is informed by the master of a canal boat or otherwise that a person on a canal boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may by the certificate of their medical officer of health, or of any other legally qualified practitioner, appear requisite for preventing the said disorder from spreading, and for that purpose may exercise the power of removing a person suffering as aforesaid, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875 (*i*), and may also, if need be, detain the boat; but such boat shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

38 & 39 Vict. c. 55.

Authorised person may enter boat, etc.

5. Where any person duly authorised by a registration or sanitary authority, or by a justice of the peace, has reasonable cause to suppose, either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may, on producing (if demanded) either a copy of his authorisation, purporting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorised as aforesaid, enter by day (*k*) such canal boat and examine the same and every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act, or a person suffering from an infectious disorder, and may, if need be, detain the boat for the purpose, but for no longer time than is necessary.

The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

(*h*) The boat must be lettered on both sides or on the stern, so as to be visible from both sides of the canal. See the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), s. 7, *post*.

(*i*) See the Public Health Act, 1875, s. 124, extended to ships by the Public Health (Ships, etc.) Act, 1885 (48 & 49 Vict. c. 35).

(*k*) *I.e.*, between 6 a.m. and 9 p.m. (47 & 48 Vict. c. 75, s. 9, *post*).

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A refusal to comply with the requisition of such person under this section shall be deemed to be an obstruction of such person.

If such person is obstructed in the performance of his duty under this Act in the case of any boat, the person so obstructing shall be liable to a fine not exceeding forty shillings.

Education of children. 33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79.

6. A child in a canal boat registered in pursuance of this Act, and his parent, shall for the purposes of the Elementary Education Acts, 1870, 1873, and 1876, be deemed, subject as hereinafter mentioned, to be resident in the place to which the boat is registered as belonging (*l*), and shall be subject accordingly to any byelaw in force under the said Acts in that place.

Provided, that if the parent satisfies the school board or school attendance committee having authority in that place, that the child is actually attending school, or is under efficient instruction in accordance with the said Acts, in some other school district, the said board or committee shall grant him without charge a certificate to that effect, and thereupon he and his child shall be deemed for the purposes aforesaid to be resident in the school district in which the child is so attending school, or under efficient instruction, and shall be subject to any byelaw in force therein.

The said certificate may on application by the parent be rescinded or varied by the school board or school attendance committee for the place to which the boat is registered as belonging, and may be rescinded without application by any such board or committee, if they are satisfied, after due notice to the parent, that his child is not properly attending school or under efficient instruction in the school district mentioned in the certificate.

Registration authority.

7. For the purpose of the registration of canal boats the registration authority shall be such one or more of the sanitary authorities having districts abutting on a canal as may from time to time be prescribed by regulation of the Local Government Board.

A canal boat shall be registered with some registration authority having a district abutting on the canal on which such boat is accustomed or intended to ply (*m*).

With a view of determining the place to which a canal boat belongs, for the purpose of the Elementary Education Acts, 1870, 1873, and 1876, the registration authority shall

33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79.

(*l*) See the next section.

(*m*) This gives the owner the choice of the place of registration.

register any canal boat in respect of which an application is made for registration as belonging to some place which is either a school district or is part of a school district, and is situate wholly or partly within the jurisdiction of the registration authority with which it is registered.

Expenses of sanitary authority.

8. The expenses incurred in the execution of this Act by a local authority shall be defrayed as follows:

(1) When they are incurred by an urban sanitary authority, a rural sanitary authority, or a port sanitary authority, they shall be defrayed out of the fund or rate out of which the expenses of such authority, as a sanitary authority under the Public Health Act, 1875, are defrayed: Provided, that when they are incurred by a rural sanitary authority they shall be deemed to be general expenses; and

38 & 39 Vict. c. 55.

(2) When they are incurred by a vestry or district board in the metropolis they shall be defrayed as expenses incurred by such vestry or board in the execution of the Metropolis Management Act, 1855, and the Acts amending the same (*n*).

18 & 19 Vict. c. 120.

Regulations to be laid before Parliament.

9. An order of the Local Government Board making revoking or varying any regulation in pursuance of this Act shall not come into force until it has lain in a complete form as settled and approved by the Board for forty days before both Houses of Parliament during the session of Parliament.

The Local Government Board shall take steps for enabling all persons interested in any regulations made by that Board in pursuance of this Act to obtain copies thereof at such places in the neighbourhood of canals as the Local Government Board may prescribe, on payment of such sum not exceeding sixpence as may be prescribed by that Board (*o*).

Illegal detention of certificate of registry.

10. If the master of any canal boat illegally detains the certificate of registry of such boat, he may, on summary conviction before two justices, be directed by order of such justices to deliver up such certificate, and shall, in addition thereto, be liable to a fine not exceeding forty shillings, and

(*n*) Now the metropolitan borough councils. As to the duty of the local authority to enforce the Act and regulations under it, see the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), s. 3, *post*.

(*o*) See the regulations of the Local Government Board, dated September, 1878, and November, 1879, prescribing places and fixing prices for sale of regulations (Glen's Local Government Orders, pp. 473 and 478), and further regulations dated July, 1887.

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the justices may direct any part of such fine to be paid to the person injured by the detention of such certificate.

Application of fees under this Act.

11. All fees paid in respect of registration under this Act shall be carried to the fund or rate out of which the expenses incurred in the execution of this Act by the authority making such registration are by this Act declared to be payable (*p*).

Power of canal company, etc. to establish schools.

12. Any company or association, corporate or unincorporate, being the owners of any canal boats, or being the owners lessees or undertakers of any canal, may, with the assent of a special resolution of their members, and notwithstanding any Act of Parliament, charter, or document regulating the funds of the company or association, appropriate any portion of their funds to the establishment and maintenance, or establishment or maintenance, of a school or schools wherein the children of the persons employed in canal boats may be lodged maintained and educated, or educated only; with this restriction, that the children shall not be maintained gratuitously, but the lodging or education may be wholly or partially gratuitous.

A "special resolution" shall for the purposes of this Act mean a resolution passed in manner provided by the fifty-first section of the Companies Act, 1862 (*pp*).

25 & 26 Vict. c. 89.

Recovery of penalties.

13. Offences under this Act may be prosecuted, and fines under this Act may be recovered on summary conviction before two justices having jurisdiction, either in the place to which the boat in respect of which the offence was committed is registered as belonging, or in the place where the offence is committed, or in the place where the alleged offender for the time being is, in manner provided by the Summary Jurisdiction Act, 1848 (*q*).

11 & 12 Vict. c. 43, etc.

Definitions.

14. In this Act, unless the context otherwise requires—

The expression "sanitary authority" means an urban sanitary authority, a rural sanitary authority, or port sanitary authority: Provided, that in the case of the parishes mentioned in Schedule A. and the districts mentioned in Schedule B. to the Metropolis Management Act, 1855, so far as they are not within the

18 & 19 Vict. c. 120.

(*p*) See s. 8, *supra*.

(*pp*) See now the Companies (Consolidation) Act, 1908, by which the Companies Act, 1862, was repealed.

(*q*) *Sic.* in the second edition of the Statute Revised, but it ought to be "the Summary Jurisdiction (England) Acts," because in the original statute not only is the Act of 1848 referred to by its long title, but also "the Acts amending the same." See the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 (7). Fines are to be paid to the registration or sanitary authority. See the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), s. 8, *post*.

jurisdiction of a port sanitary authority, the vestry (*r*) of any such parish and the district board (*r*) of any such district elected under the Metropolis Management Act, 1855, and the Acts amending the same, shall be deemed to be sanitary authorities, and where other sanitary authorities are by this Act empowered to exercise powers conferred by the Public Health Act, 1875, may exercise similar powers conferred by any Act of Parliament extending to such parishes or districts : 38 & 39 Vict. c. 55.

The expression "parent" includes guardian, and every person who is liable to maintain or has the actual custody of any child :

The expression "urban sanitary authority" and "rural sanitary authority" and "port sanitary authority" have the same meaning as in the Public Health Act, 1875 : 38 & 39 Vict. c. 55.

The expression "canal" includes any river, inland navigation, lake, or water being within the body of a county, whether it is or not within the ebb and flow of the tide :

The expression "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal as above defined, and which is not a ship duly registered under the Merchant Shipping Act, 1854, and the Acts amending the same (*s*) : 17 & 18 Vict. c. 104.

The expression "owner" includes a person who, though only the hirer of a canal boat, appoints the master and other persons working such boat :

The expression "master" in relation to a canal boat means the person having for the time being command or charge of the boat.

15. [*Commencement of Act.*] (*t*)

16. This Act shall not extend to Scotland or Ireland. Extent.

17. This Act may be cited as the Canal Boats Act, 1877. Short title.

(*r*) Now the metropolitan borough councils.

(*s*) The excepted vessels may in some cases be registered as canal boats. See the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), s. 10, *post*. See now the Merchant Shipping Act, 1894, by which the Merchant Shipping Act, 1854, was repealed.

(*t*) Repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Appendix.

THE CANAL BOATS ACT, 1884.

(47 & 48 VICT. c. 75) (*u*).

An Act to amend the Canal Boats Act, 1877.

[14th August 1884.]

Certificate of registry made void by structural alterations.

1. A certificate of registration granted under the principal Act (*x*) shall cease to be in force in the event of any structural alterations having been made in the canal boat affecting the conditions upon which the certificate of registration has been obtained.

Penalty for contravention of regulations under Canal Boats Acts.

2. If default is made in complying with any of the regulations made or to be made by the Local Government Board and Education Department under the principal Act (*y*) or this Act (*z*), and for the time being in force, the master of the boat with respect to which the default is made, and also the owner of the boat, if in default, shall for each default be liable on summary conviction to a fine not exceeding twenty shillings.

Enforcement of Act by registration and sanitary authority, and report to be made.

3. It shall be the duty of every registration or sanitary authority within whose district any canal, or any part of a canal is situate, to enforce within such district the provisions of the principal Act and this Act, and any regulations made thereunder by the Local Government Board; and every such authority shall, within twenty-one days after the thirty-first day of December in every year, make a report (*a*) to the Local Government Board as to the execution of the principal Act and this Act, and of the regulations made thereunder as aforesaid, and as to the steps taken by such authority during the year to give effect to the provisions of the said Acts and regulations.

Inquiries and reports by Local Government Board.

4. The Local Government Board shall in every year present a report to both Houses of Parliament as to the execution of the principal Act and this Act, and the

(*u*) See the Canal Boats Act, 1877 (40 & 41 Vict. c. 60), *ante*, p. 361. The preamble to this Act is repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22). As to the omission of the clause of enactment, see s. 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(*x*) See the Canal Boats Act, 1877 (40 & 41 Vict. c. 60), s. 3, *ante*, p. 362.

(*y*) *Ibid.*, s. 2, *ante*, p. 362.

(*z*) See s. 5, *post*.

(*a*) As to this report, see Circular of the Local Government Board, dated November 28th, 1884.

observance of the regulations made by them thereunder; and shall cause inquiries to be made from time to time by an inspector or inspectors to be appointed by them for that purpose.

Such inspectors shall for the purpose of any inquiry under this Act have, in relation to witnesses and their examination, the production of papers, and inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts (*b*), and may enter any canal boat at any time by day (*c*), and examine the same and every part thereof, and may, if need be, for the purpose of such inquiry detain the boat, but for no longer time than is necessary.

The master of the boat shall, if required by any such inspector, produce to him the certificate of registry, if any, of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such inspector may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such inspector under this section shall be deemed to be an obstruction of such inspector.

If such inspector is obstructed in the performance of his duty under this Act, the person obstructing him shall be liable to a fine not exceeding forty shillings.

Power to make regulations as to school certificates, etc.

5. The power to make regulations given to the Local Government Board by the principal Act and this Act shall include power to the Education Department to make regulations with respect to the form of certificates or pass books as to attendance at school to be used by children in canal boats.

Annual report by Education Department. 33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79. 43 & 44 Vict. c. 23.

6. The Education Department shall every year report to Parliament as to the manner in which the Elementary Education Acts, 1870 and 1873, 1876 and 1880, are enforced

(*b*) 10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions as to the powers of poor law inspectors. Under these sections an inspector may summon any person to be examined before him, or to produce and verify on oath any books, contracts, agreements, accounts or copies of the same, and not relating to or involving any question of title to land (except the property of the local authority). He may examine witnesses on oath or require the party examined to make and subscribe a declaration of the truth of his evidence. Disobedience of any summons, refusing to produce, altering or concealing any books, etc., are misdemeanors, and evidence falsely given before the inspector is perjury.

(*c*) See *post*, s. 9.

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with respect to children in canal boats, and shall for that purpose direct her Majesty's Inspector of Schools to communicate with the school boards and school attendance committees in their district.

Lettering and numbering of canal boats.

7. A canal boat shall not be deemed to be lettered, marked, and numbered in conformity with section three of the principal Act (*d*), unless it is so lettered, marked, and numbered on both sides of the canal boat, or in some suitable position on the stern of the boat, so that the lettering, marking, and numbering may be plainly visible from both sides of the canal whereon the boat may be.

Application of fines.

8. Every fine recovered under the principal Act or this Act shall be paid in the case of a prosecution by any registration or sanitary authority or person authorised by any such authority to such authority or person, and if paid to such person shall be paid by him to such authority, and shall be applied towards the expenses of executing the principal Act and this Act, any Act to the contrary notwithstanding.

Definition of term "by day."

9. The expression "by day" in the principal Act and this Act shall be deemed to include the hours between six o'clock in the morning and nine o'clock at night.

Amendment of definition of canal boat.

10. If it shall at any time appear to the Local Government Board, on the representation of any registration or sanitary authority or of any inspector appointed under this Act, that the principal Act and this Act ought to apply to any vessel or class of vessels which would be within the definition of canal boat contained in section fourteen of the principal Act, if such vessel or class of vessels were not registered under the Merchant Shipping Act, 1854, and the Acts amending the same, the Local Government Board may declare that the principal Act and this Act shall apply to such vessel or class of vessels, although the same may be registered as aforesaid, and thereupon the same shall be deemed to be a canal boat or canal boats within the meaning of the principal Act and this Act, and the definition contained in section fourteen of the principal Act shall be amended accordingly (*e*).

Short title and construction of Act. 40 & 41 Vict. c. 60.

11. This Act may be cited as the Canal Boats Act, 1884, and shall be construed as one with the Canal Boats Act, 1877, which Act and this Act may be cited together as the Canal Boats Acts, 1877 and 1884.

(*d*) *Ante*, p. 362.

(*e*) This section amends the definition of canal boat in the Canal Boats Act, 1878 (40 & 41 Vict. c. 60), s. 14, *ante*, p. 366.

THE PUBLIC HEALTH (LONDON) ACT, 1891, AMENDMENT ACT, 1893.

(56 & 57 VICT. c. 47.)

An Act to amend the Public Health (London) Act, 1891, with respect to the Removal of Refuse.

[12th September 1893.]

Whereas under the Metropolis Management Act, 1855, the vestries and district boards of the metropolis were empowered to deal with the removal of street and other refuse, and provisions were contained in that Act as to the borrowing of money to defray the expenses incurred therein : 18 & 19 Vict. c. 120.

And whereas by the Public Health (London) Act, 1891, further powers were conferred with respect to the removal of street and house refuse, but the effect of the said Act has been to repeal the power of vestries and district boards of borrowing money for some of those purposes, and it is expedient that the said Act should be amended : 54 & 55 Vict. c. 76.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (ee) :

1. This Act may be cited as the Public Health (London) Act, 1891, Amendment Act, 1893. Short title.

2. This Act shall be read with and form part of the Public Health (London) Act, 1891, which is in this Act referred to as the "principal Act." Act to be read with principal Act.

3. Notwithstanding anything in the principal Act, expenses incurred or to be incurred by a vestry or district board as sanitary authority for and in connexion with the provision of land, wharves, destructors, plant, and equipment for the purposes of collection, removal, and disposal of house and street refuse, shall be and be deemed to have been expenses for the purposes of which a vestry or district board may borrow money as expenses incurred by them in the execution of the Metropolis Management Act, 1855. And sections one hundred and eighty-three to one hundred and ninety-one (both included) of that Act shall apply and have effect accordingly (*f*). As to expenses in connexion with provision of wharves, destructors, etc.

(*ee*) This preamble was repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

(*f*) See the provision in s. 105 (1) of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), *ante*, and the note thereto.

Under the Metropolis Management Act, 1855, the vestries and district boards of the metropolis were empowered to deal with the

Appendix.

THE MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. c. 60.)

An Act to consolidate Enactments relating to Merchant Shipping. [25th August 1894.]

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PART II.

MASTERS AND SEAMEN.

° ° ° ° °

Protection of Seamen from Imposition.

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Seamen's lodging-houses (*g*).

214.—(1) A local authority hereinafter mentioned (*h*) whose district (*h*) includes a seaport may, with the approval of the Board of Trade, make byelaws relating to seamen's lodging-houses in their district, and those byelaws shall be binding upon all persons keeping houses in which seamen (*i*) are lodged and upon the owners thereof and persons employed therein.

(2) The byelaws shall amongst other things provide for the licensing, inspection, and sanitary conditions of seamen's lodging-houses, for the publication of the fact of a house being licensed, for the due execution of the byelaws, for preventing the obstruction of persons engaged in securing that execution, for the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and for the exclusion from

removal of street and other refuse, and provision was made by the Act as to the borrowing of money to defray the expenses incurred for these purposes. The Public Health (London) Act, 1891, made further provision with respect to the removal of street and house refuse, but the effect of that Act was to repeal the power of vestries and district boards to borrow money for some of these purposes. The Public Health (London) Act, 1891, Amendment Act, 1893, has now provided that notwithstanding anything in the Act of 1891 expenses incurred by a vestry or district board as sanitary authority for or in connection with the provision of land, wharves, destructors, plant and equipment for the purposes of the collection, removal and disposal of house and street refuse shall be expenses for the purposes of which vestries and district boards may borrow money as expenses incurred by them in the execution of the Metropolis Management Act, 1855. The vestries and district boards are now superseded by the metropolitan borough councils. See note (*b*), *ante*, p. 198.

(*g*) This section takes the place of s. 48 of the Merchant Shipping (Fishing Boats) Act, 1883 (46 & 47 Vict. c. 41), now repealed by this Act.

(*h*) See sub-s. (7), *post*.

(*i*) Defined by s. 742, *post*.

licensed houses of persons of improper character, and shall impose sufficient fines not exceeding fifty pounds for the breach of any byelaw (*k*).

(3) The byelaws shall come into force from a date therein named, and shall be published in the London Gazette (*l*) and in one newspaper at the least circulating in the district, and designated by the Board of Trade.

(4) If the local authority do not within a time in each case named by the Board of Trade make, revoke, or alter, any byelaws under this section, the Board of Trade may do so (*m*).

(5) Whenever her Majesty in Council orders (*n*) that in any district or any part thereof none but persons duly licensed in pursuance of byelaws under this section shall keep seamen's lodging-houses or let lodgings to seamen from a date therein named, a person acting in contravention of that order shall for each offence be liable to a fine not exceeding one hundred pounds (*o*).

(6) A local authority may defray all expenses incurred in the execution of this section out of any funds at their disposal as sanitary authority, and fines recovered for a contravention of this section or of any byelaw under this section shall be paid to such authority and added to those funds.

(*k*) Byelaws under this section were made by the London County Council on July 6th and December 14th, 1909. By s. 680 (2) of this Act, any offence committed or fine recoverable under a byelaw made in pursuance of this Act may be prosecuted or recovered in the same manner as an offence or fine under this Act. By s. 680 (1) (b), an offence under this Act, punishable by a fine not exceeding £100, shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts. Then s. 681 (2) provides that fines are to be recovered as civil debts; s. 682 gives an appeal to quarter sessions in case the fine inflicted exceeds five pounds; s. 683 limits the time for commencing proceedings to within six months after the commission of the offence; s. 684 gives jurisdiction not only in the place where the offence was actually committed, but also in any place where the offender may happen to be. Sub-section (6) of the present section deals with the application of fines recovered.

(*l*) See s. 740, *post*.

(*m*) This power has not yet been exercised, nor has there been any exercise of the corresponding power under the repealed statute.

(*n*) See the Order in Council, dated February 19th, 1910, as to seamen's lodging-houses in the administrative county of London.

Section 738 of this Act gives power to revoke, alter, or add to any Order in Council, when made, and provides for the publication of Orders in Council in the London Gazette, for laying them before Parliament, and for their taking effect.

(*o*) As to the recovery and application of fines when recovered, see note (*k*), *supra*.

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(7) In this section the expression "local authority" means in the administrative county of London the county council, and elsewhere in England the local authority under the Public Health Acts (*p*) . . . and the expression "district" means the area under the authority of such local authority.

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PART XIV.

SUPPLEMENTAL.

° ° ° ° °

Transmission and Publication of Documents.

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Publication in London Gazette. 56 & 57 Vict. c. 66.

740. Where a document is required by this Act to be published in the London Gazette (*q*), it shall be sufficient if notice thereof is published in accordance with the Rules Publication Act, 1893 (*r*).

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Definitions and Provisions as to Application of Act.

Definitions.

742. In this Act, unless the context otherwise requires, the following expressions (*s*) have the meanings hereby assigned to them; (that is to say,)

. . . . .

"Seaman" includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;

. . . . .

"Port" includes place;

. . . . .

Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

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(*p*) Words relating to Scotland and Ireland only are here omitted.

(*q*) See s. 214 (3), *ante*, p. 373, as to publication of byelaws.

(*r*) By s. 3 (3) of this Act (56 & 57 Vict. c. 66), where any statutory rules are required by any Act to be published or notified in the London Gazette a notice in the Gazette of the rules having been made, and of the place where copies of them can be purchased, shal be sufficient compliance with the said requirement.

(*s*) Only those expressions are here included which occur in the foregoing section.

THE PUBLIC HEALTH ACT, 1896.

(59 & 60 VICT. c. 19.)

An Act to make further Provision with respect to Epidemic, Endemic, and Infectious Diseases, and to repeal the Acts relating to Quarantine. [7th August 1896.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of 38 & 39 Vict. c. 55, ss. 130, 134, as to regulations with respect to disease.

1.—(1) Regulations of the Local Government Board made in pursuance of section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875, or in pursuance of either of those sections, as extended to London by the Public Health (London) Act, 1891, may provide for such regulations being enforced and executed by the officers of Customs and the officers and men employed in the Coastguard as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by those sections may provide for—

(a) the signals to be hoisted by vessels having any case of epidemic, endemic, or infectious disease on board; and

(b) the questions to be answered by masters, pilots, and other persons on board any vessel as to cases of such disease on board during the voyage or on the arrival of the vessel; and

(c) the detention of vessels and of persons on board vessels; and

(d) the duties to be performed in cases of such disease by masters, pilots, and other persons on board vessels.

(2) Provided that the regulations shall be subject to the consent—

(a) so far as they apply to the officers of Customs, of the Commissioners of her Majesty's Customs; and

(b) so far as they apply to officers or men employed in the Coastguard, of the Admiralty; and

(c) so far as they apply to signals, of the Board of Trade.

(3) If any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875, or in pursuance of either of those sections as extended to

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London by the Public Health (London) Act, 1891 (*t*), and as amended by this Act, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues (*u*); and any such penalty, if not recovered under the provisions of the Acts relating to public health, shall be recoverable by action on behalf of the Crown in the High Court (*x*).

54 & 55 Vict. c. 76.

Transfer of powers under 39 & 40 Vict. c. 36, s. 234.

2. The powers exerciseable by her Majesty in Council or any two of the Lords of her Majesty's Privy Council under section two hundred and thirty-four of the Customs Consolidation Act, 1876 (*y*), shall be exerciseable by the Local Government Board, and accordingly in that section the words "the Local Government Board" shall be substituted for the words "her Majesty in Council or any two Lords of her Majesty's Privy Council."

(*z*) ° ° ° ° °

(*t*) See s. 82, *ante*, p. 171. These sections empower the Board to make regulations for the treatment of persons affected with cholera or any epidemic, endemic or infectious diseases, and preventing the spread of cholera and such other diseases; and, in case any part of England is affected or threatened by any formidable epidemic, endemic or infectious disease, for the speedy interment of the dead, for house to house visitation and for the provision of medical aid, etc. The power to make regulations under this Act and the enactments mentioned therein was extended by the Public Health Act, 1904 (4 Edw. 7, c. 16), s. 1, to the making of regulations for carrying into effect conventions with respect to the prevention of danger arising to public health from vessels, and the prevention of the conveyance of infection by means of vessels. See the Act, set out *post*. The power to make regulations under these enactments was further extended by the Public Health (Regulations as to Food) Act, 1907 (7 Edw. 7, c. 32), to the making of regulations as to the importation, preparation, storage and distribution of articles of food. See the Act set out *post*.

(*u*) It is questionable whether the daily penalty is incurred before as well as after conviction.

(*x*) See s. 117 of the Public Health (London) Act, 1891, *ante*, p. 225.

(*y*) By s. 234 of the Customs Consolidation Act, 1876, his Majesty in Council or any two of the Lords of his Majesty's Privy Council are empowered from time to time by Order to require that no person on board any ship coming to any port in the United Kingdom, the Channel Islands or the Isle of Man, or having touched at any place out of the United Kingdom, where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit the vessel before the state of health of the persons on board shall have been ascertained on examination by the proper officer of Customs at the place or places appointed by the Commissioners of Customs for the purpose, and before permission to land has been given. The section provides for the imposition of penalties on any person so quitting the vessel, and on the master, pilot, or person in charge of the ship if he does not on arrival at the place appointed, hoist and continue the signal directed by the order until the proper officer has given permission to haul it down.

5. In the making of the regulations referred to in this Act regard shall be had to the expediency of uniform regulations throughout the whole of the United Kingdom. Regulations to be uniform.

6. *The enactments relating to quarantine mentioned in the Schedule to this Act, and the other enactments therein mentioned, shall be repealed, as to the whole of the British Islands, to the extent appearing in the third column of that Schedule* (*z*). Repeal of enactments.

7. *This Act shall come into operation on the expiration of three months from the passing thereof* (*z*). Commencement of Act.

8. This Act may be cited as the Public Health Act, 1896. Short title.

(*z*) Sections 3 and 4 which relate to the application of the Act to Scotland and Ireland respectively are omitted.
Sections 3, 6, 7, and the Schedule are now repealed. See the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
6 *Geo.* 4, *c.* 78	*The Quarantine Act*, 1825.	*The whole Act.*
7 *Will.* 4 *and* 1 *Vict. c.* 36.	*The Post Office* (*Offences*) *Act*, 1837.	*In section six the words "and every master of a vessel, or any other person on board any ship liable to the performance of quarantine, who shall neglect or refuse to deliver to the person or persons appointed to superintend the quarantine all letters in his possession, shall forfeit twenty pounds."*
3 *&* 4 *Vict. c.* 96.	*The Post Office* (*Duties*) *Act*, 1840.	*Section thirty-six from "and also except such letters" to "despatched in the usual manner by the post."*
17 *&* 18 *Vict. c.* 94.	*The Public Revenue and Consolidated Fund Charges Act*, 1854.	*In Schedule B. the words "expenses of quarantine."*
30 *&* 31 *Vict. c.* 101.	*The Public Health* (*Scotland*) *Act*, 1867.	*Sections thirty-one, thirty-four, and fifty-six.*
38 *&* 39 *Vict. c.* 55.	*The Public Health Act*, 1875.	*Section one hundred and thirty from "Any person wilfully" to the end of the section.* *In Part III. of Schedule V. the words re-enacting* 29 *&* 30 *Vict. c.* 90, *ss.* 51 *and* 52.

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Session and Chapter.	*Short Title.*	*Extent of Repeal.*
39 & 40 *Vict.* c. 36.	*The Customs Consolidation Act*, 1876.	*In section two hundred and thirty-four the words "whether or not it shall on or after such examination be found expedient to order such vessels under the restraint of quarantine," and the words "and any penalty incurred under the Act of the sixth year of the reign of King George the Fourth chapter seventy-eight."*
52 & 53 *Vict.* c. 64.	*The Public Health Act*, 1889.	*The whole Act.*
54 & 55 *Vict.* c. 76.	*The Public Health (London) Act*, 1891.	*In section one hundred and forty-two the words "sections fifty-one and fifty-two of the Sanitary Act*, 1866, *and"* *So much of the Act as extends or applies any provision of the Public Health Acts which is repealed by this Act, and in particular the second paragraph of section one hundred and thirty of the Public Health Act*, 1875, *and the whole of section two of the Public Health Act*, 1889, *as set out in the First Schedule to the Act.*

This Schedule was repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

THE CLEANSING OF PERSONS ACT, 1897.

(60 & 61 VICT. c. 31.)

An Act to permit Local Authorities to provide Cleansing and Disinfection for Persons infested with Vermin.

[6th August 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power to local authorities to provide cleansing, etc., for persons infested with vermin.

1. *On and after the passing of this Act* (*a*) any local authority shall have the power, when in their discretion they shall see fit, to permit any person who shall apply to the said authority, on the ground that he is infested with vermin, to have the use, free of charge, of the apparatus (if any) which the authority possess for cleansing the person and his clothing from vermin. The use of such apparatus shall not be considered to be parochial relief or charitable allowance to the person using the same, or to the parent of such person, and no such person or parent shall by reason thereof be deprived of any right or privilege or be subject to any disqualification or disability (*b*).

Local authorities may expend any reasonable sum on buildings, appliances, and attendants that may be required for the carrying out of this Act, and any expenses for these purposes may be defrayed out of any rate or fund applicable by the authority for general sanitary purposes or for the relief of the poor.

Definition.

2. In this Act "local authority" means in England the council of any county borough, the district council of any district, any board of guardians, and in the county of London any sanitary authority as defined in the Public Health (London) Act, 1891 (*c*).

54 & 55 Vict. c. 76.

° ° ° ° °

Short title.

3. This Act may be cited as the Cleansing of Persons Act, 1897 (*d*).

(*a*) The words in italics were repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

(*b*) See s. 80 (4) of the Public Health (London) Act, 1891.

(*c*) Sections 3 and 4 are omitted as they relate only to the application of the Act to Scotland and Ireland respectively.

(*d*) See the provisions in Part V. of the London County Council (General Powers) Act, 1907, *post*, as to the cleansing of verminous persons.

Appendix.

THE PUBLIC HEALTH ACT, 1904.

(4 EDW. 7, c. 16.)

An Act to enable Regulations to be made for carrying into effect conventions with respect to the prevention of danger arising to public health from vessels, and the prevention of the conveyance of infection by means of vessels.

[15th August 1904.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sanitary regulations as to vessels. 59 & 60 Vict. c. 19.

1.—(1) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from vessels arriving at any port, and for the prevention of the conveyance of infection by means of any vessel sailing from any port, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any foreign country, and the regulations may in particular provide for the recovery of any expenses incurred in disinfection and of any charges authorised to be made by the regulations for the purpose of those regulations or any services performed thereunder, and also for any powers and duties under the regulations being executed and performed by local authorities:

Provided that the regulations shall not be made except after consultation with the Board of Trade.

(2) In the application of this Act to Scotland, Part IV. of the Public Health (Scotland) Act, 1897, shall be substituted for the Public Health Act, 1896.

60 & 61 Vict. c. 38.

(3) This Act shall extend to the Isle of Man with the substitution of section eight of the Local Government Amendment Act (Isle of Man), 1897, for the Public Health Act, 1896.

Short title.

2. This Act may be cited as the Public Health Act 1904 (*e*).

(*e*) See the Public Health Act, 1896, *ante*, and the notes to s. 1 thereof.

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THE PUBLIC HEALTH (REGULATIONS AS TO FOOD) ACT, 1907.

(7 EDW. 7, c. 32.)

An Act to enable Regulations to be made for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food. [28th August 1907.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to make regulations as to the importation, preparation, storage, and distribution of articles of food. 59 & 60 Vict. c. 19.

1.—(1) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption, and, without prejudice to the generality of the powers so conferred, the regulations may—

(a) provide for the examination and taking of samples of any such articles ;

(b) apply, as respects any matters to be dealt with by the regulations, any provision in any Act of Parliament dealing with the like matters, with the necessary modifications and adaptations ;

(c) provide for the recovery of any charges authorised to be made by the regulations for the purposes of the regulations or any services performed thereunder.

(2) For the purposes of regulations made under this Act, articles commonly used for the food or drink of man shall be deemed to be intended for sale for human consumption unless the contrary is proved.

(3) In the application of this Act to Scotland, Part IV. of the Public Health (Scotland) Act, 1897, shall be substituted for the Public Health Act, 1896. 60 & 61 Vict. c. 38.

Publication of regulations. 56 & 57 Vict. c. 66.

2. All regulations made under this Act shall be laid as soon as may be before Parliament, and the Rules Publication Act, 1893, shall apply to such regulations as if they were statutory rules within the meaning of section one of that

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Act, and that Act as so applied shall, notwithstanding anything in sub-section five of section one thereof, extend to Scotland, with the substitution of a reference to the Edinburgh Gazette for the reference to the London Gazette.

Short title.

3. This Act may be cited as the Public Health (Regulations as to Food) Act, 1907 (*f*).

(*f*) See the Public Health Act, 1896, and the Public Health Act, 1904, *ante*, and the notes to s. 1 of the earlier Act.

The following Orders and Circular Letters have been issued by the Local Government Board :

The Public Health (Foreign Meat) Regulations, 1908. September 12th, 1908.

The Public Health (First Series : Unsound Food) Regulations, 1908. September 12th, 1908.

Circular, dated September 16th, 1908, with reference to the said Regulations.

Circular, Foreign Meat (No. 2), dated December 12th, 1908.

Circular, Foreign Meat (No. 3), dated January 26th, 1909.

The City of London (Foreign Meat Regulations) Order, 1908, dated December 29th, 1908.

The City of London (First Series : Unsound Food Regulations) Order, 1908. December 29th, 1908.

The Southwark (Foreign Meat Regulations) Order, 1908. December 29th, 1908.

The Southwark (First Series : Unsound Food Regulations) Order, 1908. December 29th, 1908.

The Stepney (Foreign Meat Regulations) Order, 1908. December 29th, 1908.

The Stepney (First Series : Unsound Food Regulations) Order, 1908. December 29th, 1908.

The Poplar (Foreign Meat Regulations) Order, 1908. December 29th, 1908.

The Poplar (First Series: Unsound Food Regulations) Order, 1908. December 29th, 1908.

The Bermondsey (Foreign Meat Regulations) Order, 1908. December 29th, 1908.

The Bermondsey (First Series : Unsound Food Regulations) Order, 1908. December 29th, 1908.

Circulars, dated April 29th and July 26th, 1909.

The Public Health (Foreign Meat) Amending Regulations, 1909. September 27th, 1909.

Circular, dated September 30th, 1909.

See the provisions in ss. 7 and 8 of the London County Council (General Powers) Act, 1908, *post*, as to accommodation for the cooking of food in tenement houses, and as to sanitary regulations for premises used for sale, etc. of food for human consumption ; also the provisions of ss. 16—19 of the London County Council (General Powers) Act, 1909, *post*, as to accommodation for the storage of food in tenement houses.

THE CHILDREN ACT, 1908.

(8 EDW. 7, c. 67.)

* * * * *

Cleansing of verminous children.

122.—(1) A local education authority (*a*) may direct their medical officer, or any person provided with and, if required, exhibiting the authority in writing of their medical officer, to examine in any public elementary school provided or maintained by the authority the person and clothing of any child (*b*) attending the school, and, if on examination the medical officer, or any such authorised person as aforesaid, is of opinion that the person or clothing of any such child (*b*) is infected with vermin or is in a foul or filthy condition, the local education authority (*a*) may give notice in writing to the parent or guardian of, or other person liable to maintain, the child (*b*), requiring him to cleanse properly the person and clothing of the child within twenty-four hours after the receipt of the notice.

(2) If the person to whom any such notice as aforesaid is given fails to comply therewith within such twenty-four hours, the medical officer, or some person provided with and, if required, exhibiting the authority in writing of the medical officer, may remove the child (*b*) referred to in the notice from any such school, and may cause the person and clothing of the child to be properly cleansed in suitable premises and with suitable appliances, and may, if necessary for that purpose, without any warrant other than this section, convey to such premises and there detain the child (*a*) until the cleansing is effected.

(3) Where any sanitary authority within the district of a local education authority (*a*) have provided, or are entitled to the use of, any premises or appliances for cleansing the person or clothing of persons infested with vermin, the sanitary authority shall, if so required by the local education authority (*a*), allow the local education authority to use such premises and appliances for the purpose of this section

(*a*) The expression "local education authority" means a local education authority for the purpose of Part III. of the Education Act, 1902 (s. 131 of this Act).

(*b*) The expression "child" means a person under the age of fourteen years (s. 131 of this Act).

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upon such payment (if any) as may be agreed between them or, in default of agreement, settled by the Local Government Board.

(4) Where, after the person or clothing of a child (*c*) has been cleansed by a local education authority under this section, the parent or guardian of, or other person liable to maintain, the child allows him to get into such a condition that it is again necessary to proceed under this section, the parent, guardian, or other person shall, on summary conviction, be liable to a fine not exceeding ten shillings.

(5) Where a local education authority (*d*) give notice under this section to the parent or guardian of, or other person liable to maintain, a child (*c*), requiring him to cleanse the person and clothing of the child, the authority shall also furnish him with written instructions describing the manner in which the cleansing may best be effected.

(6) The examination and cleansing of girls under this section shall only be effected by a duly qualified medical practitioner or by a woman duly authorised as hereinbefore provided.

(7) For the purposes of this section "medical officer" means any officer appointed for the purpose of section thirteen of the Education (Administrative Provisions) Act, 1907.

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By s. 1 of the Cleansing of Persons Act, 1897, *ante*, p. 378, local authorities are empowered to provide buildings with appliances and attendants for cleansing persons infested with vermin, and to allow such persons and their clothes to be cleansed free of charge. Such cleansing is not to constitute parochial relief or charitable allowance either in the case of the person so cleansed or of his parent, and no such person or parent is by reason thereof deprived of any right or privilege, or subject to any disqualification or disability.

(*c*) See note (*b*), *ante*, p. 383.
(*d*) See note (*a*), *ante*, p. 383.

THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1893.

(56 & 57 Vict. c. ccxxi.)

° ° ° ° °

2. In this Act the following words and expressions have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say) : Interpretation of terms.

"The council" means the London County Council ;

"The county" means the administrative county of London.

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Prevention of Epidemic Disease.

13. The Local Government Board may assign to the council any powers and duties under the epidemic regulations made in pursuance of section 134 of the Public Health Act 1875 which they may deem it desirable should be exercised and performed by the council (*e*). Assignment of certain powers to council by Local Government Board.

If the Local Government Board are of opinion that any sanitary authority in whose default the council have power to proceed and act under the Public Health (London) Act 1891 is making or is likely to make default in the execution of the said regulations they may by order assign to the council for such time as may be specified in the order such powers and duties of the sanitary authority under the regulations as they may think fit. Where any such order has been made the expenses incurred by the council in pursuance of the order shall be recoverable from the sanitary authority in manner provided by sub-section 3 of section 101 of the Public Health (London) Act 1891 (*f*).

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26. All costs and expenses of the council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 . . . As to payments under this Act.

(*e*) See s. 82 of the Public Health (London) Act, 1891 ; s. 1 of the Public Health Act, 1896 ; the Public Health Act, 1904, and the Public Health (Regulations as to Food) Act, 1907, *ante*, and the notes thereto.

(*f*) See this section, *ante*, p. 291.

Appendix.

THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1896).

(59 & 60 VICT. c. CLXXXVIII.)

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Power to sanitary authorities to borrow for certain sanitary purposes.

32. The purposes for which under section 105 sub-section (2) of the Public Health (London) Act 1891 *vestries of parishes and boards of works for districts* (*g*) under the Metropolis Management Act 1855 and the Acts amending the same and also the *Woolwich Local Board* (*h*) are empowered to borrow shall extend to and include the purposes of providing shelter or house accommodation for persons removed from their homes in case of infectious disease (*i*).

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THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1897.

(60 & 61 VICT. c. CCLII.)

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PART IV.

POWERS TO VESTRIES AND DISTRICT BOARDS (*k*).

Sheds, etc. on disused burial grounds.

49. It shall be lawful for the council (*l*) and for the *vestries and district boards of works* (*k*) in the county of London (including the *Woolwich Local Board* (*m*)) with the consent of the council to erect and maintain upon any disused burial grounds in the county of London of which they respectively now have or hereafter may have the management or control any sheds for the protection of plants and gardening implements.

(*g*) Now the metropolitan borough councils.

(*h*) Now the metropolitan borough of Woolwich.

(*i*) See s. 105 (2) of the Public Health (London) Act, 1891, *ante*, p. 206, and the notes thereto.

(*k*) Now the metropolitan borough councils. See s. 99 of the Public Health (London) Act, 1891, and the notes thereto, *ante*, p. 196.

(*l*) The London County Council. See s. 2 of the Act.

(*m*) Now the metropolitan borough council of Woolwich.

50. Section 92 of the Public Health (London) Act 1891 shall be deemed to have authorised and shall authorise sanitary authorities upon such terms as may be agreed upon between such sanitary authorities and the council (*l*) to provide and maintain accommodation for the holding of inquests in connexion with a mortuary or other building belonging to such sanitary authority (*n*). Power to sanitary authorities to provide accommodation for inquests.

THE CITY OF LONDON (VARIOUS POWERS) ACT, 1900.

(63 & 64 VICT. c. CCXXVIII.)

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4. In this Act unless the subject or context otherwise requires terms to which meanings are assigned by any Act incorporated with this Act and any part of this Act have the same respective meanings: Interpretation.

. . . . .

"The city" means the city of London and the liberties thereof:

"The corporation" means the mayor and commonalty and citizens of the city of London:

"The common council" means the mayor aldermen and commons of the city in common council assembled:

"The consolidated rate" or "the sewer rate" mean respectively the consolidated rate or the sewer rate made under the provisions of the City of London Sewers Acts 1848 1851 and 1897:

. . . . .

5. Subject to the provisions of this Act this Act shall be carried into execution by the corporation acting by the common council. Act to be executed by common council.

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PART VII.

PUBLIC HEALTH.

54. The corporation shall make and enforce byelaws (*nn*) with respect to water-closets earth-closets privies ashpits Byelaws as to water-closets, etc.

(*n*) See s. 92 of the Public Health (London) Act, 1891, and the notes thereto, *ante*, p. 179.

(*nn*) Byelaws made in pursuance of this section were confirmed by the Local Government Board on September 7th, 1909.

Appendix.

cesspools and receptacles for dung and the proper accessories thereof in connection with buildings Provided that nothing in this part of this Act contained shall authorise the corporation to make or enforce any byelaws with respect to water-closets or the accessories thereof which would be inconsistent with or contrary to anything contained in the Metropolis Water Act 1852 or the Metropolis Water Act 1871 or any regulations or byelaws made thereunder "Ashpit" in this section means any ashpit dust-bin ash-tub or other receptacle for the deposit of ashes or refuse matter (*o*).

* * * * *

PART X.

FINANCE.

Expenses of execution of Act.

60. All expenses incurred by the corporation in carrying into execution the provisions of this Act (except the expenses connected with the part of this Act headed Police and Street Traffic) shall be paid out of the consolidated rate and the sewer rate or either of such rates and all moneys received by the corporation under the provisions of this Act except the part headed Police and Street Traffic shall be carried to the credit of the consolidated rate and the sewer rate or either of such rates.

* * * * *

PART XI.

MISCELLANEOUS.

General provision as to byelaws.

63. All byelaws from time to time made by the corporation under the powers of this Act shall except as in this Act specially provided be made under and according to the provisions with respect to byelaws contained in the provisions of the Public Health (London) Act 1891 (*p*).

Proof of byelaws and regulations.

64. The production of a copy of a byelaw or of a regulation made by the corporation under any of the provisions of this Act if authenticated by the common seal of the city shall until the contrary be proved be sufficient evidence of the due making and existence of the byelaw or regulation and if it be so stated in the copy of the byelaw or regulation having been approved or confirmed by the authority whose

(*o*) This definition is the same as that in s. 141 of the Public Health (London) Act, 1891, *ante*, p. 293.

(*p*) See s. 114 of that Act, *ante*, p. 220.

approval or confirmation is required to the making or before the enforcing of the byelaw.

Summary proceedings for offences expense, etc.

65. All offences fines penalties costs and expenses under this Act or under any byelaw made under the authority of this Act and directed to be prosecuted or recovered in a summary manner or the prosecution or recovery of which is not otherwise provided for may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts.

Appeal to quarter sessions.

66. Any person who deems himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act may save as otherwise provided in this Act or in any Act incorporated with this Act or any part of this Act appeal therefrom to a court of quarter sessions.

Penalties to be paid over to the chamberlain, etc.

67. All penalties recovered by the corporation under this Act or any byelaw thereunder shall be paid to the chamberlain of the city and be by him carried to the credit of the consolidated rate or the sewer rate as the case may be.

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THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1900.

(63 & 64 VICT. C. CCLXVIII.)

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29. It shall be lawful for the council (*q*) and for the *vestries and district boards of works* (*r*) in the county of London (including the *Woolwich Local Board*) (*s*) with the consent of the council to erect and maintain upon any disused burial grounds in the county of London of which they respectively now have or hereafter may have the management or control such lavatories and sanitary conveniences as are necessary for the use of persons resorting thereto:

Provided that the council and the *vestries and district boards of works* (*r*) shall not exercise the powers contained in this section in respect of any disused burial ground which has been consecrated unless and until they have been authorised to do so by a faculty from the Bishop's court of the diocese in which such disused consecrated burial ground is situate and subject to such conditions and restrictions as shall be inserted in the faculty.

(*q*) The London County Council.
(*r*) Now the metropolitan borough councils.
(*s*) Now the metropolitan borough of Woolwich.

Appendix.

THE CITY OF LONDON (PUBLIC HEALTH) ACT, 1902.

(2 EDW. 7, c. CXVI.)

An Act for regulating the removal of house refuse and the materials arising from the demolition of buildings within the city and the nuisances caused by such demolition and for other purposes. [22nd July 1902.]

WHEREAS provisions for the removal of house refuse within the city are at present inadequate :

And whereas great nuisance is caused during the demolition of buildings within the city by want of proper control over such demolition and the removal of materials resulting therefrom and great damage and inconvenience is done and caused by the dust and dirt arising from such demolition :

And whereas it is expedient that further powers be granted to the mayor and commonalty and citizens of the city of London (in this Act referred to as "the corporation") as street and sanitary authority and for the improvement of the health and for the better government of the city :

And whereas the purposes aforesaid cannot be effected without the authority of Parliament :

May it therefore please your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :

Short title.

1. This Act may be cited as the City of London (Public Health) Act, 1902.

Interpretation.

2. In this Act unless the subject or context otherwise requires—

"The city" means the city of London and the liberties thereof :

"The corporation" means the mayor and commonalty and citizens of the city of London :

"The common council" means the mayor aldermen and commons of the city in common council assembled :

"House refuse" means ashes cinders breeze dust or rubbish but does not include the refuse of any trade manufacture or business or of any building materials.

Act to be executed by common council.

3. Subject to the provisions of this Act this Act shall be carried into execution by the corporation acting by the common council.

As to removal of house refuse.

4. Notwithstanding anything contained in any Act of Parliament the inmates and occupiers of any house within the city who do not deposit their house refuse in the ashpit attached to the building of which they are the inmates or occupiers shall deposit such house refuse before eight o'clock in the morning on the kerbstone of the foot pavement in a street and all house refuse deposited in a street in accordance with the provisions of this Act or of the Metropolitan Streets Act 1867 shall be contained in a box barrel or receptacle of a prescribed pattern or patterns. The corporation may make byelaws for giving effect to this section.

Corporation may make byelaws as to demolition of buildings.

5. The corporation may make byelaws in relation to the demolition of buildings within the city for the following purposes (that is to say):

The placing of fans at the level of each floor;

The hoarding up of windows from which sashes and glass have been removed:

The regulation of demolition of internal parts of buildings before commencing to take down external walls:

The placing of screens or mats to prevent nuisance arising from dust:

The compelling the use of water to prevent nuisance arising from dust:

The regulating the periods of the day or night during which ceilings may be broken down and mortar shot or allowed to fall into any basement:

The regulating the hours of the day or night during which materials arising from the demolition of buildings may be carted away (*ss*).

Exemption for railway property.

6. Nothing in this Act or any byelaws to be made thereunder shall apply to any building (not being a dwelling-house) belonging to any railway company and used by such company as a part of or in connection with their railway.

Byelaws to be allowed by Local Government Board.

7. Byelaws made under this Act shall not come into operation until they are allowed by the Local Government Board and such byelaws shall be made subject and according to the provisions contained in section 184 of the Public Health Act 1875 which section shall apply in like manner as if the corporation were a local authority (*t*).

Penalties in byelaws.

8. Byelaws under this Act may impose penalties not exceeding five pounds for each breach thereof but shall be

(*ss*) Byelaws made in pursuance of this section were confirmed by the Local Government Board on July 20th, 1904.

(*t*) See this section set out, *ante*, p. 347.

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so framed as to allow in every case of less than the maximum penalty being ordered to be paid.

Printing and sale of bye-laws.

9. The corporation shall cause all byelaws for the time being in force under this Act to be printed and a copy thereof to be sold at a price not exceeding sixpence to every person desiring to buy the same.

Proof of byelaws.

10. The production of a printed copy of byelaws purporting to be made and allowed under this Act and purporting to be printed by the direction of the corporation and to be authenticated by the signature of the town clerk of the city shall be evidence of the existence and contents and due making of those byelaws and of the approval thereof (where approval is required) without proof of the signature of the town clerk or of any other matter.

Recovery of penalties.

11. Save as otherwise by this Act expressly provided all offences against this Act and all penalties forfeitures costs and expenses imposed or recoverable under this Act or any byelaw made in pursuance thereof may be prosecuted and recovered in a summary manner and shall on recovery be paid to the chamberlain of the city and shall be carried to the account of the consolidated rate or sewer rate or either of such rates Provided that costs or expenses except such as are recoverable along with a penalty shall not be recovered as penalties but may be recovered summarily as civil debts.

Appeal to quarter sessions.

12. Any person who deems himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act may appeal therefrom to a court of quarter sessions.

Exempting property of Inner and Middle Temples.

13. The lands buildings and property of—

(1) The Honourable Society of the Inner Temple;

(2) The Honourable Society of the Middle Temple;

shall be exempt from the operation of this Act.

Saving rights of Crown.

14. Nothing in this Act affects prejudicially any right power privilege or exemption of the Crown.

Expenses of Act.

15. The costs charges and expenses preliminary to and of and incidental to the preparing of and applying for and the obtaining and passing of this Act shall be paid by the corporation out of their consolidated rate or sewer rate or either of such rates.

THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1902.

(2 Edw. 7, c. clxxiii.)

* * * * *

3. In this Act the following words and expressions have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say): Interpretation.

"The council" means the London County Council;

"The county" means the administrative county of London:

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Part VIII.

Ice Creams (*u*).

42. Any person being a manufacturer of or merchant or dealer in ice creams or other similar commodity who within the county— For regulating manufacture and sale of ice-creams, etc.

(a) Causes or permits ice creams or any similar commodity to be manufactured sold or stored in any cellar shed or room in which there is any inlet or opening to a drain or which is used as a living room or sleeping room;

(b) In the manufacture sale or storage of any such commodity does any act or thing likely to expose such commodity to infection or contamination or omits to take any proper precaution for the due protection of such commodity from infection or contamination; or

(c) Omits on the outbreak of any infectious disease amongst the persons employed in his business or living or working in on or about the premises in or on any part of which any such commodity as aforesaid is manufactured sold or stored to give notice thereof forthwith to the medical officer of the sanitary district in which such business is carried on or such premises are situate;

shall be liable for every such offence on conviction in a court of summary jurisdiction to a penalty not exceeding forty shillings.

(*u*) See the London County Council (General Powers) Act, 1904, s. 48, *post*.

Itinerant vendors to exhibit name of manufacturer of ice-cream, etc. on barrow.

43. Every itinerant vendor of any such commodity as aforesaid shall if not himself the manufacturer thereof exhibit in a legible manner on a conspicuous part of his barrow a notice stating the name and address of the person from whom he obtains such commodity and if such vendor is himself the manufacturer of such commodity he shall in the same manner exhibit his own name and address. Every such itinerant vendor who shall fail to comply with the provisions of this section shall be liable for each offence on conviction as aforesaid to a penalty not exceeding forty shillings.

Procedure.

44. Proceedings for the recovery of the penalties imposed by the two last preceding sections of this Act shall be instituted by the sanitary authority for the district in which the offence was committed or of the district to the medical officer of which such notification as aforesaid ought to have been made or in which such itinerant vendor as aforesaid shall offer any such commodity as aforesaid for sale as the case may be:

Provided always that if any sanitary authority omit to institute such proceedings the council may institute the same as if such omission were a default within the meaning of the Public Health (London) Act 1891 and the provisions of that Act relating to any such default and the consequences thereof shall apply with respect to such proceedings.

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PART IX.

COMMON LODGING-HOUSES (*x*).

Council may give notice requiring application for licence to keep a common lodging-house.

46. The council may within six months after the passing of this Act give notice to every keeper of a common lodging-house in the county who shall then be registered under the Common Lodging-Houses Acts 1851 and 1853 (*y*) (hereinafter referred to as "registered common lodging-house keepers") requiring him to make application in writing to the council within one month after receipt of such notice or within such further period as the council may prescribe for a licence to keep a common lodging-house in the county and to receive lodgers therein and such application shall specify the premises in respect of which application is made for such licence and the number of lodgers proposed to be received therein. Such notice shall be given by

(*x*) See the London County Council (General Powers) Act, 1904, s. 47, and the London County Council (General Powers) Act, 1907, s. 79.

(*y*) See the note to s. 94 (2) of the Public Health (London) Act, 1891, *ante*, with reference to the Common Lodging-Houses Acts, 1851 and 1853, and the area to which they apply.

leaving the same for each registered common lodging-house keeper at his lodging-house and may be in the form set out in the Schedule to this Act or to the like effect.

Council to inquire as to suitability of applicant and of premises.

47. The council shall as soon as practicable after any such application shall have been made to them make or cause to be made all necessary and proper inspections and inquiries both as to whether the person so applying is a fit and proper person to have the control and management of a common lodging-house and as to whether the premises in respect of which application is made for a licence are structurally and otherwise suitable for use and occupation as a common lodging-house having regard to the number health safety and convenience of persons occupying or intended to occupy the same.

Granting of licence.

48. If in the opinion of the council the person applying for a licence is a fit and proper person to have control and management of a common lodging-house and the premises in respect of which the application is made are suitable for a common lodging-house the council may grant to such person a licence to use the premises specified in his application for the purpose of a common lodging-house and to receive lodgers therein and such licence shall specify the maximum number of persons who may at any one time occupy such premises.

Period of licence and as to renewal and cancellation.

49. Such licence shall be valid for the period of one year from the date thereof but after the expiration of the said period the same shall be of no force or effect. The person named in any such licence (hereinafter referred to as "a licensed lodging-house keeper") may at or before the expiration of the said period make application to the council to renew his licence in respect of the same premises and if the council shall think fit they may renew such licence accordingly for a further period of one year from the expiration of any licence and so from time to time (*z*).

Appeal against refusal to licence.

50.—(1) The council shall not refuse to grant or renew a licence under this part of this Act except upon the ground (a) that the person applying to be licensed is not a fit and proper person to be licensed as a common lodging-house keeper or (b) that the premises are not suitable or suitably equipped for the purposes of a common lodging-house.

(2) If the council refuse to grant a licence under this part of this Act they shall if required by the applicant deliver to him a statement in writing of the ground or grounds upon which such licence is refused.

(*z*) See the London County Council (General Powers) Act, 1904, s. 47, and the London County Council (General Powers) Act, 1907, s. 79 (2).

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(3) If the licence or renewal of licence be refused any person aggrieved by such refusal may appeal to a metropolitan police magistrate provided that such appeal is made within fourteen days from the date of such refusal and not less than twenty-four hours' notice of such appeal be sent to the council.

(4) If a licence or renewal of licence be refused upon the ground that the premises are not suitable or suitably equipped for the purposes of a common lodging-house the magistrate shall have power to appoint a person being a properly qualified surveyor or architect to examine and report to him upon the condition of such premises and their suitability for the purposes of a common lodging-house.

(5) The costs of any such appeal including the expenses of any such examination and report as aforesaid shall be paid in such manner and by such parties to the appeal as the said magistrate may direct.

Unlicensed person not to keep a common lodging-house.

51. From and after the expiration of the period of notice to be given by the council as aforesaid no person unless he shall have applied for and obtained a licence under this part of this Act shall keep a common lodging-house in the county or receive lodgers therein.

Future applications for licences.

52. Any person who shall hereafter be desirous of becoming a licensed lodging-house keeper in the county shall be at liberty to make application to the council in the same manner as if he had at the date of the passing of this Act been a registered common lodging-house keeper and the provisions of this part of this Act shall apply accordingly.

Byelaws relating to common lodging-houses.

53.—(1) From and after the passing of this Act section 9 of the Common Lodging-Houses Act 1851 (*a*) shall cease to be operative or have effect in the county.

(2) The council may make byelaws (*b*)—

(a) For fixing and from time to time varying the number of lodgers who may be received into a common

(*a*) Section 9 of the Common Lodging-Houses Act, 1851, provided as follows: "The local authority may from time to time make regulations respecting common lodging-houses within its jurisdiction for all or any of the purposes respecting the same for which the local board of health are by the Public Health Act, 1848, authorised to make byelaws, and for the well ordering of such houses and for the separation of the sexes therein: Provided always, that the regulations made under this Act by the local authority shall not be in force until they have been confirmed by one of her Majesty's Principal Secretaries of State."

(*b*) The byelaws made by the London County Council under this section are dated July 2nd, 1903, and were approved by the Local Government Board on August 14th, 1903.

lodging-house and for the separation of the sexes therein; and

(b) For promoting cleanliness and ventilation in such houses and

(c) For the giving of notices and the taking precautions in the case of any infectious disease; and

(d) Generally for the well ordering of such houses.

(3) Any byelaws made by the council under the provisions of this section shall be made subject and according to the provisions referred to in section 114 of the Public Health (London) Act 1891 (*c*).

As to keeping lodging-houses open after death of registered keeper.

54. Notwithstanding anything in the Common Lodging-Houses Act 1853 contained to the contrary notice shall be given to the council of the death of any registered lodging-house keeper in the county forthwith after the same shall have occurred and the right by section 3 of the last-mentioned Act conferred upon the widow or any member of the family of a registered lodging-house keeper to keep such common lodging-house open and of receiving lodgers therein for four weeks after such death without registration shall not be exerciseable unless such notice shall have been duly given (*d*).

Penalties or fines to be paid to council.

55. Whenever in consequence of proceedings taken by the council against any person in respect of any offence in connection with a common lodging-house in the county a pecuniary penalty or fine is inflicted the amount of such penalty or fine shall notwithstanding anything in the Metropolitan Police Courts Act 1839 or in any other Act or Acts contained to the contrary be payable and paid to the council.

Saving and application of provisions of general Acts.

56. Notwithstanding anything in this Act contained the provisions of the Common Lodging-Houses Acts 1851 and 1853 shall except so far as the same are varied by or inconsistent with the provisions of this part of this Act

(*c*) See s. 114 of the Public Health (London) Act, 1891, *ante*, p. 220, and the notes thereto.

(*d*) Section 3 of the Act of 1853 is in the following terms: "A person shall not keep a common lodging-house or receive a lodger therein until the house have been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and have been registered as by the recited Act provided; and a person shall not keep a common lodging-house unless his name as the keeper thereof be entered in the register kept under the recited Act: Provided always, that when the person so registered dies, his widow or any member of his family may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof."

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continue to be of full force and effect and the provisions of the said Acts with respect to a registered common lodging-house keeper shall except so far as the same are varied by or inconsistent with the provisions of this part of this Act apply to a licensed common lodging-house keeper.

Offences.

57. Section 14 of the Common Lodging-Houses Act, 1851 (*e*) and section 11 of the Common Lodging-Houses Act 1853 (*f*) shall extend to offences against any of the provisions of this part of this Act or any byelaws made thereunder so as to render the offenders liable to penalties or imprisonment as in the said sections respectively mentioned.

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As to payments under this Act.

59. All costs and expenses of the council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general or special county purposes within the meaning of the Local Government Act 1888 as the council may decide . . .

THE SCHEDULE REFERRED TO IN THE FOREGOING ACT.

FORM OF NOTICE TO LODGING-HOUSE KEEPER.

Take notice that in pursuance of the provisions of the London County Council (General Powers) Act 1902 the London County Council hereby require you to make application to them in writing on or before the day of for a licence to keep a common lodging-house in the county of London and to receive lodgers therein and to specify in such application the premises in respect

(*e*) This section is as follows: "If the keeper of a common lodging-house, or any other person having or acting in the care or management thereof, offend against any of the provisions of this Act, or any of the byelaws or regulations made in pursuance of this Act, or if any person in any common lodging-house be confined to his bed for forty-eight hours by fever or any infectious or contagious disease, without the keeper of such house giving notice thereof as required by this Act, every person so offending shall for every such offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which the offence continues: Provided always, that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act."

(*f*) This section is as follows; "The fourteenth section of the recited Act extends to offences against any of the provisions of this Act, so as to render the offenders liable to the penalties therein expressed; and any person convicted of any offence against the recited Act and this Act, or either of them, may, in default of payment of the penalty imposed, be imprisoned for any term not exceeding three months in the manner provided by law in that behalf."

of which your application is made and the number of lodgers proposed to be received therein And the council hereby give you notice that if you omit to make such application on or before the said day of and thereafter keep or continue to keep a common lodging-house in the said county you will under the provisions of the Common Lodging-Houses Acts 1851 and 1853 as extended or varied by the said London County Council (General Powers) Act 1902 be liable to a penalty not exceeding five pounds for every lodger whom you receive in your common lodging-house after the said day of without having obtained such a licence as aforesaid and in default of payment of the penalty imposed to imprisonment for not exceeding three months And further take notice that on your applying to the clerk of the London County Council Spring Gardens London S.W. such a licence as aforesaid if granted will be so granted by the council free of all charge to you.

Dated this day of .

THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1903.

(3 Edw. 7, c. clxxxvii.)

* * * * *

Interpretation.

3. In this Act the following words and expressions have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say):

"The council" means the London County Council;

"The county" means the administrative county of London:

And the several words and expressions to which by the Acts wholly or partly incorporated herewith meanings are assigned have in this Act the same respective meanings unless there be in the subject or context something repugnant to or inconsistent with such construction.

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Part VIII.

Depots for Receiving Horses for Slaughter or Dead Horses and Removal of Dead Horses.

Unlicensed premises not to be used for receiving horses for slaughter or dead horses.

53.—(1) From and after the passing of this Act it shall not be lawful for any person to use any yard building or other premises within the county for receiving or keeping horses for slaughter or the carcases of dead horses unless

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he shall hold a licence from the council to use such yard building or other premises for that purpose.

(2) The council may grant such licences subject to such conditions as they may think fit and every such licence shall be subject to the provisions relating to granting and otherwise for the time being in force with respect to licences for keeping or using premises within the county as a slaughter-house or knacker's yard Provided that no licence under this section shall extend to entitle the holder to carry on upon the premises in respect of which the same shall have been granted the business of a slaughterer of horses or knacker but the provisions of this section shall not be construed or deemed to prejudice or affect the right of any person for the time being lawfully carrying on any of such last-mentioned businesses to use under a licence from the council and subject to the provisions of the Public Health (London) Act 1891 (*g*) premises in the county as a slaughter-house or knacker's yard.

(3) Any person contravening the provisions of this section or any of the conditions subject to which his licence shall have been granted shall be liable on conviction to a penalty of not exceeding fifty pounds for every such offence and to a further penalty of not exceeding fifty pounds for every day during which such offence shall continue after conviction thereof.

Power to council to make bye-laws as to conveyance of dead horses through streets.

54. From and after the passing of this Act it shall be lawful for the council to make vary and amend byelaws (*h*) with respect to the mode of conveying the carcases of dead horses through and along public streets in the county.

Such byelaws shall be subject to the provisions of the Metropolis Management Act 1855 (*i*) respecting the making confirmation approval publication and evidence of byelaws but the said provisions shall for the purposes of this Act be read and construed as if the Local Government Board were named therein instead of one of her Majesty's Principal Secretaries of State.

Enforcement of byelaws.

55. Subject to the provisions of this Act the byelaws referred to in the last preceding section of this Act may be

(*g*) See the provisions in s. 20 of the Public Health (London) Act, 1891, with reference to the carrying on of the business of a slaughterer of cattle or horses and knacker, *ante*, p. 53, and the notes thereto.

(*h*) The byelaws made by the London County Council under this section were confirmed by the Local Government Board on February 21st, 1905.

(*i*) See the unrepealed provisions of s. 202 of the Metropolis Management Act, 1855.

enforced by the council of the metropolitan borough in which any breach of any such byelaw shall be committed and the provisions of the said Metropolis Management Act 1855 (*i*) respecting proceedings under any such byelaws shall apply to such enforcement :

Provided always that the council on it being proved to their satisfaction that the council of any metropolitan borough has made default in the enforcement of any such byelaw may institute any proceeding and do any act which such council might have instituted or done for that purpose and shall be entitled to recover from the council of the metropolitan borough in default all such expenses in and about the said proceeding or act as the council incur and are not recovered from any other person and have not been incurred in any unsuccessful proceeding.

This part of Act not to apply to city of London.

56. The provisions of this part of this Act shall not apply to the city of London.

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As to payments under this Act.

70. All costs and expenses of the council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 . . .

THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1904.

(4 Edw. 7, c. ccxliv.)

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Interpretation.

3. In this Act the following words and expressions have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say) :

"The council" means the London County Council ;

"The county" means the administrative county of London ;

"The corporation" means the mayor and commonalty and citizens of the city of London acting by the mayor aldermen and commons of the city of London in common council assembled ;

"The city" means the city of London and the liberties thereof ;

"The Woolwich Council" means the council of the metropolitan borough of Woolwich :

Appendix.

And the several words and expressions to which by the Acts wholly or partly incorporated herewith meanings are assigned have in this Act the same respective meanings unless there be in the subject or context something repugnant to or inconsistent with such construction.

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PART IV.

SANITARY.

Filthy dangerous or unwholesome articles to be purified.

19.—(1) Where on the certificate of the medical officer of health of any sanitary district it appears to the sanitary authority of that district that any articles in any house or part thereof in that district are in such a filthy dangerous or unwholesome condition that health is affected or endangered thereby or that the cleansing or purifying or destroying of any such articles is requisite to prevent risk of or to check infectious disease the sanitary authority may cause any such articles to be at their own expense cleansed or purified or they may destroy the same.

(2) If any owner suffer any unnecessary damage the sanitary authority shall compensate him for the same and the sanitary authority shall also reasonably compensate the owner for any articles destroyed.

Houses infested with vermin to be cleansed.

20.—(1) Where on the certificate of the medical officer of health of any sanitary district it appears to the sanitary authority of that district that any house or part thereof in that district is infested with vermin such sanitary authority shall give notice in writing to the owner or occupier of such house or part thereof requiring him within a period to be specified in such notice to cleanse such house or the portion thereof specified in the notice and if so required in the notice to remove the wall paper from the walls of such house or the part thereof specified in the notice and to take such other steps for the purpose of destroying and removing vermin as the case may require.

(2) If the person to whom such notice is given fails to comply therewith within the time therein specified he shall be liable on summary conviction to a fine not exceeding ten shillings for every day during which he makes default in complying with the requirements of such notice and the sanitary authority may if they think fit at any time after the expiration of the period specified in the notice themselves do any work required by the notice to be done and all reasonable costs and expenses incurred by the sanitary authority in so doing shall (subject as hereinafter provided)

be recoverable summarily as a civil debt from the person making the default.

(3) Upon any proceedings under this section the court may inquire as to whether any requirement contained in any notice given or any work done by the sanitary authority was reasonable and as to whether the costs and expenses incurred by the sanitary authority in doing such work or any part thereof ought to be borne wholly or in part by the person to whom the notice was given and the court may make such order concerning such costs and expenses or their apportionment as appears to the court to be just and equitable under the circumstances of the case.

Provision of means for cleansing, etc. filthy articles and houses.

21. Section 59 of the Public Health (London) Act 1891 shall for the purposes of the two last preceding sections of this Act extend and be applicable to the provision of means for cleansing purifying and destroying filthy dangerous or unwholesome articles and for the removal thereof and for the cleansing of houses infested with vermin as if the said section 59 were re-enacted herein and in terms made applicable thereto (*k*).

Sanitary authority may require removal or alteration of sanitary conveniences.

22. If any sanitary convenience now or hereafter erected in or accessible from any street in any sanitary district shall be so placed or constructed as to be a nuisance or offensive to public decency the sanitary authority of that district by notice in writing may require the owner to remove such convenience or otherwise to reconstruct the same in such a manner and with such materials as may be required to abate the nuisance and remove the offence against public decency Any owner who fails within a reasonable time to comply with a notice under this section shall be liable on summary conviction to a fine not exceeding five pounds and to a further fine not exceeding twenty shillings for every day during which he makes default in complying with the requirements of such notice after such conviction (*l*).

Fixed ashpits to be removed where movable ashpits provided.

23. Where any person shall have provided in connection with any building in any sanitary district a movable ashpit conforming with the requirements of any byelaw or order made under any statutory power or authority in that behalf it shall be lawful for the sanitary authority of that district by notice in writing to require the owner of such building to remove or fill up any fixed ashpit in or about such building

(*k*) See the provisions of s. 59 of the Public Health (London) Act, 1891, *ante*, p. 142, and the notes thereto.

(*l*) See the provisions in s. 44 of the Public Health (London) Act, 1891, *ante*, p. 100, as to the provision of public conveniences.

Appendix.

and restore to a good and sanitary condition the site of such ashpit within a reasonable period to be prescribed in such notice and if such owner fails to comply therewith within the period so prescribed he shall be liable on summary conviction to a fine not exceeding twenty shillings and to a further fine not exceeding ten shillings for every day during which he makes default in complying with such notice after such conviction (*m*):

Provided that the sanitary authority may if in the circumstances of any particular case they think fit bear any reasonable costs and expenses or part thereof incurred in executing work under this section.

Power to sanitary authorities, etc., to enter.

24.—(1) If the sanitary authority of any sanitary district have reasonable cause to suppose—

(A) that any articles in any house or part thereof in that district are in such a condition as is described in the section of this Act of which the marginal note is "Filthy dangerous or unwholesome articles to be purified"; or

(B) that any house or part thereof in that district is infested with vermin

such sanitary authority may enter on such house or part thereof and may inspect and examine the same and any articles therein for the purposes of the sections of this Act of which the marginal notes are respectively "Filthy dangerous or unwholesome articles to be purified" and "Houses infested with vermin to be cleansed."

(2) The sanitary authority of any sanitary district shall have a right to enter at all reasonable times any house building or premises or part thereof in that district for the purpose of examining whether there is any contravention of the provisions of this Part of this Act or any non-compliance with the requirements of any notice given thereunder respectively (*n*).

Enforcement of this Part of Act and provisions relating thereto.

25. It shall be the duty of the sanitary authority for each sanitary district to enforce within that district the provisions of this Part of this Act and for that purpose the sanitary authorities shall have all the rights and powers and be subject to all the liabilities and obligations conferred

(*m*) The obligation to provide a sufficient ashpit is contained in s. 37 of the Public Health (London) Act, 1891. The London County Council are required to make byelaws with respect to ashpits by s. 39 of that Act.

(*n*) See the power of entry conferred by ss. 10, 40 and 115 of the Public Health (London) Act, 1891, *ante*, and the notes thereto.

or imposed upon them by sections 101 115 116 117 118 119 121 124 125 127 128 133 and 135 of the Public Health (London) Act 1891 and those sections shall apply and have effect in respect of this Part of this Act as if they were expressly re-enacted in and in terms made applicable to this Part of this Act (*o*).

Interpretation in this Part of Act.

26. For the purposes of this Part of this Act unless the context otherwise requires—

The expression "sanitary authority" means the corporation in respect of the city and as port sanitary authority in respect of so much of the port of London as established for the purposes of the laws relating to the customs of the United Kingdom as is within the county the overseers of the Inner and Middle Temples in respect of the places known as the Inner and Middle Temples respectively and as respects any metropolitan borough (except as to any portion thereof which may be within the said portion of the port of London) the council of such borough;

The expression "sanitary district" means the city or so much of the port of London as is within the county or the places known as the Inner and Middle Temples respectively or any metropolitan borough (except as to any portion thereof which may be within the said portion of the port of London);

The expression "house" includes schools and other buildings in which persons are employed and the curtilage of a house and any building or house wholly or partly erected under statutory authority but shall not include any premises being a factory workshop or laundry to which the Factory and Workshop Act 1901 applies or any building belonging to any dock company situate within the dock premises and not used wholly or in part as a dwelling-house or stable;

The expression "owner" means the person for the time being receiving the rack-rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or who would so receive the same if such premises were let at a rack-rent;

The expression "rack-rent" means rent which is not less than two-thirds of the full annual value of the premises out of which the rent arises and the full annual value shall be taken to be the annual rent which a tenant

(*o*) See the sections of the Public Health (London) Act, 1891, here referred to, *ante*, and the notes thereto.

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might reasonably be expected taking one year with another to pay for the premises if the tenant undertook to pay all usual tenants' rates and taxes and tithe commutation rent-charge (if any) and if the landlord undertook to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the premises in a state to command such rent ;

The expression "ashpit" means any ashpit dustbin ash-tub or other receptacle for the deposit of ashes or refuse matter ;

The expression "sanitary convenience" includes any urinal water-closet earth-closet or privy and any similar convenience (*p*).

PART V.

TUBERCULOSIS OF THE UDDER IN COWS.

Council may cause cow suffering from tuber-culosis of udder to be slaughtered.

27.—(1) If a veterinary surgeon appointed by the council for the purposes of the Dairies Cowsheds and Milkshops Order 1899 has reason to suspect on any inspection that any cow in any dairy farm or cowshed situate in the county (elsewhere than in the city) is suffering from tuberculosis of the udder he may cause such cow to be removed from such dairy farm or cowshed.

(2) Forthwith after such removal the council shall either agree in writing with the owner of such cow the full value thereof at the time of removal or if they shall fail so to agree shall cause such value to be ascertained by a valuer to be appointed on the application of the council by the Board of Agriculture and such valuer shall give to the council and to the owner a certificate in writing of the said value (*q*).

(3) As soon as may be after such value shall have been agreed or certified as aforesaid the council shall cause any cow which may have been so removed as aforesaid to be slaughtered and shall thereupon cause the carcase of such cow to be examined by a properly qualified and (if so required by the owner of the cow) independent veterinary surgeon who failing agreement between the council and such

(*p*) See the meaning given to the expressions "house," "owner," "rack-rent," "ashpit," and "sanitary convenience" in s. 141 of the Public Health (London) Act, 1891, *ante*, p. 291, and the notes thereto.

(*q*) See s. 81 of the London County Council (General Powers) Act, 1907, *post*. The "council" referred to is the London County Council (s. 3, *ante*).

owner shall be nominated by the president for the time being of the Royal College of Veterinary Surgeons.

(4) If on such examination the veterinary surgeon making the same certifies that such cow was not in fact suffering from tuberculosis of the udder the council shall pay to the owner thereof by way of compensation and in full satisfaction of all claims and demands by the owner against the council a sum equal to the value of such cow as agreed or certified in manner aforesaid or the sum of thirty pounds (whichever shall be the less) and a further sum of twenty shillings and shall also bear and pay the reasonable costs of any independent veterinary surgeon and valuer employed for the purposes of this section.

(5) If on any such examination the veterinary surgeon making the same shall certify that such cow was in fact suffering from tuberculosis of the udder the council shall pay to the owner thereof by way of compensation and in full satisfaction of all claims and demands by the owner against the council a sum equal to three-fourths of the value of such cow as agreed or certified in manner aforesaid or the sum of twenty-two pounds ten shillings (whichever shall be the less) and shall also bear and pay one half of the reasonable costs of any independent veterinary surgeon and valuer employed for the purposes of this section and the remaining half of such costs shall be borne and paid by the said owner.

(6) The carcase of any cow which has been slaughtered under the provisions of this section shall belong to the council and shall be buried or sold or otherwise disposed of as the council may direct and as the condition of such carcase and other circumstances may require or admit and any money received by the council on any such sale shall be carried by them to the credit of the special county account of the county fund.

(7) This section may be carried into execution by a committee of the council formed in accordance with the Fourth Schedule to the Diseases of Animals Act 1894 except that the committee shall consist wholly of members of the council.

(8) Any person obstructing a veterinary surgeon or other person duly employed in the execution of this section shall be liable on summary conviction to a fine not exceeding five pounds.

(9) All expenses incurred by the council in the execution of this Part of this Act shall be defrayed as payments for special county purposes within the meaning of the Local Government Act 1888.

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Appendix.

Amending Part IX. of London County Council (General Powers) Act, 1902.

47. Notwithstanding anything contained in the London County Council (General Powers) Act 1902 licences granted or renewed by the council under that Act to keep or use premises as common lodging-houses shall expire on such day in every year as the council may fix notwithstanding that the period during which any such licence shall remain valid may exceed one year from the date thereof and when a licence is first granted or renewed after the passing of this Act the council may provide that the same shall be valid for a period ending on or at any time before the day so fixed which secondly occurs after the date of the licence (*r*).

Fines under Part VIII. of London County Council (General Powers) Act, 1902, to be payable to sanitary authorities.

48. Notwithstanding anything contained in the Metropolitan Police Courts Act 1839 or in the London County Council (General Powers) Act 1902 or in any other Act or Acts to the contrary whenever in consequence of proceedings taken by a sanitary authority against any person in respect of any offence under Part VIII. (ice-creams) of the said London County Council (General Powers) Act 1902 a pecuniary penalty is inflicted the amount of such penalty shall be payable and paid to such sanitary authority (*r*).

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As to payments under this Act.

54.—(1) All costs and expenses of the council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 . . .

(2) Any moneys expended by the council of any metropolitan borough in the execution of this Act (except so far as they may be otherwise provided for by this Act) shall be charged upon the general rate leviable within the respective boroughs of the councils expending the same.

(3) Any moneys expended by the corporation in the execution of this Act as the sanitary authority of the city shall be paid out of their consolidated rate and sewers rate or either of such rates.

(4) Any moneys expended by the overseers of the Inner and Middle Temple respectively in the execution of this Act shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in such places.

(*r*) See the provisions of the London County Council (General Powers) Act, 1902, as to licences to keep or use premises as common lodging-houses, and as to ice-creams, which are set out *ante*, pp. 393, 394.

THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1907.

(7 Edw. 7, c. clxxv.)

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Interpretation of terms.

3.—(1) In this Act the following words and expressions have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say):

"The council" means the London County Council:

"The county" means the administrative county of London:

. . . . .

"The corporation" means the mayor and commonalty and citizens of the city of London acting by the mayor aldermen and commons of the city of London in common council assembled:

. . . . .

"The medical officer" means the medical officer of health of the county and includes any person duly authorised to act as deputy for or temporarily as such medical officer of health:

"Dairy" means any farm farmhouse cowshed milk-store milk shop or other place from which milk is supplied or in which milk is kept for purposes of sale:

"Dairyman" means any cowkeeper purveyor of milk or occupier of a dairy:

"Sanitary authority" means—

(a) As respects the city of London the corporation:

(b) As respects any metropolitan borough the council of such borough:

"Daily penalty" means a penalty for every day on which any offence is continued after conviction.

(2) In and for the purposes of the several Parts of this Act hereinafter specified the following words and expressions have respectively the meanings hereby assigned to them unless there be anything in the subject or context repugnant to such construction (that is to say):

. . . . .

In Part XII.:

. . . . .

"Tenement house" means any house occupied by any person of the working class which is wholly or partially let in lodgings or which is occupied by members of more than one family:

Appendix.

"Working class" has the same meaning as in the Schedule to the Housing of the Working Classes Act 1903.

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PART IV.

MILK SUPPLY (TUBERCULOSIS).

Power to take samples of milk.

24.—(1) It shall be lawful for the medical officer or any person provided with and if required exhibiting the authority in writing of the medical officer to take within the county for examination samples of milk produced or sold or intended for sale within the county:

Provided that in the exercise of the said power at any railway station or railway premises the medical officer of health or the person so authorised by him shall conform to the reasonable requirements of the railway company owning or using such station or premises so that the working of the traffic thereat may not be obstructed or interfered with.

(2) The council may if in their discretion they think fit by resolution authorise any such sanitary authority as is mentioned in the section of this Act of which the marginal note is "Interpretation of terms" to exercise in substitution for the medical officer so much of the powers of sub-section (1) of this section as to enable such sanitary authority through their medical officer or any person provided with and if required exhibiting the authority in writing of such last-mentioned medical officer to take within their district samples of milk for examination by the council and may by such resolution prescribe the period during which and the conditions subject to which such authorisation shall take effect. Provided that any medical officer or other person purporting to act in pursuance of a resolution of the council passed under this sub-section shall if required before taking any sample exhibit a copy of such resolution certified by the clerk of the council.

(3) The like powers as are conferred by sub-section (1) of this section in all respects may be exercised outside the county by the medical officer or such authorised person if he shall first have obtained from a justice having jurisdiction in the place where the sample is to be taken an order authorising the taking of samples of the milk which order any such justice is hereby empowered to make.

Power to inspect cows and to take samples of milk.

25.—(1) If milk from a dairy situate within the county is being sold or suffered to be sold or used within the county the medical officer or any person provided with and if

required exhibiting the authority in writing of the medical officer may if accompanied by a properly qualified veterinary surgeon at all reasonable hours enter the dairy and inspect the cows kept therein and if the medical officer or such person has reason to suspect that any cow in the dairy is suffering from tuberculosis of the udder he may require the cow to be milked in his presence and may take samples of the milk and the milk from any particular teat shall if he so requires be kept separate and separate samples thereof be furnished.

(2) If the medical officer is of opinion that tuberculosis is caused or is likely to be caused to persons residing in the county from consumption of the milk supplied from a dairy situate within the county or from any cow kept therein he shall report thereon to the council and his report shall be accompanied by a report to be furnished to him by the veterinary surgeon and the council may thereupon serve on the dairyman notice to appear before them within such time not less than twenty-four hours as may be specified in the notice to show cause why an order should not be made requiring him not to supply within the county any milk from such dairy or any milk from any specified cow or cows in such dairy until the order has been withdrawn by the council.

(3) If the medical officer has reason to believe that milk from any dairy situate outside the county from which milk is being sold or suffered to be sold or used within the county or from any cow in any such dairy is likely to cause tuberculosis in persons residing within the county the powers conferred by this section may in all respects be exercised in the case of such dairy or cow Provided that the medical officer or other authorised person shall first have obtained from a justice having jurisdiction in the place where the dairy is situate an order authorising such entry and inspection which order any such justice is hereby empowered to make Provided also that the medical officer or such authorised person as aforesaid shall in all cases where reasonably practicable without involving delay in the exercise of the powers of this section give to the medical officer of the county in which the dairy is situate previous notice in writing of his intention to enter such dairy for the purpose of inspecting the cows kept therein.

(4) Every dairyman and the persons in his employment shall render such reasonable assistance to the medical officer or such authorised person or veterinary surgeon as aforesaid as may be required by the medical officer or such person or veterinary surgeon for all or any of the purposes

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of this section and any person refusing such assistance or obstructing the medical officer or such person or veterinary surgeon in carrying out the purposes of this section shall be liable to a penalty not exceeding five pounds.

(5) If in their opinion the dairyman fails to show cause why such an order should not be made as aforesaid the council may make the said order and shall forthwith serve notice of the facts on the Local Government Board and if the dairy is situate outside the county on the county council of the administrative county and the council of the borough or district in which it is situate.

(6) The said order shall be forthwith withdrawn on the council or the medical officer being satisfied that the milk supply has been changed or that it is not likely to cause tuberculosis to persons residing in the county.

(7) If any person after any such order has been made supplies any milk within the county in contravention of the order or sells it for consumption therein he shall be liable to a penalty not exceeding five pounds and if the offence continues to a daily penalty not exceeding forty shillings.

(8) A dairyman shall not be liable to an action for breach of contract if the breach be due to an order under this section.

(9) It shall be lawful for the council if they think fit to repay to any dairyman who shall have appeared before them pursuant to any notice in that behalf served on him by the council the whole or any part of the expenses reasonably incurred by such dairyman in attending for the purpose of such appearance.

(10) The council shall simultaneously with the service on any dairyman of a notice under this section furnish to him free of charge a copy of the report made to the council by the medical officer in relation to the dairy referred to in such notice and of the report furnished to the medical officer by the veterinary surgeon who accompanied the medical officer or such authorised person as aforesaid on the occasion of his entry and inspection of such dairy and where any order proposed to be made by the council under this section relates to any dairy situate outside the county the council shall before making such order furnish free of charge to the county council of the county in which the dairy is situate copies of the like reports relating to such dairy.

Appeal.

26. The dairyman may appeal against an order of the council made under the last preceding section or the refusal

of the council to withdraw any such order (A) if the dairy is situate within the county outside the city of London to the metropolitan police court of the district within which the dairy is situate or (B) if the dairy is situate within the said city to the lord mayor or an alderman of the said city for the time being sitting at the Mansion House or Guildhall justice rooms in the said city or (C) if the dairy is situate outside the county at his option either to a metropolitan police court or to the Board of Agriculture and Fisheries who shall appoint an officer to hear such appeal Such officer shall fix a time and place of hearing within the county and give notice thereof to the dairyman and the clerk of the council not less than forty-eight hours before the hearing Such officer shall for the purposes of the appeal have all the powers of a petty sessional court.

The Board of Agriculture and Fisheries may at any stage require payment to them by the dairyman of such sum as they deem right to secure the payment of any costs incurred by the Board of Agriculture and Fisheries in the matter of the appeal.

The court or the Board of Agriculture and Fisheries as the case may be may confirm vary or withdraw the order which is the subject of the appeal and may direct to and by whom the costs of the appeal (including any sum paid or payable to the Board of Agriculture and Fisheries as aforesaid) are to be paid but pending the decision of the appeal the order shall remain in force unless previously withdrawn by the council.

Compensation to dairymen.

27. If an order is made without due cause or if the council unreasonably refuse to withdraw the order the dairyman shall if not himself in default be entitled to recover from the council full compensation for any damage which he has sustained by reason of the making of the order or of the refusal of the council to withdraw the order.

The court or the Board of Agriculture and Fisheries may determine and state whether an order the subject of appeal has been made without due cause and whether the council have unreasonably refused to withdraw the order and whether the dairyman has been in default.

Any dispute as to the fact whether the order has been made or maintained without due cause or as to the fact of default where any such fact has not been determined by the court or Board of Agriculture and Fisheries or as to the act of damage or as to the amount of compensation shall be determined in the manner provided by section 308 of

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the Public Health Act 1875 (*s*) and that section shall accordingly apply and have effect as if the same were herein re-enacted and in terms made applicable to any such dispute as aforesaid Provided that for the purposes of the said section the council shall be deemed to be the local authority and that in the declaration to be made under the provisions of section 180 (10) of the Public Health Act 1875 (*t*) there shall be substituted for the reference to that Act a reference to this Act.

Penalty for selling milk of diseased cows.

28. Every person who knowingly sells or suffers to be sold or used for human consumption within the county the milk of any cow which is suffering from tuberculosis of the udder shall be liable to a penalty not exceeding ten pounds.

Penalty on failing to isolate diseased cows.

29. Any person the milk of the cows in whose dairy is sold or suffered to be sold or used for human consumption within the county who after becoming aware that any cow in his dairy is suffering from tuberculosis of the udder keeps or permits to be kept such cow in any field shed or other premises along with other cows in milk shall be liable to a penalty not exceeding five pounds.

Obligation to notify cases of tuberculosis.

30. Every dairyman who supplies milk within the county and has in his dairy any cow affected with or suspected of or exhibiting signs of tuberculosis of the udder shall forthwith give written notice of the fact to the medical officer stating his name and address and the situation of the dairy or premises where the cow is.

Any dairyman failing to give such notice as required by this section shall be liable to a penalty not exceeding forty shillings.

Notice of provisions of this Part of Act.

31. The council shall cause to be given public notice of the effect of the provisions of this Part of this Act by advertisement in two or more daily newspapers circulating in the county and by handbills and otherwise in such manner as they think sufficient and this Part of this Act shall come into operation at such time not being less than one month after the first publication of such advertisement as aforesaid as the council may fix.

(*s*) Section 308 of the Public Health Act, 1875, provides for the payment of compensation in case of damage by the local authority and in case of dispute for the determination of questions as to the fact of damage and the amount of the compensation by arbitration.

(*t*) Section 180 contains regulations as to arbitrations under that Act.

Procedure.

32. Offences under this Part of this Act may be prosecuted and penalties may be recovered by the council before a petty sessional court having jurisdiction in the place where the dairy is situate or the offence is committed and not otherwise.

As to expenses.

33. Any expenses incurred by the council in the application by a veterinary surgeon of the tuberculin or other reasonable test for the purpose of discovering tuberculosis to any cow whose milk is or was recently being supplied within the county shall be defrayed by them as expenses incurred in the execution of this Act in accordance with the provisions hereinafter contained Provided that no such test shall be applied except with the previous consent of the owner of such cow.

Execution of this Part of Act by committee.

34. The powers conferred upon the council by this Part of this Act may be carried into execution by a committee of the council formed in accordance with and subject to the provisions of the Fourth Schedule to the Diseases of Animals Act 1894 except that the committee shall consist wholly of members of the council.

As to exercise of powers within city of London.

35. It shall be lawful for the corporation or their medical officer to exercise concurrently with the council or their medical officer within the city of London such of the powers by this Part of this Act conferred upon the council or their medical officer as the case may be as are exercisable within the said city and the council and the corporation may enter into and carry into effect agreements and arrangements with respect to the exercise of such powers as aforesaid.

Part V.

Cleansing of Verminous Persons (*u*).

Cleansing of children attending school and their clothing.

36.—(1) The medical officer or any person provided with and if required exhibiting the authority in writing of the medical officer may in any school within the county provided or maintained by the council as the local education authority examine the person and clothing of any child attending such school and if on examination the medical officer or any such authorised person as aforesaid shall be of opinion that the person or clothing of any such child is infested with vermin or is in a foul or filthy condition the medical officer may give notice in writing to the

(*u*) See the provisions of the Cleansing of Persons Act, 1897, *ante*, p. 378.

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parent or guardian or other person who is liable to maintain or has the actual custody of such child requiring such parent guardian or other person to cleanse properly the person and clothing of such child within twenty-four hours after the receipt of such notice.

(2) If the person to whom any such notice as aforesaid is given fail to comply therewith within the prescribed time the medical officer or some person provided with and if required exhibiting the authority in writing of the medical officer may remove the child referred to in such notice from any such school and may cause the person and clothing of such child to be properly cleansed in suitable premises and with suitable appliances and if necessary for that purpose may without any warrant other than this Act convey to such premises and there detain such child until such cleansing is effected.

Cleansing of inmates of common lodging-houses and their clothing.

37.—(1) If the medical officer or any person provided with and if required exhibiting the authority in writing of the medical officer has reason to suspect that the person or clothing of any inmate of any common lodging-house within the county (elsewhere than in the city of London) is infested with vermin or is in a foul and filthy condition the medical officer or any such authorised person may at any reasonable hour enter any such common lodging-house and may examine the person and clothing of such inmate If on examination the medical officer or any such authorised person as aforesaid shall be of opinion that the person or clothing of such inmate is infested with vermin or is in a foul and filthy condition the medical officer or such authorised person may give to such inmate notice in writing requiring him within twenty-four hours to submit his person and clothing to be cleansed in such suitable premises as may be specified in the notice and by means of any suitable appliances available thereat for that purpose.

(2) If the inmate to whom any such notice as aforesaid is given fail to comply therewith within the prescribed time the medical officer or some person provided with and if required exhibiting the authority in writing of the medical officer may cause the person and clothing of the inmate referred to in such notice to be properly cleansed in suitable premises and with suitable appliances and may for that purpose enter any such common lodging-house as aforesaid and may if necessary without any warrant other than this Act convey to any such premises and there detain such inmate until such cleansing is effected.

(3) Any person who shall prevent or obstruct the entry of the medical officer or any such authorised person as aforesaid into any such common lodging-house as aforesaid for the purposes of this section and any inmate of any such common lodging-house who shall refuse to permit the medical officer or any such authorised person as aforesaid to examine his person or clothing or who shall refuse to allow his person or clothing to be cleansed in accordance with the provisions of this section shall be liable on summary conviction to a penalty not exceeding forty shillings.

(4) In relation to any common lodging-house within the city of London and the inmates of any such lodging-house the like powers as are by this section conferred upon the medical officer and persons authorised by him as aforesaid in relation to common lodging-houses elsewhere within the county and inmates of such lodging-houses shall be exerciseable by the medical officer of the said city or any person provided with and if required exhibiting the authority of such medical officer and the foregoing sub-sections of this section shall extend and apply accordingly and shall be read and have effect as if such last-mentioned medical officer and authorised persons had been substituted therein for the medical officer and persons authorised by him and as if the corporation had been substituted therein for the council.

Agreements between council and sanitary authorities for purposes of this Part of Act.

38. The council and any sanitary authority may make and carry into effect agreements and arrangements for or with respect to the cleansing of the person or clothing of any person under this Part of this Act and for the use by the council for the purpose of effecting such cleansing of any premises or appliances adapted for such purpose and belonging to or used by such sanitary authority.

Examination and cleansing of females to be effected by medical practitioner or female only.

39. The examination or cleansing of females under this Part of this Act shall only be effected either by a person duly qualified as a medical practitioner or by a female person duly authorised as hereinbefore provided.

Regulations as to this Part of Act.

40.—(1) It shall be lawful for the council to make regulations with respect to the mode of carrying into effect the provisions of this Part of this Act.

(2) No such regulations shall be of any force or effect unless or until the same shall have been submitted to and confirmed by the Local Government Board.

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As to supply of water in tenement houses.

78. For the purposes of section 48 (Provisions as to house without proper water supply) of the Public Health (London)

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Act 1891 (*x*) a tenement house shall be deemed to be a house without a proper and sufficient supply of water unless there shall be provided on the storey or one of the storeys in which the rooms or lodgings in the separate occupation of each family occupying such house are situate a sufficient provision for the supply of water for domestic purposes :

Provided that with respect to any building existing and in use as a tenement house at the passing of this Act this section shall not (a) come into operation until the first day of January one thousand nine hundred and eight or (b) apply where the only storey or storeys on which a proper and sufficient supply of water is not provided is or are a storey or storeys (i) constructed at a height exceeding that to which the Metropolitan Water Board may for the time being be required to furnish a supply of water for domestic purposes and (ii) to which a supply of water for such purposes is not at the passing of this Act being furnished by the said board by agreement :

Provided also that this section shall not apply to any tenement house in respect of which it can be shown that any such provision for the supply of water as aforesaid is not reasonably necessary.

Keeper of common lodging-house or approved substitute to reside therein.

79.—(1) From and after the passing of this Act the person licensed as the keeper of a common lodging-house in the county or some proper and responsible substitute or deputy to be nominated by such person and approved in writing by the council shall reside constantly and shall remain between the hours of nine of the clock in the afternoon and six of the clock in the forenoon in such lodging-house and if there shall not be in constant residence in any such lodging-house either the keeper thereof or some proper and responsible substitute or deputy nominated and approved as aforesaid or if the keeper of any such lodging-house or such substitute or deputy as aforesaid shall not remain therein between the said hours the keeper of such common lodging-house shall be liable on summary conviction to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(2) It shall be lawful for the council to revoke or to suspend for such period as they may think fit or to refuse to renew any licence held by any keeper of a common lodging-house who shall be convicted of an offence under this section.

(*x*) See this section, *ante*, p. 120, and the notes thereto.

Application of penalties under Act.

80. Notwithstanding anything contained in the Metropolitan Police Courts Act 1839 or in any other Act or Acts to the contrary whenever in consequence of proceedings taken in respect of an offence under this Act a pecuniary penalty is inflicted the amount of such penalty shall be payable and paid to the council.

Saving for existing powers of council as to milk.

81. Nothing in this Act shall prejudice or affect the exercise by the council or any officer of or person authorised by the council of any powers under the Dairies Cowsheds and Milkshops Orders 1885 and 1899 or Part V. of the London County Council (General Powers) Act 1904 (*y*).

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As to payments under this Act.

86.—(1) All costs and expenses of the council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 . . .

(2) Any moneys expended by the council of any metropolitan borough in the execution of this Act (except so far as they may be otherwise provided for by this Act) shall be charged upon the general rate leviable within the borough of such council.

(3) Any moneys expended by the corporation in the execution of this Act shall be paid out of their consolidated rate and sewers rate or either of such rates.

(*y*) These provisions are set out *ante*, p. 406.

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THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1908.

(8 EDW. 7, c. CVII.)

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Interpretation.

3. In this Act the following words and expressions have the several meanings hereby assigned to them unless there is something in the subject or context repugnant to such construction (that is to say):

"The council" means the London County Council:

"The county" means the administrative county of London:

"The corporation" means the mayor and commonalty and citizens of the city of London acting by the mayor aldermen and commons of the city of London in common council assembled:

"Sanitary authority" means—

(a) As respects the city of London and so much of the port of London as established for the purposes of the laws relating to the customs of the United Kingdom as is within the county the corporation;

(b) As respects the places known as the Inner Temple and the Middle Temple respectively the overseers of such places respectively; and

(c) As respects any metropolitan borough (except as to any portion thereof which may be within the said portion of the port of London) the council of such borough;

"Daily penalty" means a penalty for every day on which any offence is continued after conviction:

. . . . .

"Owner" (except where used in Part III. of this Act) means the person for the time being receiving the rack-rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or who would so receive the same if such premises were let at a rack-rent:

"Rack-rent" means rent which is not less than two-thirds of the full annual value of the premises out of which the rent arises and the full annual value shall be taken to be the annual rent which a tenant might reasonably be expected taking one year with another to pay for the premises if the tenant undertook to pay all usual tenants' rates and taxes and the tithe commutation rent-charge (if any) and if the landlord

undertook to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the premises in a state to command such rent:

"Rag and bone dealer" means any person selling or buying for the purpose of resale or otherwise dealing in rags (other than tailors' or dressmakers' cuttings) bones rabbit-skins fat or other like articles:

"Tenement house" means any house occupied by any person of the working class which is wholly or partially let in lodgings or which is occupied by members of more than one family:

"Working class" has the same meaning as in the Schedule to the Housing of the Working Classes Act, 1903.

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Part II.

Sanitary Provisions.

Power to sanitary authorities to remove from or refuse to enter on register names of dairymen in certain circumstances.

5.—(1) Notwithstanding anything contained in the Dairies Cowsheds and Milkshops Order of 1885 (*z*) or in any subsequent order any sanitary authority may remove from the register kept by them of persons from time to time carrying on in their district the trade of cowkeepers dairymen or purveyors of milk or may refuse to enter upon such register the name of any person carrying on or proposing to carry on the trade of a dairyman or purveyor of milk upon premises which are in the opinion of such sanitary authority for any reason unsuitable for the sale of milk therein Provided that for the purposes of this section premises shall not be deemed to be unsuitable for the sale of milk therein on any ground inconsistent with the provisions or requirements of any order or regulation made under any enactment for the time being in force and applicable to such premises.

(2) Any person who thinks himself aggrieved by any decision of a sanitary authority under the provisions of this section may at any time within twenty-one days from the

(*z*) See the Dairies, Cowsheds and Milkshops Order, 1885, the subsequent Orders, and the Regulations made thereunder. See also the provisions of the Public Health (London) Act, 1891, s. 28, as to the making of regulations and orders for dairies, *ante*, p. 73; s. 71 as to the inspection of dairies and the power to prohibit the supply of milk, *ante*, p. 157; and of the London County Council (General Powers) Act, 1907, ss. 24 *et seq.*, *ante*, p. 410, and the notes to the said sections respectively; also s. 6 (4) of the London Government Act, 1899, as to the duty of metropolitan borough councils to enforce byelaws and regulations with respect to dairies and milk, set out in note (*a*), *ante*, p. 75.

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date of such decision appeal against the same to a court of summary jurisdiction and if on any such appeal it shall appear to the court that the premises of the person appealing are in all respects suitable for the sale of milk therein the court may make an order requiring such authority to enter upon or restore in the register the name of such person.

Power to sanitary authorities to appoint health visitors.

6.—(1) Any sanitary authority may on or at any time after the first day of January one thousand nine hundred and nine appoint suitable women (to be known as health visitors) for the purpose of giving to persons advice as to the proper nurture care and management of young children and the promotion of cleanliness and discharging such other duties (if any) as may be assigned to them in accordance with the provisions of this section.

(2) The Local Government Board may make regulations prescribing the qualification mode of appointment duties salary and tenure of office of health visitors (*a*) appointed under this section and no appointment of a health visitor shall be made otherwise than in accordance with such regulations.

(3) It shall be lawful for the council to pay out of the County Fund and charge to the Exchequer Contribution Account any sum or sums by way of contribution towards the salaries of any person so appointed not exceeding in the case of any such person one half of her salary.

As to accommodation for cooking of food in tenement houses.

7. If at any time it appears to any sanitary authority that in any tenement house (*b*) within their district sufficient and suitable accommodation for the cooking of food is not provided for the use of each family occupying such house on the storey or one of the storeys in which are situate the rooms or lodgings in the separate occupation of such family such sanitary authority may cause notice to be served on the owner of such house requiring him within such reasonable time as may be specified in the notice to provide sufficient and suitable accommodation for the purpose aforesaid and any owner failing to comply with any such requirement within the period prescribed in the notice shall be liable on summary conviction to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings :

(*a*) See s. 107 of the Public Health (London) Act, 1891, as to the appointment of sanitary inspectors.

Regulations under this section were made by the Local Government Board on September 4th, 1909.

(*b*) See the definition of "tenement house" in s. 3, *ante*, p. 421.

See also the provisions of ss. 16—19 of the London County Council (General Powers) Act, 1909, as to accommodation for the storage of food in tenement houses.

Provided that this section shall not apply to any tenement house used or occupied as such before the passing of this Act.

Sanitary regulations for premises used for sale etc. of food for human consumption.

8.—(1) From and after the passing of this Act the following provisions shall apply to any room shop or other part of a building within the county in which any article whether solid or liquid intended or adapted for the food of man is sold or exposed for sale or deposited for the purpose of sale or of preparation for sale or with a view to future sale :

(a) No urinal water-closet earth-closet privy ashpit or other like sanitary convenience shall be within such room shop or other part of a building or shall communicate therewith except through the open air or through an intervening ventilated space ;

(b) No cistern for supplying water to such room shop or other part of a building shall be in direct communication with and directly discharge into any such sanitary convenience ;

(c) No drain or pipe for carrying off fœcal or sewage matter shall have any inlet or opening within such room shop or other part of a building ;

(d) No such room shop or other part of a building shall be used as a sleeping place and so far as may be reasonably necessary to prevent risk of the infection or contamination of any such article as aforesaid no sleeping place shall adjoin such room shop or other part of a building and communicate therewith except through the open air or through an intervening ventilated space ;

(e) Refuse or filth whether solid or liquid shall not be deposited or allowed to accumulate in any such room shop or other part of a building except so far as may be reasonably necessary for the proper carrying on of trade or business ;

(f) Due cleanliness shall be observed in regard to such room shop or other part of a building and all articles apparatus and utensils therein and shall be observed by persons engaged in such room shop or other part of a building.

(2) If any person occupies or lets or knowingly suffers to be occupied any such room shop or other part of a building wherein any of the conditions prohibited by this section exist or does or knowingly permits any act or thing therein in contravention of this section he shall be liable on summary conviction to a fine not exceeding for a first offence twenty shillings and for every subsequent offence five pounds and in either case to a daily penalty not exceeding twenty shillings.

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Power to council and corporation to make byelaws with respect to certain businesses.

9.—(1) The council may make byelaws for regulating the conduct within the county (elsewhere than in the city of London and so much of the port of London as established for the purposes of the laws relating to the customs of the United Kingdom as is within the county) of the businesses of a vendor of fried fish a fish-curer and a rag and bone dealer (*c*) or any of them and with respect to the premises in or upon which any such business is carried on and the apparatus utensils and appliances used for the purposes of or in connection with any such business.

(2) The provisions of section 114 (byelaws) of the Public Health (London) Act 1891 (*d*) shall apply to all byelaws made by the council under this section.

(3) The corporation may make and enforce byelaws for regulating the conduct within the city of London of any such business as aforesaid and with respect to the premises in or upon which any such business is carried on and the apparatus utensils and appliances used for the purposes of or in connection with any such business.

(4) The following sections of the City of London (Public Health) Act 1902 shall extend and apply to and with respect to byelaws made under the last preceding sub-section of this section (that is to say):

Section 7 (Byelaws to be allowed by Local Government Board);
Section 8 (Penalties in byelaws);
Section 9 (Printing and sale of byelaws);
Section 10 (Proof of byelaws);
Section 11 (Recovery of penalties);
Section 12 (Appeal to quarter sessions) (*e*).

(5) Notwithstanding anything contained in the said section 114 of the Public Health (London) Act 1891 or in the said section 7 of the City of London (Public Health) Act 1902 or in section 184 (confirmation of byelaws) of the Public Health Act 1875 applied by the said sections respectively all byelaws made by the council or the corporation (as the case may be) under this section shall as regards any business carried on in any factory or workshop to which the Factory and Workshop Act 1901 applies require confirmation as if the Secretary of State were named in the said sections in addition to the Local Government Board.

(*c*) See the provisions in s. 19 of the Public Health Act, 1891, as to offensive trades, *ante*, p. 47, and the byelaws made thereunder by the London County Council.

(*d*) See s. 114 of the Public Health (London) Act, 1891, *ante*, p. 220.

(*e*) See the provisions of these sections of the City of London (Public Health) Act, 1902, set out *ante*, p. 390.

(6) Nothing in this section or in any byelaw made thereunder shall be construed as imposing upon any person any obligation to alter any premises which are at the passing of this Act used for the business of a vendor of fried fish or of a fish curer or any fittings or apparatus in any such premises or to place or provide in any such premises any new fittings or apparatus Provided that if at any time after the passing of this Act any alteration of any such premises or of any fittings or apparatus therein shall be effected or if any new fittings or apparatus shall be placed or provided therein such alteration shall be carried out and such new fittings and apparatus shall be placed and provided in conformity with the requirements of any such byelaw as aforesaid for the time being in force.

Enforcement of this Part of Act and byelaws.

10. Subject to the provisions of this Act it shall be the duty of each sanitary authority to enforce within their district the provisions of this Part of this Act and all byelaws made by the council thereunder and for that purpose the sanitary authorities shall have all the rights and powers and be subject to all the liabilities and obligations conferred or imposed upon them by sections 101 117 118 121 124 125 126 127 128 133 and 135 of the Public Health (London) Act 1891 (*f*) and subject as aforesaid those sections shall apply and have effect in respect of this Part of this Act as if they were expressly re-enacted in and in terms made applicable to this Part of this Act.

Power to Local Government Board to extend byelaws made by council.

11. The Local Government Board may on the application of the sanitary authority of the port of London by order extend to so much of the said port as is within the county any byelaws made by the council under the section of this Act of which the marginal note is "Power to council and corporation to make byelaws with respect to certain businesses."

Power to sanitary authorities etc. to enter.

12. Any sanitary authority or any officer or person duly authorised by them in that behalf shall have the right to enter at all reasonable times any house building or premises in the district of such sanitary authority (*g*) for the purpose of examining whether there is any contravention of the provisions of this Part of this Act or of any byelaw made thereunder or any non-compliance with the requirements of any notice given thereunder respectively.

(*f*) See the provisions of these sections of the Public Health (London) Act, 1891, set out *ante*.

(*g*) See the provisions as to power of entry in ss. 10, 20 (7) and 115 of the Public Health (London) Act, 1891, *ante*, and s. 24 of the London County Council (General Powers) Act, 1904, *ante*.

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Power to owner to enter notwithstanding provisions of lease.

13. For the purpose of complying with any of the provisions of this Part of this Act or of any byelaw made thereunder or with the requirements of any notice given under any such provision it shall be lawful for the owner of any house building or premises not being the occupier thereof notwithstanding anything to the contrary contained in any lease underlease or agreement of or relating to such house building or premises or any part thereof to enter such house building or premises or any part thereof and carry out all such works and do all such things as may be necessary to comply with any such provision or requirement and if the occupier of such house building or premises or part thereof suffers damage by reason of the negligent or improper execution of such works or of anything negligently or improperly done by the owner under the powers of this section such occupier may apply to the petty sessional court having jurisdiction within the district in which the house building or premises is or are situate and the court may after hearing the owner or (if after being duly summoned he shall fail to appear) in his default make such order for compensation to be paid by the owner as the court may deem just and equitable (*h*).

Application of sections 115 and 116 of Public Health (London) Act 1891.

14. The provisions of section 115 (General provisions as to powers of entry) and section 116 (Penalty on obstructing execution of Act) of the Public Health (London) Act 1891 (*i*) shall apply and have effect in respect of this Part of this Act as if such sections were expressly re-enacted in and in terms made applicable to this Part of this Act.

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Application of penalties under Act.

75. Notwithstanding anything contained in the Metropolitan Police Courts Act 1839 or in any other Act to the contrary whenever in consequence of proceedings taken in respect of an offence under this Act or any byelaw made thereunder (other than an offence under Part III. of this Act) a pecuniary penalty is inflicted the amount of such penalty shall be payable and paid if such proceedings are taken by the council to the council and if such proceedings are taken by a sanitary authority to such sanitary authority.

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As to payments under this Act.

79.—(1) All costs and expenses of the council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 . . .

(*h*) This is a new provision.

(*i*) See the provisions of ss. 115 and 116 of the Public Health (London) Act, 1891, set out *ante*.

(2) Any moneys expended by the council of any metropolitan borough in the execution of this Act (except so far as they may be otherwise provided for by this Act) shall be paid out of the general rate authorised to be levied by such council.

(3) Any moneys expended by the corporation in the execution of this Act shall be paid out of the general rate authorised to be levied by them.

(4) Any moneys expended by the overseers of the Inner and Middle Temples respectively in the execution of this Act shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in such places.

THE LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1909.

(9 Edw. 7, c. cxxx.)

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3. In this Act unless there be in the subject or context something repugnant thereto or inconsistent therewith— Interpretation.

(1) The following words and expressions have the several meanings hereby assigned to them (that is to say):

"The council" means the London County Council;

"The county" means the administrative county of London;

. . . . .

"The corporation" means the mayor and commonalty and citizens of the city of London acting by the mayor aldermen and commons of the city of London in common council assembled;

"Sanitary authority" means—

(a) As respects the city of London the corporation;

(b) As respects the places known as the Inner Temple and the Middle Temple respectively the overseers of such places respectively; and

(c) As respects any metropolitan borough the council of such borough;

"Daily penalty" means a penalty for every day on which any offence is continued after conviction;

. . . . .

"Owner" (where used in Part III. of this Act) means the person for the time being receiving the rack-rent of the premises in connexion with which the word

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is used whether on his own account or as agent or trustee for any other person or who would so receive the same if such premises were let at a rack-rent:

"Rack-rent" means rent which is not less than two-thirds of the full annual value of the premises out of which the rent arises and the full annual value shall be taken to be the annual rent which a tenant might reasonably be expected taking one year with another to pay for the premises if the tenant undertook to pay all usual tenants' rates and taxes and the tithe commutation rent-charge (if any) and if the landlord undertook to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the premises in a state to command such rent;

"Tenement house" means any house occupied by any person of the working class which is wholly or partially let in lodgings or which is occupied by members of more than one family;

"Working class" has the same meaning as in the Schedule to the Housing of the Working Classes Act 1903:

(2) The several words and expressions to which by the Acts wholly or partly incorporated herewith meanings are assigned have in this Act the same respective meanings.

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PART III.

ACCOMMODATION FOR STORAGE OF FOOD (*k*).

As to accommodation for storage of food in tenement houses.

16. If at any time it appears to any sanitary authority that in any tenement house within their district sufficient and suitable accommodation for the storage of food is not provided for the use of each family occupying such house on the storey or one of the storeys in which are situate the rooms or lodgings in the separate occupation of such family the sanitary authority may if the provision of such accommodation is practicable cause notice to be served on the owner of such house requiring him within such reasonable time as may be specified in the notice to provide sufficient and suitable accommodation for the purpose aforesaid and

(*k*) See the provisions of s. 7 of the London County Council (General Powers) Act, 1908, as to accommodation for the cooking of food in tenement houses.

any owner failing to comply with such requirement within the period prescribed in the notice shall be liable on summary conviction to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings :

Provided that this section shall not apply to any tenement house used or occupied as such before the passing of this Act.

Application of certain provisions of Public Health (London) Act, 1891, and enforcement of this Part of Act.

17. The following sections of the Public Health (London) Act 1891 shall apply and have effect in respect of this Part of this Act as if such sections were expressly re-enacted in and in terms made applicable thereto :

Section 101 (Proceedings on complaint to Local Government Board of default of sanitary authority) ;
Section 112 (Powers of port sanitary authority of Port of London) ;
Section 115 (General provisions as to powers of entry) ;
Section 116 (Penalty on obstructing execution of Act) ;
Section 117 (Summary proceedings for offences expenses etc.) ;
Section 118 (Evidence by defendant) ;
Section 121 (Recovery of expenses by sanitary authority from owner or occupier) ;
Section 122 (Justice may act though member of sanitary authority or liable to contribute) ;
Section 124 (Protection of sanitary authority and their officers from personal liability) ;
Section 125 (Appeal to quarter sessions) ;
Section 127 (Authentication of notices etc.) ;
Section 128 (Service of notices) ;
Section 133 (Application of Act to City) ;
Section 135 (Proceedings on complaint to Local Government Board of default of Commissioners of Sewers) :

And for the purpose of enforcing the provisions of this Part of this Act the sanitary authorities shall have all the rights and powers and be subject to all the liabilities and obligations conferred or imposed upon them by the said sections or any of them.

Power to sanitary authorities, etc. to enter.

18. Any sanitary authority or any officer or person duly authorised by them in that behalf shall have the right to enter at all reasonable times any tenement house in the district of such sanitary authority for the purpose of ascertaining the accommodation (if any) provided for the storage of food in such house or of ascertaining whether there is

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any contravention of the provisions of this Part of this Act or any non-compliance with the requirements of any notice given thereunder.

Power to owner to enter notwithstanding provisions of lease.

19. For the purpose of complying with any of the provisions of this Part of this Act or with the requirements of any notice given under any such provision it shall be lawful for the owner of any tenement house not being the occupier thereof notwithstanding anything to the contrary contained in any lease underlease or agreement of or relating to such house or any part thereof to enter such house or any part thereof and carry out all such works and do all such things as may be necessary to comply with any such provision or requirement and if the occupier of such house or part thereof suffers damage by reason of the negligent or improper execution of such works or of anything negligently or improperly done by the owner under the powers of this section such occupier may apply to the petty sessional court having jurisdiction within the district in which such house is situate and the court may after hearing the owner or (if after being duly summoned he shall fail to appear) in his default make such order for compensation to be paid by the owner as the court may deem just and equitable.

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Power to councils of metropolitan boroughs and others to provide public lavatories, etc. on or near boundaries of their districts.

66.—(1) It shall be lawful for the council of any metropolitan borough on the one hand and the council of any other metropolitan borough or the corporation or any local authority or authorities having jurisdiction in any area or areas adjoining the county or any of them on the other hand to enter into and carry into effect agreements for and with respect to the provision construction or maintenance of public lavatories or sanitary conveniences on or in the vicinity of the boundary of any district or districts in which the parties to any such agreement or any of them respectively exercise jurisdiction.

(2) For the purpose of carrying into effect any such agreement any such council corporation or local authority as aforesaid being a party to such agreement may subject to the terms thereof and notwithstanding that the lavatory or convenience therein referred to may be wholly or partly outside their district do all or any of the following things (that is to say):

(a) They may bear or contribute towards the expense of the provision construction or maintenance of any

such lavatory or convenience and apply the like funds and rates for that purpose and exercise the like powers of borrowing money upon the security of rates or otherwise for the purpose of such provision and construction as aforesaid as are applicable and exerciseable by them in respect of public lavatories or sanitary conveniences within their district:

(b) They may exercise the like powers of regulation charging and otherwise with respect to any such lavatory or convenience as if the same were situate within their district.

(3) The enactments byelaws and regulations relating to public lavatories and sanitary conveniences within the respective districts of any of the parties to any such agreement shall to the extent specified in such agreement apply to any lavatory or convenience provided constructed or maintained under the foregoing provisions of this section.

Application of penalties under Act.

67. Notwithstanding anything contained in the Metropolitan Police Courts Act 1839 or in any other Act to the contrary whenever in consequence of proceedings taken in respect of an offence under this Act or any byelaw made thereunder (other than an offence under Part IV. of this Act) a pecuniary penalty is inflicted the amount of such penalty shall be payable to the council unless such proceedings are taken by the council of a metropolitan borough or other sanitary authority in which case such penalty shall be payable to the authority taking the proceedings.

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As to payments under this Act.

70.—(1) All costs and expenses of the council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 and subject as hereinafter provided the costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be paid by the council in like manner:

. . . . .

(2) Any moneys expended by the council of any metropolitan borough in the execution of this Act (except so far as they may be otherwise provided for) shall be paid out of the general rate authorised to be levied by such council.

Appendix.

(3) Any moneys expended by the corporation in the execution of this Act shall be paid out of the general rate authorised to be levied by them.

(4) Any moneys expended by the overseers of the Inner and Middle Temples respectively in the execution of this Act shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in such places.

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